

**CUSTOMER CHOICE IN AUTOMOTIVE REPAIR
SHOPS**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN
COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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JULY 30, 2002
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ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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CUSTOMER CHOICE IN AUTOMOTIVE REPAIR SHOPS

TUESDAY, JULY 30, 2002

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE
AND TOURISM
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:25 p.m. in room SR-253, Russell Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Subcommittee, presiding.

Staff Members assigned to this hearing: David Strickland, Democratic Senior Counsel; Carlos Fierro, Republican Senior Counsel; and Ken Nahigian, Republican Counsel.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. I'm going to call the Subcommittee hearing to order today.

We welcome our colleague from Minnesota, Senator Wellstone. The full committee just finished a rather lengthy hearing, less than an hour ago, so we've spent a fair amount of the time in this room, today.

We are convening the Subcommittee this afternoon for a hearing at the request of our colleague from Minnesota, Senator Wellstone. Senator Wellstone has brought to our attention a very interesting issue regarding whether independent automobile repair shops are being given the information they and their customers need to properly repair their cars. The question before us, is whether the ability of the consumer to choose where they want to get their cars fixed being constrained because the independent repair shops cannot get the information they need to repair their vehicles?

Not surprisingly, depending on who you talk to, you get different answers to that question. Some say all the information is available, while others say they have to turn away business because some repairs can only be done by a dealer.

Let me say that I understand there's a natural tension between repair information and proprietary information, between making sure that anyone who is in the repair business today can read the fault codes and properly repair the vehicle and not releasing the internal computer codes that actually control how the computer chip runs the vehicle. So we're having this hearing to try to get to the bottom of what is really happening.

What I do know is that if there ever was something an American consumer cares about, it's their cars. My first automobile was one I bought for \$25. My dad pointed it out. My dad was a fellow who drove a farm gas truck, and he told me of an old car sitting in a granary on an abandoned farm. It was a 1924 Ford. The rats had eaten everything off that Ford—all the wiring, the seat covers. All that was left was rusted metal. I bought it for \$25 from a fellow who had moved from the farm to Milwaukee, Wisconsin. I hauled it into my dad's service station and worked on it for about a year and a half restoring it. It wasn't very complicated. The engine wasn't very complicated. It was a labor of love.

But then I was in high school and discovered girls and realized that I needed a car newer than a 1924 Ford. So now I no longer own the 1924 Ford, much to my regret, but I know a lot about cars because of that experience and the other cars I've owned. I do know that today's cars have become significantly more complicated. With computer chips and onboard diagnostic equipment, they bear very little resemblance to that 1924 Ford. To fix a new model today, you almost have to be a computer wizard. And to say that they are more difficult to repair than my old car is really a large understatement.

This is a very important issue, because we know how much people depend on their cars. We know that 70 to 80 percent of all cars that are no longer under warranty are repaired at independent repair facilities. We know also that there are a lot of people who care a great deal about the dealership from which they purchased that car, and they go back there routinely. We know there are many other Americans who care a great deal about their independent repair shop down the block or on the corner, and that's where they trust getting their car repaired. This is true especially in rural states where the dealer's shop can often be many miles away.

Being able to take your car to the dealer is not always a matter of choice. Having a good independent mechanic nearby who has the information and tools that he or she needs to make the right repair is critically important.

So I look forward to this hearing. I think it is a very important and an interesting topic, and I appreciate Senator Wellstone bringing it to the Subcommittee's attention.

The Senate has scheduled a vote for 2:45 today. My intention would be to take Senator Wellstone's testimony. And, following that, I will ask the other witnesses to come forward and hear their testimony. We will then recess for perhaps 10 minutes while we cast our vote over in the Senate and then come back and finish the hearing. I regret that inconvenience, but that's what we need to do in order to accommodate the vote that's occurring on the Senate floor.

Senator Wellstone, thank you very much for being here and raising this issue. And why don't you proceed? Your entire statement will be part of the record, and you may summarize as you choose.

**STATEMENT OF HON. PAUL WELLSTONE,
U.S. SENATOR FROM MINNESOTA**

Senator WELLSTONE. Thank you, Mr. Chairman.

I have to say at the beginning that, you know, when I first met with some of the independent mechanical repair facility people and was just listening to them, I couldn't believe my ears, and I thought this is really an important issue. This is unfair, what's going on to a lot of small business people, and unfair to consumers.

And when I look at the number of people that have come here from, really, around the country, I just—I want to thank everyone for being here today, and I just want to say to each and every one of you that there was a full Committee this morning with everybody here, and I know I've talked to a number of different Senators who say they're very interested, and I think there's going to be a lot of support.

Since I think this second committee is more important—the second panel is more important, I'll just try to do this briefly. I want to, first of all, thank you, and I want to tell you that I think the real experts are going to be on the second panel.

I want to say a word about Dale Feste, who is from Minnesota, our state, President and Owner of Dale Feste Automotive, which is a full-service independent mechanical repair facility in Hopkins.

Dale founded his automotive repair business in 1980, and his business now services over 4,200 vehicles per year. You don't get that kind of business unless you provide the customers with very, very good service. His shop is AAA approved and was awarded top shop awards in 2000 and 2001. And I would thank AAA for their strong support of this legislation. In addition, he's a past president of the Alliance of Automotive Service Providers of Minnesota, and I want to thank Dale for coming all the way from Minnesota here to testify.

As I said, I met with a group of auto repair shop owners back in April, and they were telling me about the Clean Air Act, and they were telling me that basically, you know, there was a requirement to monitor emissions, and they had access to that code, but that basically what was happening is that post-1996 you had this very sophisticated computerized system, but they were being denied access to the code, in which case they couldn't do the diagnosis and the repair work. And I couldn't believe it. I mean, what I heard from them was that they were unable to access the codes and the diagnostic tools necessary to repair newer-model cars.

And, to me, it just sounded like almost a cartel, like a few companies were driving them out of business. And then I thought to myself, thinking back to the experience that we have had in Northfield or in St. Paul, now. I mean, you sort of build up a lot of trust with these independent mechanics. It's where you want to take the car.

And I was saying this morning to everybody, Mr. Chairman, that, look, if somebody wants to go to the dealership, they should be able to, of course; but the only thing that these small businessmen and women are asking for is a level playing field. And the only thing I'm saying is that us consumers should have a choice. We shouldn't be robbed of that choice.

So I introduced, on June 13th, the Motor Vehicle Owners' Right to Repair Act, which would protect the viability of the independent service station and repair shops and ensure that consumers have a choice.

And basically I'll summarize and finish. This legislation would simply require a manufacturer of a motor vehicle sold in the United States to disclose to the vehicle owner, a repair facility, and the Federal Trade Commission the information necessary to do the diagnosis to service and repair the vehicle. And the bill bars the FTC from requiring disclosure of any information entitled to protection as to manufacturer's trade secrets, so we deal with that concern.

Mr. Chairman, fundamentally this legislation is just about a level playing field. Independent mechanics, all the independent mechanics you see back here, they don't mind competition. In fact, I think they thrive on it. I think with fair competition, they can do great, and they know it, but they can't stay in business if they don't have access to the information to repair the new cars.

And if the kind of anticompetitive practices that you will hear testimony on today continue to occur, we're simply going to see a lot of these independent shops fail, through no fault of their own, because of anticompetitive practice. If this isn't fixed, the result of the loss of a competitive-free market for auto repair will be higher prices, poor customer service, and lower quality, which all means less safe cars and trucks on America's roads. I don't think I'm stretching when I make that point. This legislation is also an example of what is good for small business is good for consumers.

I'll end my testimony on this note. I would guess that for as long as there have been automobiles, there have been independent mechanics to fix them, and I think both sides would agree they've worked pretty well together. I don't think anybody wins if this problem isn't fixed. I don't think it'll be good for the automotive industry if we lose all of our independent repair shops. I know it won't be good for our consumers, and I know it won't be good for our communities.

I think this bill, Mr. Chairman, is a good way out of this mess, but what I'm here for, more than anything else, is results. I would be delighted if the manufacturers would sit down with the independent mechanics and work out a fair agreement in August. Otherwise, I'm committed to moving forward with this legislation, getting every single Senator, Democrat and Republican alike, behind these independent mechanics, behind these small businesses and passing this legislation.

Once you meet with people and you hear about their businesses and you hear about how they've built their businesses, and then you see the threat that they're going to be driven out of business because of an anticompetitive practice, it really puts the fire in your belly. I mean, I'm so determined to help, and I think we'll get strong bipartisan support.

I thank you so much for holding this hearing. It's much appreciated.

[The prepared statement of Senator Wellstone follows:]

PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Mr. Chairman, members of the Subcommittee thank you for holding this hearing on the Motor Vehicle Right to Repair Act and for allowing me testify. I will be brief, because the real experts are in the second panel, but I do want to make some short remarks about how I came to this issue and why I think it is an important issue to be addressed by this Subcommittee and the Senate.

Before I do that, I want to say a few words of introduction for one of the experts on the Second Panel, Dale Feste, President and owner of Dale Feste Automotive, a full service independent mechanical repair facility in Hopkins, MN. Dale founded his automotive repair business in 1980 and his business now services over 4200 vehicles per year. His shop is AAA approved and was awarded "Top Shop" awards in 2000 and 2001. In addition he is a past President of the Alliance of Automotive Service Providers of Minnesota. Thank you, Dale, for agreeing to testify.

In April of this year I met with a group of auto repair shop owners from Minnesota who told me that some auto manufacturers are effectively preventing them from working on newer cars. They explained that the 1990 Clean Air Act mandated that vehicle manufacturers install computer systems to monitor emissions in 1996 model year cars and beyond. Today, many vehicle systems are integrated into the car's computer system, making auto repair an increasingly "high tech" business and making access to the computer and the information it contains vital to the ability to perform repairs.

The problem is that independent repair shops are increasingly unable to access the codes and diagnostic tools necessary to repair newer model cars. The effect is to reduce consumer choice for auto repair services, and to endanger the livelihood of thousands of small, family owned repair shops across the country.

I know that this Committee will agree that the last thing America needs is another industry where all the little guys, the small, independent businesses, are driven out. It is terrible for our communities who lose businesses and jobs, and reduced competition means higher prices for consumers.

On June 13th I introduced S. 2617, the Motor Vehicle Owners' Right to Repair Act of 2002 to address this problem. This legislation would protect the viability of independent service station and repair shops and ensure that consumers will continue to have a choice of automotive service providers.

Specifically, the Motor Vehicle Owners' Right to Repair Act would simply require a manufacturer of a motor vehicle sold in the United States to disclose to the vehicle owner, a repair facility, and the Federal Trade Commission (FTC) the information necessary to diagnose, service, or repair the vehicle. The bill bars the FTC from requiring disclosure of any information entitled to protection as a manufacturer's trade secret.

Mr. Chairman, fundamentally this legislation is about a level playing field. Independent automotive repair shop owners have not come to Congress looking for a hand-out. They simply want to be able to compete for the driving public's repair dollar on the basis of quality, service and price. Independent mechanics don't mind competition, but they can't stay in business if they don't have access to the information to repair newer cars. And if the kind of anti-competitive practices that you will hear testimony on today continue to occur, we're simply going to see these independent shops fail.

If this isn't fixed, the result of the loss of a competitive free market for auto repair will be higher prices, poorer customer service, and lower quality, which all mean less-safe cars and trucks on America's roads. This legislation is also an example of what is good for small business is good for the consumer.

I'll end my testimony on this note: I would guess that for as long as there have been automobiles there have been independent mechanics to fix them. And I think both sides would agree they've worked pretty well together. I don't think anybody wins if this problem isn't fixed. I don't think it will be good for the automobile industry if we lose all of our independent repair shops. I know it won't be good for consumers or our communities.

Mr. Chairman, I think my bill is a good way out of this mess. But I'm really here to ask for results—an end to this anti-competitive behavior. I am open to any solution that gets us there, and this hearing is a good first step in that direction.

Senator DORGAN. Senator Wellstone, thank you very much.

Let me just ask a brief question, and then I would like to ask the other witnesses to come forward. We will hear testimony from Greg Dana, Vice President of Environmental Affairs, who represents the Alliance of Automobile Manufacturers. On page five of

his testimony, he essentially says, "Look, there's no problem here." He's essentially saying that if independent mechanics are not able to make the repairs, it's not because they don't have the information; it's because they don't know how to make the repairs.

I mean, that's essentially what the Alliance is saying, with respect to the coordination they have had with the repair shops, the pilot projects, the programs and so on.

On the other hand, I, as a consumer, have driven around for some time with a car that says, "Check your engine," so I went to an independent repair shop, and they fixed whatever was wrong, but they couldn't get the little light off. And I said, "Well, why does it still say, 'Check your engine?'" They said, "Well, we don't have the capability of getting that light off for you." So I drove for a long time with a "Check your engine" light. Is that part of what you're talking about?

Senator WELLSTONE. It is. And, you know, Mr. Chairman, I'll tell you something. This second panel, they're going to speak so loudly and clearly to this point that was made. I must say that if you're in any coffee shop in North Dakota or Minnesota, and you ask people about, "Well, do you think these independent mechanics are—do you think they do a good job, or do you think you really ought to be going to the dealerships all the time because they do much better work?" It's not even a close call what you're going to hear.

And this basically—this is kind of like a little bit outrageous—I'm not going to be shrill—that is to say you don't give people access to the codes, you make sure that they're not able to do some of the diagnosis and the work, and then you turn around and say, "The problem is that they don't have the ability to do mechanical work." I think that's an insulting claim to make, and I think we're going to have people on the second panel that will speak to it directly.

Senator DORGAN. Well, Senator Wellstone, thank you for your legislation and your leadership.

Senator WELLSTONE. Thank you.

Senator DORGAN. I do not know what your time situation is, but if you have time, I would, by consent, invite you to join me at the podium. You're not a Member of this Committee, but we would invite you, as a courtesy, to join me. And thank you for your testimony.

Let me call to the witness table, Mr. Bill Haas, Vice President of Automobile Service Association; Mr. John Cabaniss, Jr., Association of International Auto Manufacturers; Mr. Dale Feste, who owns Dale Feste Automotive in Hopkins, Minnesota; Ms. Josephine Cooper, President of the Alliance for Automobile Manufacturers; Mr. John Nielsen, Director of Automotive Services and Repair Shops for AAA; and Mr. John Vallely, President of McLean Marathon Service representing NAPA.

I want to thank all of you for being with us today. And, as you note from my opening statement and from the statement of Senator Wellstone, we have a dispute about what the facts are here. My hope is that we can, through the process of this hearing, understand what factors we should base our decision on whether federal legislation is warranted to address an unfairness.

Why don't we begin the same way that I introduced the panel? Mr. Bill Haas, Vice President of the Automotive Service Association. Mr. Haas?

And I would say to all of you, your entire statement will be made a part of the permanent record. You may summarize. Why don't you proceed, Mr. Haas?

STATEMENT OF BILL HAAS, VICE PRESIDENT, TECHNICAL DIVISION, EDUCATION AND TRAINING, AUTOMOTIVE SERVICE ASSOCIATION

Mr. HAAS. Thank you.

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Bill Haas, and I appreciate the opportunity to discuss S. 2617, the Motor Vehicle Owners' Right to Repair Act, introduced by U.S. Senator Paul Wellstone. The legislation is the companion bill to H.R. 2735 introduced by U.S. Representatives Joe Barton of Texas and Edolphus Towns of New York.

I serve as the Vice President of Technical Divisions, Education and Training for the Automotive Service Association. The ASA is the largest not-for-profit trade association of its kind, internationally serving more than 13,000 member businesses, representing over 65,000 professionals from all segments of the automotive service industry.

I have an extensive background in automotive repair. I completed a two-year automotive mechanics cooperative education program while in high school. And since that time, I've been involved in the industry in various capacities. I've been an automotive technician, repair shop manager, parts counterman, shop owner, and automotive instructor.

I've been ASE certified since 1976. ASE, the National Institute of Automotive Service Excellence, is the automotive industry's testing and certification organization. They are supported by the automobile manufacturers, new car dealers, and the independent aftermarket. They test certifications for our members and new car dealers.

Mr. Chairman, the independent aftermarket is in trouble. Since the beginning of the automobile, independent repairers have been at the front lines of automotive repair. The American motoring public clearly chooses the independent repairer 70 percent of the time after a vehicle is no longer under warranty. Our repairers build relationships with consumers and are a more economically viable alternative than the new car dealer in most cases.

Prior to the 1990 Clean Air Act amendments, repairers were able to obtain service information, tools, and training sufficient to compete with the new car dealer. The Clean Air Act's emissions requirements compelled the vehicle manufacturers to install much more sophisticated equipment on 1996 and newer vehicles. During the debate of the Clean Air Act amendments, Congress saw fit to provide language protecting the independent repairer.

In addition, we believed that the U.S. Environmental Protection Agency would enforce the law as passed by Congress. This was affirmed in the 1995 EPA Service Information Regulation. The regulation assured independent repairers the same emissions service information as the new car dealers. It also discussed at length that

the vehicle manufacturer should provide this information at a reasonable cost—not free, but at a reasonable cost. We have always paid for service information and believe that we should pay for it in the future but, I stress again, at a reasonable cost.

How serious is our problem? There are approximately 209 million cars and light duty vehicles in the U.S. We estimate that there are 178,000 independent repairers in the U.S. The aftermarket's most recent analysis included 1,076,250,000 repair orders or incidents of service annually. This is the number of service opportunities when the consumer drives a vehicle to our business. This represented a total sales of \$123 billion.

ASA recently surveyed our national leaders from across the country and determined that today 15 percent of all incidents of service are rejected due to a lack of information. This amounts to 161,437,500 rejected incidents of repair annually. The loss to our industry is \$18,242,437,500.

Independent repairers will see numbers of rejected repairs increase exponentially over the next few years. As 1996 and newer vehicles move into our shops, customers will have little patience with our sending them to the new car dealers. We lose our customers and eventually our businesses. There are two types of information independent repairers require to stay competitive: emissions information and non-emissions information. The dissemination of emissions information is required by law. This law has not been enforced. The EPA has contended that the 1995 regulation was insufficient to force the vehicle manufacturers to give us the emissions information required in the Clean Air Act amendments. EPA has proposed a new emissions service information regulation in 2001, but it has not been finalized. Clearly, emissions information has not been provided as required by the 1995 regulation, and yet it has not been enforced.

There are many cases where independent repairers can purchase the same software as the new car dealer, but the independent's software has specific repair items left blank when the tool attempts to read the vehicles' computers. The new car dealer's software contains these items. Some of these blank items are related to safety. Honda Motor Company currently restricts the release of pertinent service information related to safety. Franchised Honda dealers purchase a scan tool, which is manufactured for Honda by Vetronix. Honda prevents Vetronix from including information necessary to diagnosis anti-lock brake systems in the same tool when the tool is purchased by anyone other than the franchise dealer.

With regard to reasonable cost, the law's intent was to keep the independent repairer competitive. This part of the 1995 EPA regulation, reasonable cost, was exhausted in its discussion. Yet some manufacturers are using it as a mechanism to block service information distribution.

In closing, Mr. Chairman, emissions and non-emissions service information are being denied to the independent repairer at an increasing rate. Senator Wellstone's legislation assures the aftermarket that both non-emissions and emissions service information will be provided to the independent repairer. This protects consumer choice and the continued safe operation of the consumer's vehicle.

The independent repairers' technicians have the same certification process as those of the new car dealer. We have been trusted with over 70 percent of America's vehicles for many years. We want to continue to be a competitive part of the U.S. economy. Senator Wellstone's legislation assures us of that role.

We are not an industry that comes regularly before the Congress or your Committee. We hope you will give serious consideration to Senator Wellstone's legislation.

Mr. Chairman, I also have a letter from the Tire Industry Association that I would like to have included or submitted along with my testimony this afternoon.

Mr. HAAS. Thank you.

[The prepared statement of Mr. Haas, as well as a letter from the Tire Industry Association, follow:]

PREPARED STATEMENT OF BILL HAAS, VICE PRESIDENT, TECHNICAL DIVISION,
EDUCATION AND TRAINING, AUTOMOTIVE SERVICE ASSOCIATION

Good afternoon Mr. Chairman and Members of the Subcommittee. My name is Bill Haas and I appreciate the opportunity to discuss Senate Bill 2617, the Motor Vehicle Owner's Right to Repair Act, introduced by U.S. Senator Paul Wellstone. This legislation is the companion bill to H.R. 2735 introduced by U.S. Representatives Joe Barton of Texas and Edolphus Towns of New York.

I serve as Vice President of Divisions, Education and Training for the Automotive Service Association. The ASA is the largest not-for-profit trade association of its kind, internationally serving more than 13,000 member businesses, representing over 65,000 professionals from all segments of the automotive service industry. We also have the largest collision trade show in the world attended by approximately 40,000 professionals each year.

I have an extensive background in automotive repair. I completed a two-year automotive mechanics cooperative education program while in high school. Since that time, I've been involved in this industry in various capacities. I have been an automotive technician, repair shop manager, parts counterman, shop owner and automotive instructor. I have also completed my Accredited Automotive Manager (AAM) designation from the Automotive Management Institute (AMI) and have been ASE certified since 1976. ASE, Automotive Service Excellence, is the automotive industry's testing and certification organization. They are based in Herndon, Virginia and are supported by automotive manufacturers, new car dealers and the independent aftermarket. They test technicians for our members and new car dealers. I have served as Chairman of the Automotive Technology Advisory Committee at Fox Valley Technical College in Wisconsin, Chairman of the Fox Cities Alliance for Education Automotive Technology Youth Apprenticeship Program and participated in ASE test-writing workshops for manual transmissions and drive axles.

The independent aftermarket is in trouble. Since the beginning of the automobile, independent repairers have been at the front lines of automotive repair. The American motoring public clearly chooses the independent repairer 70% of the time after a vehicle is no longer under warranty. Our repairers build relationships with consumers and are a more economically viable alternative than the new car dealer in most cases.

Prior to the 1990 Clean Air Act amendments repairers were able to obtain service information, tools and training sufficient to compete with the new car dealer. The Clean Air Act's emissions requirements compelled the vehicle manufacturers to install much more sophisticated equipment on 1996 and newer vehicles. During the debate of the Clean Air Act Amendments, Congress saw fit to provide language protecting the independent repairer. At the time, the aftermarket did not foresee vehicle manufacturers tying many non-emissions functions of the vehicles into these new high technology computers.

In addition, we believed that the U.S. Environmental Protection Agency would enforce the law as passed by the Congress. This was affirmed in the 1995 EPA service information regulation. The regulation assured independent repairers the same emissions service information as the new car dealers. It also discussed at length that the vehicle manufacturers should provide this information at a reasonable cost, not free but at a reasonable cost. We have always paid for service information and believe that we should pay for it in the future but, I stress at a reasonable cost.

How serious is our problem? There are approximately 209 million light duty trucks and cars in the United States. We estimate there are 178,000 independent repairers in the U.S. The aftermarket's most recent analysis included 1,076,250,000 repair orders or incidents of service. This is the number of service opportunities when the consumer drives a vehicle to our business. This represented total sales of \$123 billion.

ASA surveyed our national leaders from across the country and determined that today 15% of all incidents of service are rejected due to a lack of information. This amounts to 161,437,500 rejected incidents of repair annually. The loss to our industry is \$18,242,437,500. This means significant technician job losses and local economic impact.

Independent repairers will see numbers of rejected repairs increase exponentially over the next few years. As 1996 and newer vehicles move into our shops, customers will have little patience with our sending them to the new car dealers. We lose our customers and eventually our businesses.

There are two types of information independent repairers require to stay competitive; emissions information and non-emissions information. The dissemination of emissions information is required by law. This law has not been enforced. EPA has contended that the 1995 regulation was insufficient to force the vehicle manufacturers to give us the emissions information required in the Clean Air Act Amendments. EPA proposed a new emissions service information regulation in 2001 but it has not been finalized. Clearly emissions information has not been provided as required by the 1995 regulation and yet it has not been enforced. Enforcing the emissions service information regulation is certainly a positive step for improving the plight of the independent repairer.

Our information dilemma is two-fold: 1) Information is not being provided by the vehicle manufacturers; 2) the information is priced to place the aftermarket at a significant competitive disadvantage.

There are many cases where independent repairers can purchase the same software as the new car dealer but the independent's software has specific repair items left blank when the tool attempts to read the vehicle's computer. The new car dealer's software contains these items. Some of these blank items are related to safety. Honda Motor Company currently restricts the release of pertinent service information related to safety. Franchised Honda dealers purchase a scan tool which is manufactured for Honda by Vetronix. Honda prevents Vetronix from including information necessary to diagnose anti-lock brake systems in the same tool when the tool is purchased by anyone other than the franchised Honda dealer.

ASA's collision repairers have also had a vested interest in this debate. Air bags have become a major cost item for a collision repair. As these systems are increasingly tied into the vehicle's computers, more and more vehicles will have to be forwarded to the new car dealer after a collision repair is completed. This will cause more delays for the consumer and increased insurance costs through rental car usage, etc. Independent repairers have faithfully made collision repairs in the past and are competent to make them in the future in a safe, timely manner if they are provided sufficient service information.

There are cases where we can't purchase a specific tool. Chrysler, until recently, blocked the aftermarket from purchasing its DRB III tool. Since this legislation was introduced, the tool has been made available to us.

With regard to reasonable cost, the law's intent was to keep the independent repairer competitive. This part of the 1995 EPA regulation, reasonable cost, was exhausted in its discussion. Yet some manufacturers are using this as a mechanism to block service information distribution. Volvo will provide information to the aftermarket but at a cost of approximately \$20,000. This does not include vehicle updates. When we raised this issue with the EPA, they informed us that this violated the spirit of reasonable cost and the intent of the law. But without enforcement, the law is meaningless.

In closing Mr. Chairman, emissions and non-emissions service information are being denied the independent repairer at an increasing rate. EPA has not enforced the will of Congress as stated in the Clean Air Act Amendments of 1990. We need this law enforced. Senator Wellstone's legislation assures the aftermarket that both non-emissions and emissions service information will be provided the independent repairer. This protects consumer choice and the continued safe operation of the consumer's vehicle.

The independent repairer's technicians have the same certification process as those of the new car dealer. Many of our employees have worked in new car dealerships. We have been trusted with over 70% of America's vehicles for many years. We want to continue to be a competitive part of the U.S. economy. Senator Wellstone's legislation assures us this role.

We are not an industry that comes regularly before the U.S. Congress or your Committee. We have an open dialogue with the vehicle manufacturers through an industry group, the National Automotive Service Task Force. This task force has been very helpful but can not alone resolve the volume of rejected repairs due to the lack of service information.

The majority of automobile manufacturers have sent letters in support of providing emissions and non-emissions information. This is certainly a step in the right direction but our problems still persist. We hope you will give serious consideration to Senator Wellstone's legislation.

TIRE INDUSTRY ASSOCIATION,
July 26, 2002.

BOB REDDING,
Washington, DC Representative,
Automotive Service Association,
Washington, DC.

Dear Bob:

On behalf of the 4,000-plus members of the Tire Industry Association (TIA) I would like to express to ASA our full support of the Motor Vehicle Owners Right to Repair Act (H.R. 2735/S. 2617). This legislation is crucial to the thousands of independent tire dealers who perform tire and automotive services.

TIA was formed July 1 of this year when the Tire Association of North America and the International Tire & Rubber Association merged into a single entity. Our membership is comprised of tire dealers, wholesalers and distributors, manufacturers and retreaders, businesses that sell, service and recycle tire and rubber products, as well as companies that provide equipment and services for the tire industry.

The Motor Vehicle Owners Right to Repair Act would require original equipment manufacturers (OEMs) provide service information to independent auto repair facilities. This bill could not be more important to the tire industry at this time.

The Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act passed as a result of the Ford/Firestone crisis in 2000 includes a mandate that all new passenger vehicles (after 2005) be equipped with Tire Pressure Monitoring Systems (TPMSs). The National Highway Traffic Safety Administration (NHTSA) issued the final TPMS rule on July 5, 2002. One of TIA's largest concerns with the published final rule is that the government is ignoring the need of independent tire dealers and automotive service providers to be given the OEM information necessary to install, service, maintain, recalibrate and fix these TPMSs.

TIA will work closely with ASA in the effort to pass the Right to Repair Act, a bill that is critical to our members.

Sincerely,

BECKY MACDICKEN,
Director of Government Affairs,
Tire Industry Association.

Senator DORGAN. Mr. Haas, on page five, you indicated the loss to your industry is \$18,242,437,500. In Congress, we round that off—

[Laughter.]

Senator DORGAN.—\$18.2 billion.

[Laughter.]

Mr. HAAS. I think that proves my point that we don't come before you regularly, Mr. Chairman.

[Laughter.]

Senator DORGAN. You've got an accountant, that gets down to the \$500 in \$18 billion. But anyway, I appreciate your testimony, Mr. Haas.

Mr. HAAS. Thank you.

Senator DORGAN. Next, let's hear from Mr. John Cabaniss, Jr., Association of International Auto Manufacturers. Mr. Cabaniss, why don't you proceed?

STATEMENT OF JOHN M. CABANISS, JR., DIRECTOR, ENVIRONMENT AND ENERGY, ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

Mr. CABANISS. Thank you, Mr. Chairman, and thank you for the opportunity to testify today before this Subcommittee regarding vehicle service information.

My name is John Cabaniss. I am the Director for the Environment and Energy at the Association of International Automobile Manufacturers. And for the past two years, I've had the privilege of serving as the chairman of the National Automotive Service Task Force, a cooperative project involving the auto industry, the auto service industry, and the equipment and tool industry.

Automakers consider the auto service industry our partner in providing vehicle service and repairs to the driving public. Auto manufacturers do not intentionally withhold service information from the service industry. To do so would be contrary to their best interests. Automakers want their customers to have a positive driving experience, including the ability to obtain effective service no matter where they take their vehicles. Automakers have every incentive to make sure that the industry has the information, training, and tools to maintain and repair vehicles. Historically, 70 to 80 percent of the vehicle service information repairs are performed in non-dealer shops, and this level has been constant for many years. We do not expect it to change.

During the past decade, the auto industry has had to address the challenge of managing the growing volume of information needed to maintain and repair modern vehicles. For the most part, however, questions involve where and how to access the information rather than its actual availability.

Recognizing the need for a national forum for dialog on service issues, in November 2000 the auto industry and the service industry established the National Automotive Service Task Force. Its mission is to facilitate the identification and corrections of gaps and the availability and accessibility of service information, training, diagnostic tools and equipment, and communications to automotive service professionals.

At the outset, the Task Force recognized three basic realities. First, despite the best efforts of everyone involved, some gaps in service information, training, and tools are inevitable. Second, the rapid pace of change in vehicle technology, which will clearly continue, exacerbates this problem. And, third, a continuing forum for open communication and cooperation is the best way to address issues.

The Task Force has made significant and sustained progress. The first issue addressed was accessibility. In May 2001, an Internet site was opened on the International Automotive Technicians Network Web site to provide a ready reference for all technicians to obtain service information and tools from auto manufacturers. A special feature of this site is the inclusion of a complaint form for a technician's use if information cannot be located. This reference Web site is widely publicized and is updated several times each year. The latest update was posted on July 1st of this year.

In October 2001, another major step forward occurred when 20 auto manufacturers announced a "Letter of Intent" to demonstrate

their commitment to the Task Force cooperative process. This commitment, which formalizes what many automakers are already doing, is that by early 2003, manufacturers intend to make available to independent technicians the same diagnostic tools, service information, and training materials that they currently make available to their franchise dealers for all 1996 and newer cars and trucks. All manufacturers are moving ahead on this basis, and most are covering additional model years on their Web sites and including directories for information for earlier years.

The success of the Task Force is due to the participation of a wide range of parties. Currently, there are 63 organizations in the Task Force, including the Automotive Service Association, the Automotive Aftermarket Industry Association, the Service Technicians Society, the Alliance of Automotive Service Providers, and the Equipment and Tool Institute, to name just a few. Participation continues to grow. Just in the past week, we've added a few new members, including CARQUEST and a number of other notables. There are a—these are just a few examples of the progress being made in the Task Force.

In conclusion, the auto industry is committed to the National Automotive Service Task Force. We believe this Task Force is the proper venue for continuing to address service issues. And it is making significant and sustained progress. Therefore, we believe that legislation in this area is not needed.

Thank you. I would be pleased to answer any questions.
[The prepared statement of Mr. Cabaniss follows:]

PREPARED STATEMENT OF JOHN M. CABANISS, JR., DIRECTOR, ENVIRONMENT AND ENERGY, ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

Thank you for the opportunity to testify before the Subcommittee regarding vehicle service information related issues. My name is John Cabaniss. I am the Director for Environment & Energy at the Association of International Automobile Manufacturers.¹ For the past two years, I have had the privilege of serving as the chairman of the National Automotive Service Task Force, a cooperative project involving the auto industry, the automotive service industry, and the equipment and tool industry.

In my presentation today, I will briefly describe who is involved in the National Automotive Service Task Force project, what activities are under way, and the progress that has been made and that is continuing. After hearing this update, I hope you will agree that the Task Force is the proper venue for addressing service issues, and that legislation in this area is not needed.

To begin, I would point out that motor vehicle manufacturers consider the automotive service industry our partner in providing vehicle service and repairs to our mutual customers, the driving public. Moreover, auto manufacturers do not intentionally withhold service information from the auto service industry. To do so would be contrary to their best interests. Automakers want their customers to have a positive driving experience, including the ability to obtain effective service no matter where or when their vehicles need maintenance. Automakers have every incentive to make sure that the auto service industry has the information, training, and tools to maintain and repair vehicles. Historically, 70–80 percent of vehicle service and

¹AIAM members include American Honda Motor Co., American Suzuki Motor Corp., Aston Martin Lagonda of North America, Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Mitsubishi Motor Sales of America, Nissan North America, Peugeot Motors of America, Saab Cars USA, Societe Anonyme Des Usines Renault, Subaru of America, and Toyota Motor Sales, U.S.A. AIAM also represents original equipment suppliers and other automotive-related trade associations. AIAM members have invested over \$20 billion in new production and distribution capacity in the U.S., creating tens of thousands of high-skill, high-wage jobs across the country in manufacturing, supplier industries, ports, distribution centers, headquarters, R&D centers, and automobile dealerships.

repairs are performed in non-dealer shops. This level has been constant for many years and is not expected to change.

During the past decade, the auto industry has had to address the challenge of managing the growing volume of information needed to maintain and repair modern vehicles. This necessitated changes in communications channels and techniques. As these changes have been made, some service providers have experienced difficulty in obtaining the necessary information. For the most part, however, these difficulties have involved questions about *where and how* to access the information rather than its actual availability.

The NASTF Project

The origin of the National Automotive Service Task Force dates back to 1999 when the Arizona legislature was considering a vehicle service information bill. During 1999 and 2000, the auto industry and the Arizona auto service industry worked together to investigate allegations of manufacturers' withholding information. It soon became apparent that the real issue for shops and technicians was accessibility, that is, knowing where to get the information and tools they need. It was also clear that a continuing forum for dialogue between parties on these issues was needed at the national level. Therefore, in November 2000 the National Automotive Service Task Force was established jointly by the auto industry and the auto service industry. The mission of the Task Force is to facilitate the identification and correction of gaps in the availability and accessibility of automotive service information, training, diagnostic tools and equipment, and communications to automotive service professionals.

At the outset, the Task Force recognized three basic realities. First, that despite the best efforts of everyone involved, some gaps in service information, training, and tools are inevitable. Second, that the rapid pace of changes in vehicle technology, which will clearly continue, exacerbates this problem. And, third, that a continuing forum for open communication and cooperation is the best way to address issues.

The Task Force has made significant and sustained progress. The first issue the Task Force addressed was the issue of accessibility. In May 2001 an Internet site was opened on the International Automotive Technicians Network website to provide a ready reference for all service technicians requiring service information and tools from auto manufacturers. A special feature of this site is the inclusion of a complaint form for a technician to use if he/she cannot locate the information being sought. This reference information is updated several times each year. The latest update was posted on July 1, 2002. This reference is broadly publicized by Task Force participants.

At the Task Force semi-annual meeting in October 2001, another major step forward occurred when twenty auto manufacturers announced that they had signed a "Letter of Intent" to demonstrate their commitment to the Task Force cooperative process. This commitment, which formalizes what many automakers are already doing, is that:

By January, 2003, the manufacturers intend to make available to independent technicians the same diagnostic and repair capabilities by making available diagnostic tools (and tool information), service information, and training materials that they currently make available to their franchised dealers for all 1996 and newer cars and light trucks.

All manufacturers are moving ahead on this basis, and most are covering additional model years on their websites and including directories for information for earlier years.

The success of the Task Force over the past two years is due to the participation of a wide range of parties. We are fortunate to have a "Who's Who" of auto service organizations participating, including the Automotive Service Association, the Automotive Aftermarket Industry Association, The Automotive Service Councils of California, the Service Technicians Society, the Alliance of Automotive Service Providers, the International Automotive Service Technicians Network, and the Equipment & Tool Institute, to name just a few. Altogether we have 78 individuals representing 63 organizations participating in the Task Force, and participation is growing. The complete list of participants and other information is available at the Task Force website (www.nastf.org).

These are just a few examples of the progress that is being made in the Task Force. In addition to the Service Information Committee, the Task Force has a Training Committee, an Equipment and Tool Committee, and a Communications Committee. The Training Committee is focused on ensuring that all technicians have access to factory equivalent training. The Equipment and Tool Committee is focused on improving the availability of generic tools for both dealer and non-dealer

shops. Finally, the Communications Committee is focused on getting information out to shops and technicians about the Task Force project, how to obtain the tools and service information they need, the progress the Task Force is making, how to get involved and provide input, and how they can otherwise help with the project.

In conclusion, the auto industry is committed to the National Automotive Service Task Force. We believe that this Task Force is the proper venue for continuing to address service related issues, and it is making significant and sustained progress in improving the availability and accessibility of information, training, and tools to automotive service professionals. Therefore, we believe that legislation in this area is unnecessary.

Thank you. I would be pleased to answer any questions.

Senator DORGAN. Mr. Cabaniss, thank you very much.

Next, we will hear from Dale Feste, Dale Feste Automotive, Hopkins, Minnesota. Mr. Feste, welcome.

**STATEMENT OF DALE FESTE, DALE FESTE AUTOMOTIVE,
HOPKINS, MINNESOTA**

Mr. FESTE. Thank you. Good afternoon, Mr. Chairman. I've looked forward for the opportunity to testify.

My name is Dale Feste, and I am the Owner and President of Dale Feste Automotive in Hopkins, Minnesota, a suburb of Minneapolis. I run a full-service mechanical independent repair facility.

I founded my business in 1980. And at this point in time, I serve approximately 4,200 vehicles per year. Like Senator Wellstone referenced, I am a member of the Automotive Service Association, and I also serve on the executive board of the Automotive Management Institute.

Automotive technology today is being used to successfully "lock out" motor vehicle owners from being able to repair their own vehicles. We are gradually losing the vehicle owners' right to select where they have their vehicles repaired. The independent automotive aftermarket repairs over 70 percent of all the nation's vehicles. When a vehicle's warranty period is over, independent repairers get the majority of these vehicles.

The Clean Air Act of 1990 required manufacturers to develop new technologies and computers in an effort to lower vehicle emissions. During that bill's consideration, we believed we were protected by the following legislative language referencing emissions service information in the Clean Air Act amendments. And they read, "No such information may be withheld if that information is provided (directly or indirectly) by the manufacturer to franchise dealers."

EPA continued with a final regulation on August 9th of 1995 assuring independent repairers the same emissions service information as new car dealers at a "reasonable cost." This has not occurred. We still have emissions information not available to the independent, and reasonable cost with regard to several manufacturers is not a consideration.

If you buy a Volvo Vira tool—that's the tool made available to the independent repairer—it will not allow us to make a complete emissions analysis of the vehicle. The Volvo dealer has the Vadis tool. The Vadis tool allows the dealer to make a complete analysis of the vehicle. This particular example should not require a new law. The 1990 Clean Air Act amendments and subsequent regulations should protect us and our customers from this scenario.

We thought the legislative language in the 1995 regulation would suffice in protecting our industry. They have not. There are 178,000 independent repairers nationwide. We are the small business persons in communities across the nation. Very clearly, without service information, we will ultimately be forced to close our doors. As the 1996 and newer vehicles come out of warranty, they roll into our facilities. If we cannot repair them, we have to send them back to the new car dealer. This is 70 percent of America's fleet not under warranty.

Unfortunately, this lack of information is not limited only to emissions. Many of the non-emission systems are now being tied into these vehicle computers. Some of these are safety items and are critical in the repair of our customers' vehicles.

Let me give you an example. In April of this year, a long-term customer of mine brought her 1996 Dodge Grand Caravan with an air bag dash light on. We were unable to access any trouble codes to diagnosis the system, and we had to send our customer to the new car dealer, explaining to her that the dealer was the only place that could access trouble codes for the air bag system.

The air bag, along with other systems in the vehicle, should not be compromised in any way. Repair information should be open and available for all repairers to protect the consumer. Although the tool has been finally made available to the independent repairer by the manufacturer, the software does not include safety items.

My friends in the collision repair industry face the air bag situation many times each week. It is now one of the more expensive systems in the vehicle to repair in a collision repair. The collision repair facilities will, in an increasing number of cases, have to delay their repair by sending what should be a fully repaired vehicle to the new car dealer to have the air bag system finished. This will not only cause a significant delay to the customer, but also an additional rental car cost for the consumer and for the insurer.

These are just a few examples of what we face as independent repairers. I would like to make this perfectly clear. We don't desire to steal sensitive information to manufacture parts of manufacture vehicles. Congress reviewed this issue at length during the 1990 Clean Air debate and determined that we were an industry worth trusting and saving. That's why the law mandated that we receive the same information as the new car dealer.

Senator Wellstone's bill, S. 2617, assures the repairer emissions and non-emissions information. It makes sure that we have the information to repair and maintain those vehicles in an effort for cleaner air. Senator Wellstone's legislation promises the vehicle owner that the safety systems in that vehicle have been repaired with the utmost care and accuracy and timely information available in the marketplace.

Independent repairers strongly support S. 2617.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Feste follows:]

PREPARED STATEMENT OF DALE FESTE, DALE FESTE AUTOMOTIVE,
HOPKINS, MINNESOTA

Good afternoon Mr. Chairman, Members of the Subcommittee, my name is Dale Feste. I am President and Owner of Dale Feste Automotive, a full-service independent mechanical repair facility in Hopkins, Minnesota. I am a graduate of the University of Wisconsin with a Bachelor of Science Degree in Industrial Education.

I served as a vocational automotive instructor from 1970–1980 and founded my automotive repair business in 1980, servicing over 4200 vehicles per year. My facility was awarded the top shop award by AAA in 2000 and 2001. I am a member of the Automotive Service Association and serve on the Executive Board of the Automotive Management Institute, which provides business management education for the automotive service industry.

Automotive technology is being used today to successfully “lock out” motor vehicle owners from being able to repair and maintain their vehicles. We are gradually losing the vehicle owner’s right to select where they have their vehicles repaired. The independent automotive aftermarket repairs over seventy percent of all vehicles. When a vehicle’s warranty period is over, independent repairers get the majority of these vehicles. Our labor rates are less, we have lower overhead and we want that customer to come back in our facility to have their vehicle repaired. We have one interest, automotive repair. We don’t sell cars!

Prior to the 1990 Clean Air Act Amendments, there were some import manufacturers that were difficult as far as providing some limited information but generally the aftermarket could resolve these information issues. The Clean Air Act Amendments required manufacturers to develop these new technologies and computers in an effort to lower vehicle emissions. During the Clean Air Act Amendments’ consideration, we believed we were protected by the following legislative language referencing emissions service information: no such information may be withheld if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles.

EPA continued with a final regulation on August 9, 1995 assuring repairers the same emissions service information as new car dealers at a “reasonable cost”. This has not occurred. At this point in time we do not have all emissions information available to the independent for a reasonable cost, and for some manufacturers this is not a consideration.

If you buy a Volvo Vira tool, the tool made available to the independent repairer, it will not allow us to make a complete emissions analysis of the vehicle. The Volvo dealer has the Vadis tool. The Vadis tool allows the dealer to make a complete analysis of the vehicle. This particular example should not require a new law. The 1990 Clean Air Act Amendments and subsequent regulations should protect us and our customer from this scenario.

We thought the legislative language and the 1995 regulation would suffice in protecting our industry. They have not. There are 178,000 independent repairers nationwide. We are small business persons in communities across the nation. Without service information, we will have to close our doors. As the 1996 and newer vehicles come out of warranty, they roll into our facilities. If we can not repair them, we have to send them to the new car dealer. This is seventy percent of America’s fleet not under warranty.

Unfortunately, this lack of information is not limited to emissions. Many of the non-emissions systems are now being tied into these vehicle computers. Some of these are safety items and are critical in the repair of our customer’s vehicle.

In April of this year, my customer brought in a 1996 Dodge Grand Caravan with the air bag illuminator light on. We were unable to access any trouble codes to diagnose the system. We had to send our customer to the new car dealer explaining that the dealer was the only place that could access trouble codes for the air bag system. The air bag along with other systems in the vehicle should not be compromised in any way. Repair information should be open and available for all repairers to protect the consumer. Although the tool has been finally made available to the independent repairer by the manufacturer, the software does not include safety items.

My friends in the collision repair industry face the air bag situation many times each week. It is now one of the more expensive systems in the vehicle to replace in a collision repair. These collision facilities will in an increasing number of cases have to delay their repair by sending what should be a fully repaired vehicle to the new car dealer to have the air bag system finished. This will not only cause a significant delay for the customer but also additional rental car costs to the consumer and the insurer.

These are just a few examples of what we face as independent repairers. We do not desire to steal sensitive information to manufacture parts or vehicles. Congress reviewed this issue at length during the 1990 Clean Air debate and determined that we were an industry worth trusting and saving. That's why the law mandated that we receive the same information as the new car dealer.

Senator Wellstone's bill, Senate Bill 2617, assures the repairer emissions and non-emissions information. It makes sure that as state governments, under federal direction, test these vehicles in critical non-attainment air quality states that we have the information to repair and maintain those vehicles in an effort for cleaner air. Senator Wellstone's legislation promises the vehicle owner that the safety systems in that vehicle have been repaired with the most accurate and timely information available in the marketplace.

Independent repairers support Senate Bill 2617.

Thank you.

Senator DORGAN. Mr. Feste, thank you very much.

There are three minutes remaining in the vote on the Senate floor, Senator Wellstone and I will go cast our vote. We will stand in recess for 10 minutes.

[Recess.]

Senator DORGAN. We will reconvene the hearing. Next we will hear from Ms. Josephine Cooper.

Mr. DANA. She's my boss, and she's not here, Senator.

Senator DORGAN. All right. Well, I didn't see a Ms. Cooper there.

Mr. DANA. I'm here in her place.

Senator DORGAN. Okay. Mr. Greg Dana, Vice President, the Alliance of Automobile Manufacturers. Why don't you proceed?

STATEMENT OF GREG DANA, VICE PRESIDENT, ENVIRONMENTAL AFFAIRS, ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. DANA. Thank you, Senator.

Mr. Chairman, thank you for the opportunity to testify today before the Subcommittee regarding access to information, tools, and parts for vehicle repairs. I'd like to give you some background on this issue, explain what we're doing with the independent repair technicians to improve their situation, and discuss the legislation introduced by Senator Wellstone.

There is a lot of reference to the Clean Air Act requirement for computers to monitor vehicle emissions. This computer is now commonly referred to as the onboard diagnostics, or OBD, system and has been required on all new vehicles since 1996. The OBD system monitors the engine, transmission, fuel, and emission-control systems to ensure they operate properly. If a problem occurs, the OBD system alerts the driver by lighting the "Check Engine" light. To assist the repair technician, the OBD system also stores a fault code along with other information about what conditions existed at the time the problem occurred.

OBD systems are required by the Federal Clean Air Act, and they're also required by EPA regulations and California Air Resources Board regulations to reduce vehicle emissions by detecting problems that could cause emissions to increase, assisting in the diagnosis and repair of the vehicle, and ensuring repairs are done properly. Combined with today's sophisticated emission control systems, the OBD system ensures clean vehicles remain clean.

EPA and CARB regulations require the auto industry to make emissions-related repair information available. In addition, the in-

dustry makes available virtually all of the other non-emission related repair information voluntarily to ensure that the non-dealer repair shops can properly repair all manner of problems. Historically, about 70 to 80 percent of vehicle service and repairs are performed in non-dealer shops. For this reason, it is absolutely critical to automakers that non-dealer repair shops have the knowledge and the ability to repair the vehicles they work on.

When Senator Wellstone introduced his parts and service information bill, he said, and I'm quoting: "I am saying to the industry, if you want to sit down and negotiate an agreement with the mechanics that is fair to these independent mechanics, go ahead. Then we won't have to pass this legislation." I'm happy to report that we are sitting down with these independent mechanics, we are negotiating agreements, and we have been doing this for over two years now.

We recognize that in the past there have been gaps in service information and tools, but automakers are working with independent technicians, first in Arizona, and now nationally, through the National Automotive Service Task Force, to fix these gaps. And John Cabaniss, who is the chair of NASTF, testified before me to explain what NASTF does.

Most of the problems that non-dealer repair shops have with availability of service information is where to get that information. For this reason, the trade associations of the auto industry and the aftermarket service industry have been working closely together to attempt to fix this problem.

Most of the activity is detailed on the NASTF Web site. On this Web site is a matrix of available service and tool information and information of whom to contact to get this information. The NASTF was established not just to ensure disclosure, but to, more importantly, improve access to the information and tools.

Some have portrayed this legislation as the little guy versus the big guy. Automakers are concerned that the purported inability to repair vehicles is a smokescreen being used by the aftermarket parts industry to gain access to the automaker's proprietary design and software information. The aftermarket parts makers have been trying to gain access to the intellectual capital of the auto industry for 12 years—at EPA, in the courts, in the Arizona legislature. At every turn, they were denied. We tried to work with them in California in legislation. After the bill, the California legislation ensured each car owner has the right to choose where and when and by whom their car is serviced and repaired.

This bill has nothing to do with the little guys. It has everything to do with big parts companies boosting profits by seizing the proprietary design and software details from the automakers. Independent repair shops have the same access to service information and tools as the dealerships do for emission-related diagnosis. Where repair information is not mandated by law—such things as climate control, door controllers, airbags, et cetera—automakers already either provide or are working to provide the independent repair shops this information and tools needed for them to have the same capabilities as franchise dealers.

Key members of the independent repair community, aftermarket trade association leaders, and automakers agree that the remain-

ing gaps and issues can be resolved cooperatively without the need for legislation. Moreover, they agree that the cooperative solutions will yield better results in less time. The automobile industry stands ready to continue to work with all independent technicians to resolve remaining differences. We believe we are headed in the right direction and look forward to keeping the Subcommittee updated on our progress.

Thank you.

[The prepared statement of Mr. Dana follows:]

PREPARED STATEMENT OF GREG DANA, VICE PRESIDENT, ENVIRONMENTAL AFFAIRS,
ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. Chairman,

Thank you for the opportunity to testify before the Subcommittee regarding access to information, tooling and parts for vehicle repairs. My name is Greg Dana and I represent the Alliance of Automobile Manufacturers (Alliance), a trade association of 12 car and light-truck manufacturers. Our member companies include BMW Group, DaimlerChrysler Corporation, Fiat, Ford Motor Company, General Motors Corporation, Isuzu Motors of America, Mazda, Mitsubishi, Nissan North America, Porsche, Toyota Motor North America and Volkswagen of America.

Alliance member companies have more than 600,000 employees in the U.S., with more than 250 manufacturing facilities in 35 states. Overall, a recent University of Michigan study found that the entire automobile industry creates more than 6.6 million direct and spin-off jobs in all 50 states and produces almost \$243 billion in payroll compensation annually.

Why are we here? Legislation has been introduced in the House and Senate with the stated objective of promoting the consumer's right to choose where their vehicles can be serviced. The proponents of this legislation assert that automakers use special codes and other practices to make it difficult for vehicle owners and independent repair facilities to diagnose problems and get information on how to repair the vehicles. These claims misrepresent the actual availability of repair information, tooling and parts. They also disguise the real reason for the legislation—to permit access of aftermarket parts manufacturers to proprietary information of the automakers that is NOT needed to repair the vehicle, but which would reduce their R&D costs and allow them to alter vehicle performance characteristics. These are not appropriate reasons to undermine the intellectual property rights of the auto manufacturers.

Today, consumers have the freedom to choose where their vehicles are serviced. Historically, about 70–80 percent of vehicle service and repairs are performed in non-dealer shops. The auto industry views these non-dealer shops as their partners in providing service to their mutual customers, the driving public. Automakers are required by law to provide to non-dealer shops all information to diagnose and repair engine, transmission, fuel, and emission control systems.

Specifically, section 202(m)(5) of the 1990 Clean Air Act requires auto manufacturers to provide independent repair operations all information needed to make emission-related diagnosis and repairs. The section is as follows: “The Administrator, by regulation, shall require (subject to the provisions of section 208c regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 208c if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 208c, in carrying out the Administrator’s responsibilities under this section.”

As you can see, independent shops clearly have the same repair capabilities as dealerships.

In light of the fact that service information and parts are available today to fix almost all vehicles, the Alliance views S. 2617, introduced by Senator Wellstone, as unnecessary and unwarranted. Instead of federal legislation, the Alliance and our member companies stand ready to work today with affected parties to resolve any

remaining differences or communication issues surrounding the repair of cars and light trucks. In fact, automakers are already working with independents to improve the flow of information and tools between automakers and independents. Before discussing this, we should clear up some misrepresentations that have surrounded this legislation.

What is OBD? The on-board diagnostic (OBD) system is an emissions monitoring system required in all new vehicles since 1996. OBD monitors the engine, transmission, fuel, the emission control systems, and any other area that may impact vehicle emissions to ensure they operate properly. If a problem occurs, the OBD system alerts the driver by lighting the “Check Engine” light on the dashboard of a vehicle. To assist the repair technician, the OBD system stores “fault codes,” along with other information about what conditions existed at the time the problem occurred (whether the vehicle was warm or cold, the load on the engine, etc.).

As mentioned earlier, OBD systems are required by the federal Clean Air Act. Additionally, there are pending regulations from the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) to ensure that the vehicle emission system is operating properly by 1) detecting problems that could cause emissions to increase, 2) assisting in the diagnosis and repair of the vehicle, and 3) ensuring repairs are done properly. Combined with today’s sophisticated emission control systems, the OBD system ensures that clean vehicles remain clean.

The claim that automakers use “access codes” to lock out independent repair shops is demonstrably untrue. “Access code” as used almost invariably refers to “fault codes” which automakers have always made available to anyone despite what the proponents of this legislation claim.

Since there’s been some confusion and misrepresentation of the codes associated with the OBD system, let me take a moment to describe this issue for the Committee. There are two types of “codes” you should be aware of:

Fault codes (sometimes called “diagnostic trouble codes”) store information that identify problems and where they occurred (e.g., misfire in #2 cylinder). Additionally, information is stored that describes how the vehicle was operating when it occurred. These codes are available to anyone with a scan tool and a shop manual. Scan tools can be purchased from scan tool manufacturers, tool dealers, aftermarket auto parts stores, or directly from the automakers. Shop manuals can be purchased from independent service information providers or from automakers. In addition, service information (including shop manuals) will be readily available on the Internet by early 2003.

Calibration code (“software code,” or just “calibration”) is another “code” normally discussed in conjunction with OBD systems. This is computer software that controls the functions of the engine, transmission, and fuel system and ensures the vehicle is operating properly. The software is similar to the software code used for word processing on a personal computer which is proprietary and not available to the public. The OBD calibration code is proprietary and is NOT provided to anyone outside of the company—including franchised dealers. Just as with personal computers, an individual does not need the proprietary software code to repair vehicles. In fact, access to the calibration would allow individuals to TAMPER with the engine control system to change the performance characteristics of the vehicle—typically at the expense of higher emissions. For this reason, the government initially REQUIRED manufacturers to encrypt their calibration codes and only dropped the encryption requirement when they were confident that manufacturers would continue to do so.

So if the aftermarket service providers have the information they need, what is the real intent of this legislation? Make no mistake: the aftermarket part manufacturers, rather than the repair shops, stand to benefit most from the bill. Meeting today’s very stringent emission and safety regulations requires more design, development, testing, and certification of parts. This is just as true for automakers as it is for aftermarket part manufacturers—automakers recognize it as the price of doing business. Part manufacturers see it differently. Rather than putting their money in R&D to develop quality competitive parts, they are putting their money on L&R (legislation and regulation) in the hopes that legislators or regulators will force automakers to turn over proprietary design specifications and software. Part makers would have a significant savings every year in R&D. However, the end result would be a devastating blow to the intellectual property rights governing computer software and irreparable harm to vehicle pollution control and safety systems and the computers that control them.

What about vehicle reprogramming? Reprogramming refers to a procedure automakers use to replace the calibration code with a new one authorized by the manufacturer, and approved by EPA or CARB. Sometimes manufacturers discover

minor problems with a new vehicle's calibration that, when fixed, improve the vehicle's performance. The changes are normally minor and reprogramming typically occurs when the vehicle is new and still under warranty. Because some vehicles are reprogrammed in the aftermarket, *reprogramming tools have been available* to independent repair technicians.

To reduce the cost of reprogramming tools in the aftermarket and eliminate the need for a unique reprogramming tool for every car manufacturer, automakers and the Society of Automotive Engineers (SAE), with leadership from EPA, spearheaded an effort to create a single black box that can be connected between a technician's personal computer and any manufacturer's vehicle. This "black box" will eliminate the need to purchase multiple reprogramming tools, and make it easier for the aftermarket to provide this service as vehicles age.

Why are some technicians unable to service the OBD system or access the fault codes? In most of the cases where technicians thought they did not have access to the necessary tools and information, they simply did not know how to find the information and tools they needed. Since May 2001, the Automotive Service Association (ASA), as part of the National Automotive Service Task Force (NASTF), has acted as a NASTF clearinghouse for shop owners across the nation to identify actual complaints about information accessibility. To date, about a dozen complaints have been received nationwide. All issues were usually resolved within a few days. The NASTF clearinghouse is widely publicized by the International Automotive Technicians Network, the Service Technicians Society and other NASTF participants.

What are automakers doing to ensure that technicians and shops owners have access to information moving forward? To improve the flow of information, automakers teamed with independent repair professionals, first in Arizona through the Arizona Pilot Program and then nationally through the National Automotive Service Task Force (NASTF). These programs have dramatically improved the flow of information and led to a better understanding on all sides. NASTF continues to identify remaining gaps and develop a framework to cooperatively resolve them. Information (including 800 numbers and websites) to obtain tools and service information is available.

What about non-emission related computer systems (climate control, anti-lock brakes, etc.)? In an October 2001 letter, 17 automakers representing about 90% of all vehicles sold in the U.S. made a commitment that by early 2003 they would "make available to independent technicians the same diagnostic and repair capabilities by making available diagnostic tools (and tool information), service information and training materials that they currently make available to their franchised dealerships for all 1996 and newer cars and light trucks." This commitment was made without exception—independent technicians will receive the same tools and information that the franchised dealers receive. Four additional automakers signed letters of intent agreeing to the same commitment, but with narrow exceptions for systems such as anti-theft. The vast majority of this service information is already available.

What else are automakers doing to improve vehicle repairs? Through the NASTF and Arizona Pilot Program, automakers learned that while service information is available, it is not always readily accessible. To provide greater accessibility, automakers are working to make their shop manuals, technical bulletins, training materials, etc. available over the Internet. Ultimately, technicians can go to the web and immediately access information needed to service a vehicle in their shops. All service information will be accessible over the Internet by early 2003. In addition, as part of the NASTF activities, automakers are working with other interested parties to improve information for generic tools and training for non-dealer technicians.

The Bottom Line:

Independent repair shops have the same repair capabilities as dealerships. Where repair information is not mandated by law (climate control, door controllers, air bags, etc.), automakers either already provide or intend to provide by January 2003, the information and tools needed for independent repair shops to have the same capabilities as franchised dealers.

Key members of the independent repair community, aftermarket trade association leaders, and automakers agree that the remaining gaps and issues can be resolved cooperatively without the need for legislation. Moreover, they agree that cooperative solutions will yield better results in less time than legislation and regulation.

The automobile industry stands ready to work with all affected parties in resolving remaining differences. We believe we are headed in the right direction and look forward to keeping the Committee updated on our progress.

Thank you.

Senator DORGAN. Mr. Dana, thank you very much.

Next, we will hear from John Nielsen, Director of the Automotive Services and Repair Network for the AAA. Mr. Nielsen, why don't you proceed.

STATEMENT OF JOHN NIELSEN, DIRECTOR, AUTOMOTIVE SERVICES AND REPAIR NETWORK, AMERICAN AUTOMOBILE ASSOCIATION (AAA)

Mr. NIELSEN. Good afternoon, Mr. Chairman. On behalf of AAA, I'd like to thank you for the opportunity to testify on S. 2617. As you may know, AAA has been an advocate for motorists for over a hundred years. We currently represent 45 million members, or one in four households.

I am a Master level auto technician. I've been in the auto service industry for more than 20 years. Currently my primary role with AAA is to assure that AAA members have access to quality automotive repair at reasonable costs. I coordinate the objective inspection of more than 7,500 repair facilities that consist of both independent and franchise dealers.

Mr. Chairman, you've been told of ownership of data, and heard a lot of talk about sophisticated codes. The message that AAA delivers to you today is that a problem exists for motorists. It directly impacts their choice, their safety, and the ownership of the data produced in their car. And we believe that this problem can be solved with S. 2617.

Members look to AAA for assistance in all of their automotive experiences, from purchase to repair. We work to take some of the mystery and stress out of buying a car, maintaining a car, and operating a car.

AAA strongly supports S. 2617 for three very important reasons, the first being consumer choice, the second being vehicle safety, and the third reason being the right of ownership of information generated by the vehicle.

Study after study reveals that consumers find automotive repair and maintenance very stressful. Having confidence in a trusted repair facility is one way to alleviate that stress. A recent AAA study found that 80 percent of members wanted the opportunity to take their car to an independent repair facility at any time they chose necessary. They found it either important or very important. Further, the ability to choose a repair facility creates competition, which ultimately benefits the consumer.

Mr. Chairman, I want to make it clear that AAA is not saying that it's bad to take your car to a dealership. Quite the contrary, many of our members have outstanding relationships and receive outstanding service from franchise auto dealers. We simply believe that motorists should have the choice.

Technology has made the cars we drive today much smarter. More than 80 percent of the systems on some cars are controlled or monitored by computer systems. Computers in these cars can tell us if we need an oil change, or if we have a problem with our braking system. In fact, today they're starting to tell us if we have low air pressure in our tires. They can tell us this before there's truly a problem and before we need to call a tow truck to tow a stranded motorist.

But what if you or your service technician didn't have access to this information? Anti-lock brakes, air bags, electronic traction, and stability control systems are only a few safety items that can be faulty on today's new cars. Yet it's becoming increasingly difficult or impossible for independent technicians to diagnose and repair the data generated by the car. This means consumers driving faulty vehicles many miles from a new car dealership or at a time when the only authorized dealership is very busy or closed will be unreasonably inconvenienced and their safety placed at risk. Consumers that have previously had a negative experience at their local dealership—including overcharging, work not performed on time, unauthorized repairs, or repairs not properly performed—will not have the recourse of taking their vehicle to another facility the way the industry is heading in this case.

Mr. Chairman, AAA believes that when you drive off the lot with your car, you, the consumer, own a lot more than just the pieces of your vehicle. You own the information necessary to have it repaired by a trusted service advisor, whether that be factory trained or independent. This information, whether it's viewed as intellectual property or real property, is really the property of the car buyer.

S. 2617 rightly states that “the ability to diagnose, service, and repair a motor vehicle in a timely, reliable, and affordable manner is essential to the safety and well-being of automotive consumers in the U.S.”

In difficult economic times, repairs may be delayed as expenses are prioritized. This often exacerbates the mechanical problems. If motorists don't have an adequate choice of repair facilities, they may face higher prices and unsatisfactory service. There are many people that must juggle expenses on a fixed income, and others who are faced with economic challenges that demand competitive prices. Competition is essential, but if the current trend continues, the customer will have fewer choices, not more.

There are also areas of the country where motorists could be forced to drive long distances or pay unneeded long-distance towing fees if local providers do not have the equipment necessary to address this problem.

Mr. Chairman, the new car you purchase is more than just the high-performance components that make up a car. It's a major investment that our families count on to get around. We count on it to keep us safe. Let us allow consumers to protect that investment and maintain choice for safe, reliable, and enjoyable operation of their automobiles by supporting the right to repair.

Thank you. I'll take questions if you have any.

[The prepared statement of Mr. Nielsen follows:]

PREPARED STATEMENT OF JOHN NIELSEN, DIRECTOR, AUTOMOTIVE SERVICES AND REPAIR NETWORK, AMERICAN AUTOMOBILE ASSOCIATION (AAA)

Good afternoon, Mr. Chairman and Members of the Subcommittee. I am very pleased to be here today on behalf of AAA to provide testimony in support of S. 2617, the Motor Vehicle Owners' Right to Repair Act. As you may know, AAA has advocated the interests of car owners for over 100 years, and currently represents more than 45 million members comprising a quarter of all U.S. households.

My name is John Nielsen. I am a Master level auto service technician with over twenty years of experience in the automobile service industry. My primary responsi-

bility is to make certain AAA members are able to locate quality facilities that can quickly and efficiently service their vehicles at a reasonable cost. In this position, I coordinate the objective inspection and approval of a network of more than 7,500 AAA-approved repair facilities that are both franchised new car dealerships and independently-owned repair shops.

Members look to AAA for advice and assistance in all of their automotive experiences, from purchase to repair. We assist them with information and advice regarding the proper maintenance and servicing of their vehicles, finding quality repair facilities, and with shopping for a new or used vehicle that best meets their needs. In short, we try to take some of the mystery out of finding, buying, operating and maintaining a vehicle.

AAA strongly supports S. 2617, and the companion House bill, H.R. 2735, for three important reasons: consumer choice, vehicle safety, and the right of car owners to own the information generated by their automobiles. The measure before you today will ensure that motorists can have the kind of service that is best suited to their particular needs.

Consumers are often uncertain about how to communicate with repair providers. Study after study reveals that consumers find automotive repair and maintenance stressful. Having confidence in a trusted service technician goes a long way towards alleviating that stress. Studies also find that consumers want to choose who repairs their vehicles. A recent AAA study found that as many as 80% of our members believe it is "important" or "very important" that consumers are able to choose a service provider other than a dealership. Furthermore, the ability to choose a repair facility creates competition which is beneficial to the consumer. Service shops must control costs and focus on providing quality repairs if they want to stay in business.

Mr. Chairman, that is not to say that AAA believes motorists should not have their vehicle serviced at a dealership. Quite the contrary, many of our members enjoy the relationship and service that dealers provide. We simply believe that motorists should have the choice.

Technology has made the cars we drive smarter. More than 80% of the systems on some cars are monitored or controlled by a computer. Computers in the car can tell us of the need for an oil change, trouble with an oxygen sensor, an impending problem with our brakes, and even if our tire pressure is too low—*before* there is a problem or critical safety breakdown. *Before* you have to call AAA from the side of the road. But what if you, or your trusted service technician, do not have access to this critical safety and diagnostic information?

Imagine traveling on a Saturday afternoon, the dashboard light comes on warning of a malfunction with the anti lock brakes system. You stop at the first service station and ask the technician to fix the problem. The technician checks the vehicle and determines the problem is not mechanical but rather, in the electrical system on which only the dealer can work—not because dealer technicians are more skilled, but because the independent technician cannot acquire the appropriate repair information. The closest dealer for your make of car is 25 miles away and won't open until Monday morning. Is it safe to keep driving the car on the trip? If not, is it safe to drive the car to the dealer and wait until Monday, or do you need a tow truck to pick up the car? Can the dealer service the car Monday or are they booked up?

This situation could just as easily have involved the supplemental restraint system or the electronic traction and stability control system. Each has the potential to compromise the safety of the vehicle's owner and passengers, but potentially other motorists as well. Problems repairing so-called comfort features in the vehicle such as the climate control may not compromise safety but would undoubtedly inconvenience the consumer.

Mr. Chairman, AAA believes that when you drive off the lot with your car, you, the consumer, own more than just the vehicle; you own the information necessary to have it repaired by a trusted service advisor of your choosing—whether it be at an independent facility or a dealership. This information, whether it is viewed as intellectual property or real property, is really the property of the car-buyer.

S. 2617 rightly states that "the ability to diagnose, service, and repair a motor vehicle in a timely, reliable, and affordable manner is essential to the safety and well-being of automotive consumers in the U.S."

The members of this panel are keenly aware of how a downturn in the economy directly impacts the wallets of your constituents. In difficult economic times, repairs may be delayed as expenses are prioritized, often exacerbating the mechanical problem. If motorists do not have an adequate choice of repair facilities, they may face higher prices and unsatisfactory service. Some people just cannot afford to go to the dealership for every repair. There are many people that must juggle expenses on a fixed income, and others who are faced with economic challenges that demand

competitive prices for repairs. Competition is essential, but if the current trend continues, the consumer will have fewer choices—not more.

There are also areas of the country where motorists could be forced to drive long distances or pay unneeded long-distance towing fees if local providers do not have the equipment necessary to address a repair problem.

It's very important to note that lower cost doesn't mean lower quality repairs, as long as all service technicians have the information necessary to diagnose and repair problems. Consumers have a right to high quality repairs and should not be compelled to use service facilities that may have previously delivered poor service, or denied the opportunity to get a second opinion. If consumers are limited to only one service option, they do not have that opportunity.

Mr. Chairman, Members of the Committee, the new car you've bought is more than just the high-performance components that make up your vehicle. It's a major investment for consumers and for families. It's what keeps us mobile and what we rely on to keep us safe. Let's allow consumers to protect that investment and maintain choice for safe, reliable, and enjoyable operation of their automobiles by supporting Right to Repair.

Mr. Chairman, thank you again for this opportunity to testify. I would be happy to answer any questions that the Committee might have at this time.

Senator DORGAN. Mr. Nielsen, thank you very much.

And, finally, Mr. Valley. Mr. Valley is the president of McLean Marathon Service representing NAPA. Mr. Valley, why don't you proceed?

**STATEMENT OF JOHN VALLELY, PRESIDENT,
NORTH MCLEAN AUTOCARE CENTER**

Mr. VALLELY. Thank you, Mr. Chairman.

McLean AutoCare Center is a family owned business employing approximately 10 people with three service bays and gasoline islands, kind of your old-time thing. We are located in Elgin, Illinois, and founded in 1970, so we've been around awhile.

My independent repair facility is one of only 10,000 nationally recognized network of NAPA AutoCare Centers across the nation. Being an autocare center has allowed me to be independent and maintain a competitive edge. My employees and their families are part of the reputation of being a respected and trusted repair facility within our community.

NAPA and the other aftermarket trainers provide technical training in specific automotive systems, introducing the latest in diagnostic and repair techniques for both domestic and import vehicles. Their extensive management training teaches the shop owners how to manage cash flow, set goals for the business, manage employees and best serve the community through technician training.

NAPA, as well as other aftermarket companies, requires highly trained technicians who must be certified through the Automotive Service Excellence Program. We also have a code of ethics that each AutoCare dealer has agreed upon prior to being an AutoCare Center. These skilled technicians have worked on a large range of models and systems and should not be deprived from working on that path.

My son, Christopher, is currently enrolled in an automotive training program at Elgin Community College. He has worked at the shop for three years and intends to take over the business as his chosen career. Frankly, I'm greatly concerned about the future and longevity of the independent automotive maintenance and repair business if the current trends are not curtailed.

Many of my colleagues have also voiced similar concerns. Today's automobiles are increasingly more sophisticated due to advancements and computer-controlled technology that can be found in most major systems of the automobile today. Information on service procedures, as well as accessibility to diagnostic code and procedures, is crucial to their proper maintenance and repair.

In many instances, these codes and procedures and affordable scan tools themselves are not made available to the independent repair technicians. Many of the diagnostic procedures that are made available are written only for use with specific OE scan tools. These procedures are not applicable to the more commonly sold scanners that are used and updated annually from aftermarket source scan tools such as Snap-on diagnostics.

Purchasing multiple scan tools would be—that would communicate with the most common vehicle models would be cost-prohibitive to the independent repair shop. Scan tools cost an average of \$5,000, or even more, per tool. Multiply that by the number of car manufacturers and a general repair shop would need to invest well over \$100,000 for average coverage to perform these repairs, with no guarantees that it would work on next year's models or even be updatable.

Put the initial purchase price aside for just a moment, and the initial—the annual update cost alone for those scanners would put most independents out of business, as computer controls are found in most of the vehicles' major systems. Scan tools that are able to communicate with each model type are necessary to perform even the most routine and minor repairs.

BMW vehicles, for example, require the use of a scan tool to reset the service reminder light after a routine oil and filter change. We purchased a \$400 tool, not a scan tool, that has one function only, and that's to reset that reminder light. We felt, though it may not seem as a lot, however, even if we were able to purchase special tools for every minor repair, it would still add up to a significant investment.

Recently, my shop had to send a customer to a Jeep dealership to program his replacement ignition keys and remote transmitters. Now, the procedure required the Chrysler DRBIII scan tool. My domestic car scanner, with a fully updated Snap-on, was unable to perform that procedure. With additional programmable control modules being added to vehicles each year, I have to wonder what will be my small business's ability to perform these repairs, or are we slowly being phased out due to economic restraints?

Having the ability to economically access, accurately diagnose, and properly repair the automotive computer-controlled systems is crucial to any auto repair shop's future, whether it be an OE dealership or an independent repair facility. Without the access to the diagnostic procedures from the manufacturers, we, the aftermarket, would be prohibited from repairing many current and future automobiles and light trucks. If this were to happen, the number of vehicles that we would be able to repair would diminish and eventually force us out of business. This would reduce the number of bays in our community, leave skilled workers without jobs, and eventually, unfairly, cause the automobile owners only one choice due to a lack of competition.

A blackout of information and affordable diagnostic equipment could blatantly create a monopoly for the OE dealerships. The results may create safety concerns and clean air problems, as well. Motorists who are driving vehicles that are in immediate need of a repair on a safety- or emissions-related system such as brakes, air bags, steering, and engine performance issues, but live in towns where car dealerships are not present—or if the motorists are on vacation with their families in areas without car dealers—could compromise their safety and that of others by attempting to drive an unsafe vehicle.

Additionally, if the independent repair industry were locked out and denied access to codes and repair information on computer-controlled systems, these motorists would be left without a choice and be forced to return to the OE dealership. Considering the number of vehicles in service today, with new cars and light trucks being delivered daily, the OE dealerships would be overloaded and unable to perform the service in a reasonable, cost-efficient, or even timely manner.

Repair choice must remain with the vehicle owner and requires a variety of competitive automotive service centers to reserve that right. Competition always benefits the consumer.

In order to accomplish this, the information must be available. With the European manufacturers already denying the aftermarket access to information to properly repair their vehicles, what is to stop other manufacturers from following their lead? There will be no uniformity for motorists to place their trust. As American workers are forced from their automotive aftermarket related jobs, the economic domino effect will cause the American economy to suffer instead. Unemployed people simply do not spend money that they do not have. But, by then, it will be too late.

Legislation, and not negotiation, is the appropriate way to stop the potential strong arm collapse of the automotive aftermarket that is so vital to America's transportation and solve the fair repair problem.

Thank you for the opportunity to testify on this consumer and small business problem.

[The prepared statement of Mr. Valley follows:]

PREPARED STATEMENT OF JOHN VALLELY, PRESIDENT,
NORTH McLEAN AUTO CARE CENTER

Mr. Chairman, distinguished Members of the Committee, my name is John Valley. I am the President of North McLean AutoCare Center, a family business employing approximately 10 people, with 3 service bays and gasoline islands. We are located in Elgin, Illinois and were founded in 1970.

I currently serve as the Chairman of the School District U-46 Automotive Advisory, and the Elgin Community College Automotive Advisory Committees. I am also a part-time Automotive Instructor at the College.

I have served on the NAPA National AutoCare Advisory Council for two years. Participation demands input on issues such as technician and management training requirements and recommendations, discussion of industry trends and issues particular to the automotive industry, AutoCare membership standards, imaging and promotions, business aids and programs which promote automotive professionalism. These issues and other programs allow us, the independent repair shops, to be competitive in today's market environment. Currently I serve as a member of the local NAPA Chicago AutoCare Advertising Committee.

My independent repair facility is only one of the over 10,000 nationally recognized network of quality NAPA AutoCare Centers. Being a NAPA AutoCare Center has

allowed me to remain independent and maintain a competitive edge. My employees and their families are proud of our reputation of being a respected and trusted repair facility within our community.

NAPA and other aftermarket trainers provide technical training in specific automotive systems, introducing the latest in diagnostic and repair techniques for both the domestic and import vehicles. Their extensive management training teaches the shop owners how to manage cash flow, set goals for the business, manage employees and best serve the community through technician training.

NAPA, as well as other aftermarket companies, requires highly trained technicians who must be certified through the Automotive Service Excellence or ASE program. This is a written requirement in the "Code of Ethics" that each AutoCare dealer agreed to prior to being accepted as a NAPA AutoCare Center. These skilled technicians have worked on a large range of models and systems and should not be deprived from continuing on that path.

My son, Christopher, is currently enrolled in the automotive training program at Elgin Community College. He has worked at the shop for three years and intends to take over the business as his chosen career. Frankly, I am gravely concerned with the future and longevity of the independent automotive maintenance and repair business if the current trends are not curtailed. Many of my colleagues have voiced similar concerns. Today's automobiles are increasingly more sophisticated due to advancements in computer-controlled technology that can be found in most major systems of the automobile today. Information on service procedures as well as accessibility to diagnostic codes and procedures is crucial to their proper maintenance and repair.

In many instances, these diagnostic codes, procedures and affordable scan tools themselves are not made available to the independent repair technicians. Many of the diagnostic procedures that are made available, are written only for use with specific OE scan tools. These procedures are not applicable to the more common scanners that are used and updated annually from the aftermarket scan tool manufacturers such as Snap-on Diagnostics. Purchasing multiple scan tools that would communicate with the most common vehicle models would be cost prohibitive to the independent repair shop. Scan tools cost an average of \$5000.00 (five thousand dollars) or more per tool. Multiply this by the number of car manufacturers and the general repair shop would need to invest well over \$100,000.00 for average coverage with no guarantee that it would work on next year's models or even be updateable. Put the initial purchase price aside for a moment. The annual update cost alone would put most independents out of business as computer controls are used in most of the vehicles' major systems.

Scan tools that are able to communicate with each model type are necessary to perform even the most routine and minor repairs. BMW vehicles require the use of a scan tool to reset the service reminder light after routine engine oil and filter change. We purchased a special \$400.00 tool that has one function, to reset the reminder light. That may not seem like a lot, however, even if we were able to purchase special equipment for each minor repair, it would still add up to a significant investment. Recently, my shop had to send a customer to the Jeep dealership to program his replacement ignition keys and remote transmitters, the procedure required the Chrysler DRB III scan tool. My domestic car scanner, the fully updated Snap-on, was unable to perform this procedure. With additional programmable control modules being added to the vehicles each year, I have to wonder what will my small business' ability to perform these repairs be or are we slowly being phased out due to economic restraints?

Having the ability to economically access, accurately diagnose, and properly repair the automotive computer controlled systems is crucial to any automotive repair shop's future whether it be an OE dealership or an independent repair facility. Without the access to diagnostic procedures from the manufacturers, we, the aftermarket, would be prohibited from repairing many current and future automobiles and light trucks. If this were allowed to happen, the number of vehicles that we would be able to repair would diminish, and eventually force us out of business. This would reduce the available number of bays in our community, leave skilled employees without jobs and, eventually, unfairly cause the automobile owners only one choice for repair due to the lack of competition.

A black out of information and affordable diagnostic equipment would blatantly create a monopoly for the OE dealerships. Results may create safety concerns and clean air problems as well. Motorists who are driving vehicles that are in immediate need of a repair on safety or emissions related systems such as brakes, air bags, steering, and engine performance issues but live in towns where car dealerships are not present, or motorists on vacation with their families in areas without car dealer-

ships, could compromise their safety and that of others by attempting to drive an unsafe vehicle.

Additionally, if the independent repair industry were locked out of and denied access to codes and repair information on computer controlled systems, those motorists would be left without choice and be forced to return to the OE dealership. Considering the number of vehicles in service today with new cars and light trucks being delivered daily, the OE dealerships would be overloaded and unable to perform service in a reasonable, cost efficient or timely manner. The repair facility choice must remain with the vehicle owner and requires a variety of competitive automotive service centers to reserve that right. Competition always benefits the consumer. In order to accomplish this, the information must be available.

With the European manufacturers already denying the aftermarket access to information to properly repair their vehicles, what is to stop other manufacturers from following their lead? Heck, manufacturers such as Volkswagen have already stated that they will not share their information. There will be no uniformity for motorists to place their trust. As the American workers are forced from their automotive aftermarket related jobs, the economic domino effect will cause the American economy to suffer instead. Unemployed people simply do not spend money that they do not have. But, by then it will be too late.

Legislation and not negotiation is the appropriate way to stop the potential strong-armed collapse of the automotive aftermarket that is so vital to America's transportation and resolve the "fair repair" problem.

Thank you for the opportunity to testify on this consumer and small business problem. I would be pleased to answer any questions that you may have.

Senator DORGAN. Mr. Vallely, thank you very much.

Now, I notice that there are a number of people in this room wearing the same shirt. And usually that means something. Today I suspect it means that we have folks here from independent dealerships or other organizations that represent either automotive dealerships or independent repair shops, I'm not sure which.

But let me ask a question of those of the audience and ask for a show of hands, if I might. How many of you in this room are engaged in the business of repairing or fixing automobiles in one way or another?

[A show of hands.]

Senator DORGAN. All right. And of those of you who are involved in the repair of automobiles, how many of you have experienced having an automobile brought to you for repair that you could not repair because you don't have access to codes and scanners and so on?

[A show of hands.]

Senator DORGAN. All right. The testimony by all six was interesting testimony, and I agree with something Mr. Nielsen said. It's not the province of this Committee or this Congress to encourage or discourage people to go to wonderful dealerships with great repair shops or independent repair shops on the corner someplace. That's a decision for consumers to make. I think there are some outstanding mechanics and repair technicians who work in both venues. So this is not about trying to force choices, one versus another. It is about making sure Americans have the choice. We have had conflicting testimony with six witnesses today, so let me try to understand where the facts are, if I might.

Mr. Dana and Mr. Cabaniss, both of you have essentially said, on behalf of manufacturers, "There's really no problem here. Look, it's in our interest to allow independent repair shops to have these codes and access to it and so on, and there's really not much of a problem." In fact—let me get a couple of quotes—I believe it was Mr. Dana said, "As you can see, independent shops clearly have the

same repair capabilities as dealerships. In light of the fact that service information and parts are available today to fix almost all vehicles, the legislation introduced by Senator Wellstone is unnecessary and unwarranted.”

Mr. DANA, you heard the testimony of Mr. Vallely, Mr. Haas, Mr. Feste, and Mr. Nielsen, who really aren't involved in the repair business; he's involved in AAA, which is a different circumstance altogether. They all disagree with your assertion that there's no problem here. Respond to their disagreement, if you will.

Mr. DANA. I think there are a couple of issues, Senator. One is that you have to look back on the recent past to see how far we've come in making sure this information is available to aftermarket service technicians. Clearly, there were gaps in the past, and we recognize that, but the problem is really one of being aware of where to get the information.

That's the reason we created this organization called NASTF where we, in the auto industry, work with the aftermarket service association people and try to make them aware of where to get the information. Many times the information is not available directly from our manufacturer, but from a third party provider that the manufacturer hires to distribute their service information.

I can give you an anecdote of a meeting we had in—

Senator DORGAN. Well, let's stop at that moment just for a second. I'm sorry to interrupt you, but the testimony by Mr. Feste, if you buy a Volvo, V-i-r-a, Vira tool, is it?

Mr. FESTE. Yes.

Senator DORGAN.—the tool made available to the independent repairer, quote: “it will not allow us to make complete emissions analysis of the vehicle. The Volvo dealer has the Vadis tool.” It “allows the dealer to make a complete analysis of the vehicle.” So are you accurate in what you just represented to me? What about the Volvo situation Mr. Feste inquired about?

Mr. DANA. I'm not entirely familiar with the Volvo system, but it is required by law that every vehicle can be diagnosed in the OBD system for emission-related repairs.

Senator DORGAN. But you indicated in your testimony that the information and parts are available to fix almost all vehicles, so you're not—

Mr. DANA. That's correct, for non emission-related repairs.

Senator DORGAN.—You're not necessarily sure of that?

Mr. DANA. No, we know that there are certain gaps that still remain to be filled.

Senator DORGAN. But you didn't put that in your testimony.

Mr. DANA. Yes, I did, sir. I said—

Senator DORGAN. Well—

Mr. DANA.—I said most vehicles can be repaired. I said virtually all of them.

Senator DORGAN. Let's talk—

Mr. DANA. We know that there are gaps, Senator.

Senator DORGAN. OK.—

Mr. DANA. We are working as hard as we can to make sure that the aftermarket independent repair shops know how to access and get the right information—

Senator DORGAN. Let me talk—

Mr. DANA.—because it's critical.

Senator DORGAN.—about those gaps, then, if I might, because, Mr. Valley, you run a shop in Illinois. Is the problem here just some gaps? Your testimony suggested the problem is much more systemic than that; it's a broad problem of the automobile manufacturers not wanting you to have access to that information. So Mr. Dana says it's gaps. What's your impression of that?

Mr. VALLELY. Well, I'm kind of, so to speak, at the bottom of the food chain, so for me to find information, I have to depend on other companies to get the information to me, which is—you know, scanner manufacturers, all that, and provide information systems.

Senator DORGAN. But Mr. Dana also just said that it might be the case you just don't know where to get the information. Wasn't that your testimony, Mr. Dana? So is this a problem, Mr. Feste, that you don't know where to get the information?

Mr. FESTE. No, that's not the problem.

Senator DORGAN. Well, tell Mr. Dana—

Mr. FESTE. The problem is—

Senator DORGAN.—why that's not the problem?

Mr. FESTE.—some of the information is not available.

Senator DORGAN. You say it's not available.

Mr. FESTE. That's correct, not available to the independent.

Senator DORGAN. Mr. Dana, tell me about that. I mean, we have independents who say this is not available, you say it is. How do we demonstrate where the facts are?

Mr. DANA. What I can tell you is that the manufacturers are committed to getting this information to the independents. Yes, there are some manufacturers on certain systems in the cars where information is not yet available. We're working on getting that available to all the independents.

By and large, if you go across many of the larger companies, you'll find every single bit of information is available that they give their dealerships to repair cars. There is nothing withheld whatsoever.

Senator DORGAN. Do you repair cars, Mr. Dana?

Mr. DANA. Not for a long time, sir.

Senator DORGAN. Mr. Nielsen, you wanted to comment.

Mr. NIELSEN. Thank you, Mr. Chairman. This morning, I was reviewing the information that's available on data availability, and I asked my staff to visit the NASTF site and pull down the list that Mr. Dana has spoke of where it actually lists what data is available and where you can purchase it. My staff called those locations up, and many of them are factory, many of them are aftermarket or third-party manufacturers.

The first thing that we found is to purchase the various equipment for each year is roughly \$107,000, very much consistent with the testimony we heard earlier. What was not available, what we were told by many manufacturers who represent a large part of cars sold in the U.S., is that one of two things: either the equipment could not be sold to the aftermarket or that they would sell them the equipment but not the information necessary to diagnose the cars.

So absolutely, there is clearly a lack of information, a lack of ability to get the information, and apparently a disconnect between manufacturers and the information that's being disseminated.

Senator DORGAN. Mr. Haas, you see the dispute that exists here. I want to ask Mr. Cabaniss in a moment, as well, because, Mr. Cabaniss, you, in your testimony, seemed to say that either there isn't a problem, or if there is a problem it's very quickly being remedied—Mr. Haas, how do we get at the facts here?

Mr. HAAS. Well, Mr. Chairman, I think the facts are very evident. The number one fact is, the only thing that the auto manufacturers are required to provide to the independent repairers are information for the diagnosis and repair of emissions-related systems on the automobile.

The other piece of evidence that we have is that the manufacturers association, the Alliance of Automobile Manufacturers, last October, provided a letter that they refer to as the OEM letter of intent. I think that's the best piece of evidence that you have, because in the letter of intent, the Alliance has gone so far as to say that they will provide to the independent repairers the information, training, and diagnostic scan tool capabilities, the same as they provide to their dealerships' technicians, by January 1 of 2003.

Now, here's the real, hard evidence: 20 manufacturers have supported the Alliance's letter. There are 22 manufacturers that we have to be concerned with in this country that sell automobiles. So two of them are missing. They're not even supporting the Alliance's letter of intent.

Senator DORGAN. Which are the two manufacturers?

Mr. HAAS. Honda and Porsche. So we have 20 manufacturers that are supporting the letter of intent. And, in the letter of intent, four of those 20 manufacturers have already said, "We will not provide, to the independents, certain information. We will limit or restrict certain safety or security information in our automobiles."

So as Mr. Dana professes that the manufacturers are working hard to provide this, it's absolutely untrue. They're not. They've already stated that they have no intention to. Those four manufacturers are BMW, Saab, Volkswagen of American, and Daimler-Chrysler.

It's also interesting that, of those 20 manufacturers that have supported the letter of intent, as we sit on the verge of August 1 of 2002 looking forward to the date that they set forth of making this information available for January 1, 2003, to date we have only three automobile manufacturers that have demonstrated their ability to successfully provide affordable access and the availability of service information to the independents.

That's the hard facts. That's the evidence.

Senator DORGAN. Which are the three manufacturers?

Mr. HAAS. The three manufacturers that have done that are General Motors, Hyundai, and Mazda.

Senator DORGAN. Mr. Cabaniss, you've just heard Mr. Haas and other witnesses. It's quite clear that, from an operational standpoint, those who are in the independent shops trying to make repairs are facing a pretty significant problem, and yet you and Mr. Dana say there's really not a problem here. Reconcile that, if you would.

Mr. CABANISS. Mr. Chairman, I'm not suggesting there have not been problems in the past. And, as Mr. Dana said, we recognize that there have been gaps in the past, and there are gaps today. And the purpose of the Task Force, the National Automotive Service Task Force, is exactly about closing those gaps as soon as we possibly can.

And with respect to the letter of intent that Mr. Haas just mentioned, yes, 20 manufacturers signed on to that letter, and in a few cases with some limited exceptions. That, however, does not mean that the manufacturers that did not sign are not moving ahead. They simply didn't sign the letter.

All the manufacturers are moving ahead on the same basis, to provide the information and to correcting the gaps that are there. And by early next year, the goal is to have that done. That doesn't mean, however, that the job will be complete.

My expectation is that we'll continue to find situations, hopefully only in a few instances, where we continue to need to address problems. But the point that I'm trying to bring to your attention is simply that we have a process in place to do this. We're all working together. In fact, Mr. Feste and Mr. Haas are both part of the Task Force effort, and we appreciate their participation.

We are working hard to address the issues. And the fact of the matter is we have a process in place to do that now, and we're moving ahead diligently to address that problem. If you look at the number of issues, the gaps, so to speak, that we had, say, two years ago when we started, they were much greater than they are today. In another year—in fact, in a few months, six months, we'll make even more progress. Six months further after that, I believe we'll make even further progress. As long as we continue to stay the course and work together, that's what it takes to address this problem.

Senator DORGAN. Tell me why it's not in the interests of the manufacturers to withhold the information from the independents and force repairs to be made in the dealerships, the franchise dealerships?

Mr. CABANISS. Well, first of all, Senator, it's—it would—as, actually, I think Mr. Feste himself—or Mr. Vallely—excuse me if I got that wrong—mentioned, it's—there was no way—we don't have the—in the dealerships don't have the capability of providing service to—if, for some reason, the customers decided to bring their cars all of a sudden to the dealership, there's just not the capability to do it. We need the aftermarket industry, the independents, to be able to service our customers, our mutual customers.

And we—believe me, we need to keep our customers happy. We want to see them back in the showroom again to buy another car from us, and so we need to keep our customers happy, and that means being able to get their cars fixed conveniently if something breaks. We hope they don't break very often. But if they do, the last thing we want is a dissatisfied customer.

Senator DORGAN. Mr. Cabaniss, this Subcommittee is going to inquire of the EPA with respect to enforcement issues, and also of the Federal Trade Commission on these issues. My fervent hope would be you would find it in your interests and in the interest of the manufacturers to provide all of that information and the ability

at a reasonable price to access the equipment so that the independent dealerships in this country can provide the necessary repairs.

I'm still trying to understand this circumstance. I always worry about bigger interests and smaller interests and making sure the rules are fair. There's an old Bob Wills and Texas Playboys song with a verse, "The little bee sucks the blossom, but the big bee gets the honey. The little guy picks the cotton, and the big guy gets the money." There's a lot of that in life with respect to big versus smaller interests.

And what I hear today from folks who run independent repair shops, I assume folks that, in many cases across the country, don't have large shops but have some awfully good mechanics, is that they feel that there's information withheld from them that prevents them from being able to provide the service to their customers that they want to provide in repairing a vehicle.

So let me call on Senator Wellstone for inquiry.

Senator WELLSTONE. Mr. Chairman, I can be relatively brief here.

I was a college teacher; you just had a great seminar class. I like the way you do that. You had everybody speaking, and you covered a lot of the ground I wanted to cover. I think I can get to the point that I want to get to with two questions.

And I guess, for Mr. Cabaniss and Mr. Dana, this—it would be helpful for me to sort of get your perspective on record on this. Leaving aside the specifics of the legislation, could you tell the Chairman, the Committee, whether or not the auto manufacturers agree with the principle that the independent repair shops—because I think that's what this is about—should have the same access to information needed to repair vehicles as the franchise auto dealers? Would you agree with that principle?

Mr. CABANISS. Yes, sir, I would.

Mr. DANA. A hundred percent, sir.

Senator WELLSTONE. OK. Well, that's very important to know. Then I guess the second question, which maybe we'd go to you, Mr. Haas, is what assurances—you know, we—you just heard industry say we agree with that principle, and we've heard about the Task Force and that there's progress being made. What assurances would you want to have with—from the point of view of the AAA or the consumers, the owners of cars, or, for that matter, the independent mechanics—what assurances do you need to make sure that, in your own words, the shops are going to get access to the information at a reasonable cost, to get the diagnostic—to be able to do the diagnostic—I mean, what do you—what's the missing piece here?

I mean, we've got legislation. We can move that. I think there would be a lot—I was talking to Senator McCain on the floor. I know he was very busy today. He might have been here. Others I think are interested. I can't commit anyone. The Chair has got a strong reputation as being pro consumer. We can move this and continue to go forward, but it also would be nice if there would be just some agreement where everybody could end up winning.

What do you need, in terms of assurances?

Mr. HAAS. We'd need to know, first of all, what is available to the franchise dealer technician in order to know comparatively that we're receiving the same information.

What I don't understand—and I think Volvo is a perfect example of this—is even though they're required by law to provide emissions information to technicians today, they've decided to provide it to the independents in an absolutely different tool than the tool that they use to provide it to their dealership technicians.

Now, you know, a minute ago, we just heard Mr. Cabaniss and Mr. Dana say that, well, we'll provide to the independents exactly what we provide to the franchise dealers. And Volvo, in this for instance, has already demonstrated that, no, they're not willing to do that. If that were the case, if these manufacturers truly believed that they were willing to provide the same information to independent technicians that they provide to dealership technicians, this example with Volvo would not exist today.

Let me share with you this. This is a quote from another manufacturer represented by the associations represented here today, BMW. And this is a quote from BMW. "In general, BMW is not in a position to provide BMW service processes, equipment, and features which have no bearing on emissions regulations and which are specifically developed to enhance the customer-service experience at BMW authorized dealers to anyone but BMW dealers." I think that's the story.

So I have to disagree with what Mr. Dana and Mr. Cabaniss are suggesting here this afternoon. They're saying all the manufacturers they represent are willing to come to the table voluntarily and provide this? I think that they'd better go back and check with BMW.

Senator WELLSTONE. Well, I would say this, Mr. Chairman, and I'd finish this way, and you may, as the Chair, have—may want to have the final word—this is what occurs to me.

I mean, just sort of building on what Mr. Haas said, it would seem to me that we've had two individuals, Mr. Cabaniss and Mr. Dana, who have done an excellent job of, you know, representing the manufacturers—I'm not here to bash anyone—who have said that, you know, this is moving along, and we want to cooperate. And then I think you talked about six months, and then in another six months—that was someone's language.

And I think what I'm hearing from a lot of the independent dealers is, "Time is not neutral for us." In other words, you know, you can keep talking six months and six months and six months, and then pretty soon there won't be that many of us left. And so that doesn't do it for us. And so I—

Mr. HAAS. Mr. Wellstone?

Senator WELLSTONE. Yeah?

Mr. HAAS. Every day that passes without resolution to this compromises the position of the consumer. Every day.

Senator WELLSTONE. Well, I would suggest to the industry—and I'd be anxious to hear from the Chair—I would suggest that the industry, as one Senator from the State of Minnesota, that there be some slightly—let me just take everything you've said in good faith, and if that's the case, then I would say the negotiations need to move forward expeditiously, and they need to be concrete, and

there needs to be some assurances, and that you all need to come to terms with one another as soon as possible.

I mean, I think, right now, the present course isn't working. Otherwise, I think we move forward on the legislative front.

Senator DORGAN. Let me ask—

Mr. DANA. Senator, if I could comment on that?

Senator DORGAN. Yes, please.

Mr. DANA. We are working closely with them. And Bill Haas is the contact point at ASA for this complaint form which is on the NASTF Web site. If any independent service provider cannot get service information from a manufacturer, is told he cannot have it, they fill out this form, get it to Bill Haas, Bill will send it to either myself or John, and we'll get it to the manufacturer, and we will do everything in our power to correct that situation as soon as possible.

Senator DORGAN. Mr. Dana—

Mr. DANA. We've set this up to try and make that happen.

Senator DORGAN. Yeah, let me ask about the BMW issue, specifically. I know nothing about this except what Mr. Haas just represented, but it is exactly what we don't want to happen in this country.

We don't want someone producing an automobile and saying, "Oh, by the way, we have included in this automobile certain repair components the keys to which we will give only the franchise dealerships to the exclusion of all the independent repair shops around the country."

I don't think anybody wants that to be the case. Consumers in this country want the choice. They want to be able to take their car back to a wonderful dealer, get it repaired there, or they want to take it to their corner trusted independent repair shop, have it repaired there.

In either case, you've got the American people who want to make the choice that they choose to make. Often they'll choose the dealership. Just as often, they'll choose the independent repair shop. But if a company decides it wants to predetermine what that choice must be by withholding key information from independent repair shops, it seems to me that is anticonsumer, anticompetitive. So that's exactly what we want to avoid having happen in this country.

Now, respond, if you will, to Mr. Haas' assertion with respect to one company, BMW.

Mr. DANA. I'd like to, Mr. Haas, know when that quote was from—what date that quote was from.

Senator DORGAN. All right. Mr. Haas, when was that quote—

Mr. HAAS. That quote was from—

Senator DORGAN. Don't tell me 1942.

[Laughter.]

Mr. HAAS. No, no. No, Mr. Chairman, it was not. It was from this year, and I believe—I can't give you the exact date, unfortunately, this afternoon, but I believe it was from May or June of this year.

Mr. DANA. Well, then we need to get a complaint form filled out, Bill, because in BMW's letter of intent, it said they were going to make information available to the dealerships. They have some ex-

ceptions, and we're working on that, having to do with anti-theft systems and security.

So, again, as I've tried to explain to you, Senator, there is a problem with people either in a third-party provider or even some people who are in a manufacturer saying the wrong thing, because even in our own companies it hasn't been filtered down in some cases.

Senator DORGAN. What—let me—

Mr. HAAS. This was a quote from a representative of BMW. This wasn't a third-party provider. This was from a gentleman employed by BMW.

Senator DORGAN. I'm going to ask, in fairness to BMW, if they would like to submit a statement for the record.

Mr. DANA. We'll be happy to have them do that.

Senator DORGAN. The hearing record, of course, will remain open.

But let's assume, for the moment—and I don't know this to be the case; I don't even know who the BMW representative was. Assume that you have a manufacturer that says, "Look, it's in our interest not to provide this information. We fully intend to try to steer all of the business back to our franchise dealerships. That's what our company wants to do." Let's assume, Mr. Dana, that one of your companies takes that position. What can you do to remedy that? Is there anything you can do?

Mr. DANA. First of all, none of the members have taken that position. And even BMW has made the point that they are willing to make it available for the aftermarket—in their letter of intent, right here.

Senator DORGAN. I'm just asking you what if—what if some company says, "Go fly a kite. We intend to try to steer everybody back to our franchise dealerships." What's the remedy for that?

Mr. DANA. I think the competitiveness of this industry would fix that problem quickly, sir.

Senator DORGAN. All right.

Senator WELLSTONE. I don't agree with that statement.

Senator DORGAN. Yes. There can't be competition for the repair of an automobile for which you're not able to make the repairs. That's the whole point of the hearing, of course.

Let me ask one other question. We're talking about concerns. I assume there are some good actors out there. Can you tell me, Mr. Feste, which of the automobile manufacturers seems to be most responsive in providing information to independent repair shops?

Mr. FESTE. Yes. From an independent repair standpoint, General Motors has been most accommodating and extremely helpful in service information and helping us to access codes and so on. They are a major player, and we would certainly hope that the other manufacturers would look to General Motors and take a cue from them.

Senator DORGAN. I want to thank Senator Wellstone. He has to run to another engagement, but I want to thank him for bringing this to the attention of the Committee.

Mr. HAAS. Mr. Chairman, I'd like to—

Senator DORGAN. Yes?

Mr. HAAS.—add to Mr. Feste's—

Senator DORGAN. Of course.

Mr. HAAS.—comments that not only has General Motors done an outstanding job of making the information available, they've done it in a manner that is accessible and affordable, and those are key issues. Those are very important. It's not just simply is the information available. It must be accessible, it must be affordable.

Senator DORGAN. All right. Well, let's have this hearing stand as an expression of concern that this problem be resolved. It can be resolved legislatively by passing legislation here in Congress, or it can be resolved through the negotiations and determination that Mr. Dana and Mr. Cabaniss have described. I don't think independent repair shops and consumers would care how it's resolved as long as it's resolved fairly and fully.

But I think it's important for us to understand that it would not be appropriate in our country for automobile manufacturers to say, "We're going to produce a product that can only be repaired in our franchise dealerships." That's not in the interest of the consumer, and it's not what we want to have happen with respect to the fostering of competition in our country.

I'm going to send a letter to the EPA and ask about enforcement issues, generally, because that's been raised here and I think it's important to inquire about that. Second, I'm going to ask the Federal Trade Commission to monitor this issue with you all so that we can evaluate what kind of progress is made.

I would agree with Senator Wellstone that if progress is not made or if we face a circumstance where we're discovering independent repair shops are being frozen out of the information systematically, I think that Congress will take a hard look at passing the type of legislation Senator Wellstone has introduced.

I think this hearing is informative and instructive, even though we've had very different opinions. From the exchange, I get a sense of what the circumstances are, and I think you should get a sense that there's an expression of concern here in Congress about what has happened in the past and what we think should happen in the future in order to foster competition.

It is true that the automobile is vastly different than it was 50 years ago. Fifty years ago, you could take it almost anyplace, put it up on a hoist and take a few bolts out and take a look at what was inside the engine. Boy, it's a radically different circumstance in trying to deal with vehicles these days.

I think it's especially important at the end of this hearing to say that there are a lot of so-called "good guys" in the automobile repair business, both at franchise dealerships and independent repair shops. I don't want anybody to get the notion that there are bad actors all over the lot here. There are "good guys" with respect to manufacturers. There are "good guys" with respect to doing automotive repair and people that the American consumer can inherently trust in having their automobile repaired.

This is not just a matter of convenience. In many cases it's a matter of safety for drivers and their families and other people on the road.

So I want to thank all of you for preparing testimony and submitting it today and thank others of you who've come. This record will remain open for two weeks from the date of this hearing. If

you wish to submit comments for the record, we will include them as a formal part of the hearing. This hearing is adjourned.
[Whereupon, at 4 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF AARON LOWE, VICE PRESIDENT, GOVERNMENT AFFAIRS,
AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION AND THE AUTOMOTIVE WARE-
HOUSE DISTRIBUTORS ASSOCIATION

On behalf of the 2,500 members of the Automotive Aftermarket Industry Association (AAIA) and the 300 member Automotive Warehouse Distributors Association (AWDA), I respectively submit the following testimony regarding The Motor Vehicle Owners Right To Repair Act (S. 2617).

AAIA and AWDA represent manufacturers, manufacturers' representatives, distributors, retailers, and installers of aftermarket parts and accessories. These companies sell primarily into the automotive aftermarket, which is everything that happens to a car once it leaves the dealership. It is estimated that 70 to 80 percent of car owners patronize the independent aftermarket, those not affiliated with the motor vehicle manufacturers, once their vehicles are out of warranty based on the factors of convenience, price and trust. In fact, U.S. car owners enjoy the most affordable repair aftermarket in the world due to the fact that there is significant competition in this country both for the repair and the supply of replacement parts. The affordability of repairs for the average motorist helps ensure that they can continue to maintain critical safety and emissions related systems. However, our industry is concerned that competition, the very thing that holds so many benefits for the car owners and the environment, may disappear as a result of government regulation and desires by some manufacturers to use technology advances for monopoly gains.

Legislation and regulations enacted in the late eighties and nineties, both federally and in California, required that car companies equip vehicles with on-board diagnostic systems capable of monitoring the major emissions control systems and alerting the car owner of a malfunction. The system also would provide technicians with the ability to better locate and correct emissions related problems. As Congress moved to enact these requirements, they also were extremely concerned that the increased use of computers could provide new car dealers and the car companies with a monopoly in the service of these vehicles. Therefore, provisions were added in both House and Senate versions of the 1990 Clean Air Act Amendments that required standardized access to the OBD II system, as well as a mandate that all information necessary to use the OBD II system and to make emissions related repairs be provided to anyone who repaired vehicles. On August 9, 1995, the U.S. Environmental Protection Agency issued regulations (60 FR 40474) implementing the "information availability requirements".

Since the 1990 Act and the subsequent regulations, the use of computers on vehicles has increased whereby virtually every system on the vehicle is tied into the vehicle's central computer. Further, while some vehicle manufacturers have become more conscious of the importance of the aftermarket to ensuring consumer satisfaction with their vehicles, other car companies have not been as cooperative. The problems that have been plaguing the aftermarket since the promulgation of the EPA information availability regulations can be summarized in the following three scenarios:

- The information is available, but difficult to locate;
- The information is available, but priced too high for most aftermarket shops to afford it, or;
- The information is not available at all, at any price.

AAIA and AWDA further have been concerned about how the on-board computer will impact parts manufacturers. Essentially, while independent producers could build a part that performed equally with the OE part it was intended to replace, the part might not interface properly with computer and thus set off the malfunction indicator light unnecessarily. Thus, the aftermarket manufacturers need information regarding the operation of the system such that they could build parts to work properly with the system. In response to our concerns, EPA determined that

Congress did not intend for the information availability provision to cover replacement parts and therefore the Agency did not include any requirements in its 1995 rulemaking.

Following promulgation of the final service information rule, the aftermarket sued claiming that the agency should have considered replacement parts related issues in their OBD II and information availability rulemaking due to their impact on the availability of competitive repairs. While the US Court of Appeals acknowledged there might be competitive concerns regarding replacement parts as a result of the OBD II standards, the court ruled that EPA was within its statutory discretion when it determined that parts issues should not be considered.

Frustrated by EPA's lack of enforcement of the current service information rules and the absence of consideration of the parts compatibility issue, the aftermarket in the late nineties turned to California in order to resolve its issues. California was selected since it had taken the lead in the development of OBD II and the fact that most car companies were building their systems to meet the California standards. Further, EPA had determined that OBD II systems that were California compliant would also be considered compliant with Federal OBD II standards. Thus the aftermarket felt that legislation enacted in California would have national implications.

Legislation (SB 1146) introduced by Senator John Burton in February of 1999 attempted to correct many of the problems being experienced by independents in obtaining emissions related service information and tools. A provision requiring information necessary to ensure that aftermarket manufacturers had access to information necessary to ensure that their parts were compatible with the OBD II system was included in the bill.

While there was general agreement regarding many of the service information provisions, the parts provisions became extremely contentious with the vehicle manufacturers. Specifically, the manufacturers publicly charged that aftermarket companies were looking for free access to the blueprints for replacement parts and the internal calibrations of their on-board computers, similar to the arguments that they are espousing with this legislation. Through several negotiating sessions between parts manufacturers and car companies, a compromise was reached whereby only general and generic operating parameters would be shared. We felt that this agreement would not only provide the necessary information for aftermarket parts manufacturers, but as it turned out, this same information would be invaluable to technicians in properly understanding how the OBD system works and therefore assist them in repairing the vehicle. It also would ensure that car companies would not be required to release proprietary software codes unless a court determined that the information was necessary to preserve competition in the aftermarket. Subsequent to that agreement, all of the major vehicle manufacturers, except one, decided to no longer oppose the bill.

The agreement in California came about because the aftermarket and car companies got together and determined what information about the OBD II system was really necessary for developing replacement parts. While the legislation has yet to be fully implemented, we believe that it will go a long way toward ensuring competition in both the repair and parts area without jeopardizing proprietary information.

Based on the events in California, AAIA and AWDA take exception to contentions made by the car companies in their testimony at the July 30 hearing that there is a sinister plot by the part manufacturers to use this legislation to obtain the internal calibrations. In truth, the reason that parts manufacturers are supporting the Motor Vehicle Owners Right To Repair Act is really very simple. The independent service providers are our number one customers. If they disappear, our independent manufacturers disappear as well. In essence, their survival is our survival. In addition, if an independent supply of replacement parts evaporates, service providers are harmed since they depend on us to keep parts prices down and therefore help them stay competitive. However, we are not asking for any more information than is needed to properly repair and maintain today's highly sophisticated emissions and safety systems.

The actions in California, EPA and Arizona, also have brought about another important benefit, the establishment of the National Automotive Service Information Task Force (NATF). The task force is comprised of both aftermarket and car companies groups committed to resolving problems in the availability of service information and tools. The discussions by this group are important to developing open communications necessary to correct our concerns. Further, the legislative and regulatory activities have brought about written commitments from many of the vehicle manufacturers to make available all service information, both emissions and non-emissions related to the aftermarket by January 1, 2003. AAIA and AWDA applaud these developments. If the car companies honor their commitments, car owner satis-

faction with car company products should improve and competition will be preserved. Definitely a win-win for everyone involved.

However, before everyone declares victory and goes home, it should be noted that there are at least two car companies that have not signed on to the letter of intent and there are others that have conditioned their commitments to this effort. Further, should the car companies not comply; there is nothing in the letter that would be enforceable by our members or consumers. Finally, the letter of commitment does not cover the price of this information to independents or how they will make this information available. Both are critical issues to the actual availability to our industry.

Therefore, AAIA and AWDA believe that it is essential that Congress pass S. 2617 in order to ensure that the commitments made by the car companies continue to be viable. In fact, if all information will be available in 2003 as promised by the manufacturers, there is little that the companies will need to fear from the enactment of S. 2617. However, should they determine not to comply, then the bill will provide the aftermarket, FTC and the car owners a legal avenue to mandate compliance.

Mr. Chairman, this legislation will not provide our industry with any advantage in competing with the dealerships or the car companies. What it will do is level the playing field for independents in competing with the dealerships, thus ensuring competition. The car companies can continue to have the ability to develop vehicle systems that are better than their competition. Their patents will be safe and will not suddenly become vulnerable to being stolen by the aftermarket as they have suggested. However, what this bill will do is ensure that once that vehicle is in the hands of consumers, he or she can obtain repairs at the facility of their choosing whether independent or dealer. We believe that absent an unfair advantage, the car owners will continue to return to the independent based on service value and convenience. However, we look forward to that fight in the marketplace and not in the halls of Congress or the federal agencies. We therefore strongly urge the committee to move forward with consideration of this legislation as soon as possible.

Thank you for this opportunity to testify and we welcome any questions that the Committee might have.

