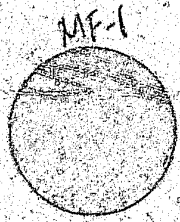


MOTOR VEHICLE THEFT PREVENTION ACT



JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON

CONSUMER PROTECTION AND FINANCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

AND THE

SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS

OF THE

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 4178

TO IMPROVE THE PHYSICAL SECURITY FEATURES OF MOTOR VEHICLE AND ITS PARTS, TO INCREASE THE PENALTIES OF PERSONS TRAFFICKING IN STOLEN VEHICLES AND PARTS, TO CURTAIL THE EXPORTATION OF STOLEN MOTOR VEHICLES, TO STEM THE GROWING PROBLEM OF "CHOP SHOPS," AND FOR OTHER PURPOSES

JUNE 2, 10, AND 12, 1980

Serial No. 96-179

(Committee on Interstate and Foreign Commerce)

Printed for the use of the
Committee on Interstate and Foreign Commerce
and the
Committee on Foreign Affairs

82897-
82900

MOTOR VEHICLE THEFT PREVENTION ACT

JOINT HEARINGS
BEFORE THE
SUBCOMMITTEE ON
CONSUMER PROTECTION AND FINANCE
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
AND THE
SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 4178

A BILL TO IMPROVE THE PHYSICAL SECURITY FEATURES OF THE MOTOR VEHICLE AND ITS PARTS, TO INCREASE THE CRIMINAL PENALTIES OF PERSONS TRAFFICKING IN STOLEN MOTOR VEHICLES AND PARTS, TO CURTAIL THE EXPORTATION OF STOLEN MOTOR VEHICLES, TO STEM THE GROWING PROBLEM OF "CHOP SHOPS," AND FOR OTHER PURPOSES

JUNE 2, 10, AND 12, 1980

Serial No. 96-179

(Committee on Interstate and Foreign Commerce)

Printed for the use of the
Committee on Interstate and Foreign Commerce
and the

Committee on Foreign Affairs

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1980

68-093 O

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

**Public Domain/
U.S. House of Representatives**

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

NCJRS

AUG 12 1980

ACQUISITION

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

JOHN D. DINGELL, Michigan
LIONEL VAN DERLIN, California
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
BOB ECKHARDT, Texas
RICHARDSON PREYER, North Carolina
JAMES H. SCHEUER, New York
RICHARD L. OTTINGER, New York
HENRY A. WAXMAN, California
TIMOTHY E. WIRTH, Colorado
PHILIP R. SHARP, Indiana
JAMES J. FLORIO, New Jersey
ANTHONY TOBY MORFETT, Connecticut
JIM SANTINI, Nevada
ANDREW MAGUIRE, New Jersey
EDWARD J. MARKEY, Massachusetts
THOMAS A. LUKEN, Ohio
DOUG WALGREN, Pennsylvania
ALBERT GORE, Jr., Tennessee
BARBARA A. MIKULSKI, Maryland
RONALD M. MOTT, Ohio
PHIL GRAMM, Texas
AL SWIFT, Washington
MICKEY LELAND, Texas
RICHARD C. SHELBY, Alabama
ROBERT T. MATSUI, California

KENNETH J. PAINTER, *Chief Clerk and Staff Director*
ELEANOR A. DINKINS, *First Assistant Clerk*
JOHN H. ALLEN, *Professional Staff*
NANCY ANN NORD, *Associate Minority Counsel*

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

JAMES H. SCHEUER, New York, *Chairman*

RICHARDSON PREYER, North Carolina
RICHARD L. OTTINGER, New York
DAVID E. SATTERFIELD III, Virginia
THOMAS A. LUKEN, Ohio
HARLEY O. STAGGERS, West Virginia
(Ex Officio)

EDMOND F. ROVNER, *Staff Director*
MARY FRANCES KIRCHNER, *Research Assistant*
MARGARET A. DURBIN, *Minority Staff Assistant*

(II)

COMMITTEE ON FOREIGN AFFAIRS

CLEMENT J. ZABLOCKI, Wisconsin, *Chairman*

L. H. FOUNTAIN, North Carolina
DANTE B. FASCELL, Florida
BENJAMIN S. ROSENTHAL, New York
LEE H. HAMILTON, Indiana
LESTER L. WOLFF, New York
JONATHAN B. BINGHAM, New York
GUS YATRON, Pennsylvania
CARDISS COLLINS, Illinois
STEPHEN J. SOLARZ, New York
DON BONKER, Washington
GERRY E. STUDDS, Massachusetts
ANDY IRELAND, Florida
DONALD J. PEASE, Ohio
DAN MICA, Florida
MICHAEL D. BARNES, Maryland
WILLIAM H. GRAY III, Pennsylvania
TONY P. HALL, Ohio
HOWARD WOLPE, Michigan
DAVID R. BOWEN, Mississippi
FLOYD J. FITHIAN, Indiana

WILLIAM S. BROOMFIELD, Michigan
EDWARD J. DERWINSKI, Illinois
PAUL FINDLEY, Illinois
JOHN H. BUCHANAN, Jr., Alabama
LARRY WINN, Jr., Kansas
BENJAMIN A. GILMAN, New York
TENNYSON GUYER, Ohio
ROBERT J. LAGOMARSINO, California
WILLIAM F. GOODLING, Pennsylvania
JOEL PRITCHARD, Washington
MILLICENT FENWICK, New Jersey
DAN QUAYLE, Indiana

JOHN J. BRADY, Jr., *Chief of Staff*

SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS

GUS YATRON, Pennsylvania, *Chairman*

DANTE B. FASCELL, Florida
BENJAMIN S. ROSENTHAL, New York
CARDISS COLLINS, Illinois
GERRY E. STUDDS, Massachusetts
ANDY IRELAND, Florida

BENJAMIN A. GILMAN, New York
TENNYSON GUYER, Ohio
ROBERT J. LAGOMARSINO, California

GENE FRIEDMAN, *Subcommittee Staff Director*
J. EDWARD FOX, *Minority Staff Consultant*
MATHEW H. MOSER, *Subcommittee Staff Associate*
NANCY A. AGRIS, *Staff Assistant*

(III)

CONTENTS

	Page
Hearings held on—	
June 2, 1980 (New York, N.Y.)-----	1
June 10, 1980-----	295
June 12, 1980-----	487
Text of H.R. 4178-----	3
Agency report of—	
Commerce Department-----	25
Justice Department-----	28
Office of Management and Budget, Executive Office of the President---	36
State Department-----	37
Statement of—	
Abbell, Michael, Director, Office of International Affairs, Criminal Division, Department of Justice-----	332
Barba, Lt. Luis, Auto Theft Bureau, El Paso Police Department-----	516
Bardell, Donald J., executive director, American Association of Motor Vehicle Administrators-----	118
Brown, Robert, director, public affairs, American Association of Motor Vehicle Administrators-----	118
Caldwell, Sgt. Frank, New Jersey State Police-----	47
Chandonnet, Noel, assistant vice president, Government Employees Insurance Co. (GIECO), on behalf of the New York/New Jersey Anti-Car Theft Committee-----	285
Claybrook, Hon. Joan B., Administrator, National Highway Traffic Safety Administration, Department of Transportation-----	297
Culver, Ralph C., General Litigation and Legal Advice Section, Crimi- nal Division, Department of Justice-----	332
Doe, John-----	38
Gilliland, Paul W., president, National Automobile Theft Bureau-----	96
Grinenko, Detective, New York City Police Headquarters-----	47
Heymann, Philip B., Assistant Attorney General, Criminal Division, Department of Justice-----	332
Johnson, Theodore W., executive director, Coalition To Halt Automot- ive Theft-----	440, 475
Knight, Merrill D., III, vice president, Government Employees Insurance Co. (GEICO), on behalf of the National Association of Independent Insurers-----	429
Lewis, Albert B., superintendent of insurance, State of New York-----	75
McKinnon, Russell F., executive vice president, Automotive Dis- mantlers and Recyclers of America-----	440
Martin, David E., director, automotive safety engineering, environ- mental activities staff, General Motors Corp-----	392, 399
Martin, Sgt. Frank, Auto Crime Unit, New York City Police Head- quarters-----	47
Matheson, Barry, special prosecutor, Canadian Department of Justice-----	489
Pagano, Col. Clinton L., superintendent, Department of Law and Public Safety, New Jersey Division of State Police-----	47
Parker, George L., Chief, Crash Avoidance Division, Office of Rule- making, National Highway Traffic Safety Administration, Depart- ment of Transportation-----	297
Riley, William J., special agent, Federal Bureau of Investigation, Department of Justice-----	332
Rodriguez, William, chief of police, city of El Paso, Tex-----	516
Weglian, Stephen M., General Litigation and Legal Advice Section, Criminal Division, Department of Justice-----	332

VI

Statement of—Continued	Page
Werner, Jeff, chairman, Motor Vehicle Theft Prevention Committee, Automotive Dismantlers and Recyclers of America.....	440
Williams, G. R., vehicle regulations manager, Environmental and Safety Engineering, Ford Motor Co.....	392
Womack, John, Assistant Chief Counsel, National Highway Traffic Safety Administration, Department of Transportation.....	297
Additional material submitted for the record by—	
American Association of Motor Vehicle Administrators:	
Attachments to Mr. Bardell's prepared statement:	
Appendix A—Letter dated April 18, 1980, from Virginia Roberts, commissioner of motor vehicles, State of West Virginia, to chairman Harley O. Staggers.....	137
Appendix B—Letter dated May 8, 1980, from John H. Allen, professional staff, Interstate and Foreign Commerce Committee, in response to above letter.....	139
Appendix C—Paper from AAMVA entitled, "The Motor Vehicle Theft Prevention Act of 1979" with attached exhibits.....	141
Appendix D—Paper entitled "Motor Vehicle Theft Prevention Act of 1979".....	255
Appendix E—Article from AAMVA bulletin, January-February 1979 entitled, "Comment by the Executive Director", by Donald J. Bardell.....	260
Appendix F—Resolution 3—Salvage vehicle title procedures.....	261
Appendix G—Resolution 8A—Concerning universal certificate of title.....	262
Appendix H—AAMVA recommendation No. 1, utilization by all jurisdictions of a title document containing security features.....	263
Resolution of International Association of Chiefs of Police—1979 annual conference—endorsement of the "Motor Vehicle Theft Prevention Act of 1979".....	264
Letter dated June 6, 1980, from Mr. Bardell to Chairman Scheuer and Chairman Yatron re further comments for the record.....	282
American Farm Bureau Federation, statement.....	534
Automotive Dismantlers and Recyclers of America, attachment to Mr. McKinnon's prepared statement, proposed amendments by the Coalition to Halt Automotive Theft to the Motor Vehicle Theft Prevention Act of 1979.....	461
Automotive Parts & Accessories Association, statement.....	527
Canadian Department of Justice, attachments to Mr. Matheson's prepared statement:	
Telephone conversation between Gdanski and X, November 15, 1978.....	494
Check for \$6,800.45 from Gdanski to Toronto Dominion Bank.....	497
Invoice for Homer Auto Wreckers, Ltd.....	498
Homer Salvage and Auto Wreckers Ltd., purchases from.....	499
Questions submitted in writing by Chairman Yatron and Mr. Matheson's responses.....	506
General Motors Corp.:	
Attachment to Mr. Martin's prepared statement, chronology of significant antitheft features incorporated in General Motors vehicles since 1967.....	413
Letter dated July 15, 1980, from Mr. Martin to Chairman Scheuer and Chairman Yatron commenting on Administrator Claybrook's statement regarding ignition lock cylinders.....	426
Green, Hon. S. William, a Representative in Congress from the State of New York:	
Cost benefit of H.R. 4178 to American motorists.....	72
International Association of Chiefs of Police, Inc., letter dated June 20, 1980, to Chairman Scheuer and Chairman Yatron.....	524

VII

Additional material submitted for the record—Continued	Page
Justice Department:	
Attachments to Mr. Heymann's prepared statement:	
Appendix I—Section-by-section analysis of the Motor Vehicle Theft Prevention Act of 1979.....	349
Appendix II—Areas in title II where Justice recommends change.....	351
Appendix III—Ten questions often asked about the Motor Vehicle Theft Prevention Act.....	352
Letter dated July 21, 1980, from Alan A. Parker, Assistant Attorney General, to Chairman Scheuer, re answers to several question asked of Mr. Heymann at the hearing.....	374
National Association of Independent Insurers, letter dated June 17, 1980, from Charles A. Taylor, legislative counsel, to Chairman Scheuer re responses to several questions posed at hearings.....	433
National Automobile Theft Bureau, attachments to Mr. Gilliland's prepared statement:	
Vehicles located by NATB by percentage.....	115
Study of New York City and State motor vehicle thefts, 1975 through 1979.....	116
FBI uniform crime report theft statistics.....	117
Transportation Department, National Highway Traffic Safety Administration, letter dated June 23, 1980, from Ms. Claybrook to Chairman Scheuer re comments on amendments proposed by the Coalition to Halt Automotive Theft (CHAT), with copy of "a Manual of Anti-Theft Guidelines for State Motor Vehicle Titling Programs" attached.....	306

MOTOR VEHICLE THEFT PREVENTION ACT

MONDAY, JUNE 2, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, AND THE SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS, COMMITTEE ON FOREIGN AFFAIRS,

New York, N.Y.

The subcommittees met, pursuant to notice at 10 a.m., 26 Federal Plaza, room 305, Hon. James H. Scheuer, chairman of Subcommittee on Consumer Protection and Finance, presiding. Hon. Gus Yatron, chairman, Subcommittee on Inter-American Affairs.

Mr. SCHEUER. The hearing will now be in order.

This is the first day of hearings on H.R. 4178, which is the Motor Vehicle Theft Prevention Act, authored by my colleague, William Green of New York City, from whom you will hear very shortly.

These hearings are joint hearings between the Consumer Protection and Finance Subcommittee of the House Interstate and Foreign Commerce Committee and the Inter-American Affairs Subcommittee of the Foreign Affairs Committee, chaired by Congressman Gus Yatron of Pennsylvania.

This bill, authored by Congressman Green, we estimate would cut auto thefts by approximately half. At the present time, auto thefts constitute a \$4 billion price tag to American society. About \$3 billion is the cost of the thefts themselves and about another \$1 billion is the cost of the Government law enforcement efforts involved with them.

The auto theft business increases the cost of insurance in New York State anywhere to nine times the cost of auto theft insurance.

About a decade ago, I wrote a book about crime. At that time, auto theft, which was of course important, was mostly a teenaged crime, the freckle-faced kid down the block who had a beer too many and went on a joyride. At that time, we recovered 80 percent of the cars just a block or two from where they were first stolen and we had a 25-percent arrest rate because these kids were amateurs.

Today instead of 80 percent recovery, we have about 40 percent recovery and instead of a 25-percent arrest rate we have a 15-percent arrest rate because the perpetrators today are no longer amateurs. They are tough, hard professionals.

They are organized crime. There is no question that organized crime has infiltrated and is now dominating the auto theft business.

What would this bill do? No. 1, it would harden criminal penalties all the way up and down the line for auto theft, including the chop shop owners, the crooked repair shop owners, who constitute the market for these stolen cars.

Second, it would enable U.S. marshals, U.S. Customs Service people at our ports, at our airports, at our docks, to make a through inspection

of the documentation of the cars that were being shipped out of the country to make sure that a car that was lifted in Flatbush was not on its way to Latin America, Asia, or Africa a few hours later.

No. 3, and perhaps most important, the bill would require that a VIN, V-I-N, a vehicle inspection number, be stamped on each major part, on the doors, on the fenders, on the hood, on the trunk cover, so that in a repair shop the parts that were being put on the car after an accident could be identified.

If they could be identified, that means that the auto repair owner, the shopowner, would not be willing to buy parts from a car that had been stolen and sold to him by organized crime. That would eliminate the markets for the major parts of the car. That would eliminate the incentive for organized crime to stay in the business of systematically organizing the car theft racket in the United States.

At this time, before introducing our major witness, I would like to call upon the author of this bill, Congressman William Green of New York, who deserves a great deal of credit for his diligence and his leadership for putting this bill together.

Congressman Green?

Mr. GREEN. Thank you very much.

I would like to take this opportunity to thank Representative Scheuer for his role in moving this legislation forward and for setting up this series of hearings here in New York and later in the month in Washington on this legislation. I would also like to thank Representative Gilman, the ranking minority member in the Inter-American Affairs Subcommittee, for his participation in this hearing.

The basic purpose of this legislation is to try to take the profit out of auto theft. The basic purpose is to make parts essentially unsalable in the black market through the vehicle identification numbers and to make it harder to get into cars through improved locking devices.

I think it is very interesting in the work that I have done on this bill that I have discovered that when cars are stolen and taken to so-called chop shops to be disassembled into parts, almost invariably the automatic transmission is thrown away, despite the fact that it is a very valuable part of the car, because of the fact that it has a vehicle identification number on it; whereas the so-called front clip and the back clip and the doors, which do not have these kinds of identification numbers, are highly marketable in the black market.

So basically what we are trying to do is to take this situation that is costing Americans \$4 billion a year and make it unprofitable for organized crime to operate in this area.

I am looking forward to the testimony that Chairman Scheuer has assembled today to enlighten us further about this problem and I hope that that will be a basis on which this subcommittee, five of whose seven members are cosponsors of the bill, including Chairman Scheuer and Mr. Gilman will, on the conclusion of the testimony, decide that this will be a useful effort and report the bill to the full committee for further consideration.

Thank you very much.

Mr. SCHEUER. Thank you, Congressman Green.

Without objection, the text of H.R. 4178 and agency reports thereon will be printed at this point in the record.

[Testimony resumes on p. 38.]

[Text of H.R. 4178 and agency reports thereon follow:]

[H.R. 4178, introduced by Mr. Greene (for himself, Mr. Bafalis, Mr. Carter, Mr. Corrada, Mr. Downey, Mr. Forsythe, Mr. Garcia, Mr. Gillman, Mr. Guarini, Ms. Holtzman, Mr. Horton, Mr. Hyde, Mr. Jenrette, Mr. Lederer, Mr. Lee, Mr. McEwen, Mr. Moakley, Mr. Mottl, Mr. Murphy of Pennsylvania, Mr. Rangel, Mr. Roe, Mr. Scheuer, Mr. Wolff, and Mr. Zeferetti), on May 22, 1979.

Cosponsored on June 21, 1979, by:

Mr. Addabbo, Mr. LaFalce, Mr. Hughes, Mr. Hollenbeck, Mr. Fish, Mr. Luken, Mr. Burgener, Mr. Cotter, Mr. Mitchell of New York, Mr. Solarz, and Mr. Bingham;

Cosponsored on November 13, 1979, by:

Mr. Florio;

Cosponsored on January 22, 1980, by:

Mr. Weaver, Mr. Miller of California, Mr. Stark, Mr. Stokes, Mr. Biaggi, Mr. Carney, Mr. Hanley, Mr. Kemp, Mr. Rosenthal, Mr. Solomon, Mr. Wydler, and Mr. Lundine;

Cosponsored on February 12, 1980, by:

Mr. Rinaldo;

Cosponsored on May 5, 1980, by:

Mr. Devine and Mr. Bailey;

Cosponsored on May 14, 1980, by:

Mr. Ottinger]

A BILL

To improve the physical security features of the motor vehicle and its parts, to increase the criminal penalties of persons trafficking in stolen motor vehicles and parts, to curtail the exportation of stolen motor vehicles, to stem the growing problem of "chop shops," and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 That this Act may be cited as the "Motor Vehicle Theft Pre-
2 vention Act of 1979."

3 **TITLE I—FINDINGS AND PURPOSES**

4 **SEC. 101.** The Congress finds and declares the follow-
5 ing:

6 (a) The annual number of reported motor vehicle
7 thefts is approaching one million vehicles. Approxi-
8 mately 50 per centum of all larcenies reported to law
9 enforcement authorities in the United States are direct-
10 ed against the motor vehicle, its accessories, or its con-
11 tents. The recovery rate of stolen vehicles has signifi-
12 cantly decreased over the past decade.

13 (b) The theft and disposition of stolen motor vehi-
14 cles and their parts is becoming more professional in
15 nature. It has also attracted elements of organized
16 crime which have used intimidation and violence as a
17 means of obtaining increased control of "chop shop"
18 operations. These activities are having a serious effect
19 on interstate and foreign commerce. There is indication
20 that organized crime is using auto theft proceeds to
21 purchase addictive and illegal drugs for resale and for
22 other illicit activities that are extremely harmful to our
23 society.

24 (c) The theft of motor vehicles has brought in-
25 creased and unnecessary burdens to automobile users

1 and to American taxpayers as the national financial
2 cost of motor vehicle-related theft offenses now ap-
3 proaches 4 billion dollars annually. This has had an
4 impact on the overall rate of inflation through higher
5 insurance rates.

6 (d) National and international uniformity on cer-
7 tain standards such as vehicle identification and titling
8 would further facilitate commerce and prevent criminal
9 abuse.

10 (e) A cooperative partnership between the States
11 and the Federal Government is required to devise ap-
12 propriate interrelated systems in the area of motor ve-
13 hicle titling and registration in order to help curb
14 motor vehicle theft.

15 (f) Farm and industrial users are concerned with
16 the theft of their self-propelled vehicles. Due to a lack
17 of meaningful data in this area, a need exists to study
18 this problem.

19 (g) The theft of motor vehicles and their parts and
20 their unlawful disposition can be significantly curtailed
21 through the more effective use of the facilities of the
22 National Crime Information Center by both law en-
23 forcement authorities and the State motor vehicle reg-
24 istrars.

1 (h) The cooperation and assistance of the auto-
2 mobile insurance industry is needed to curb the grow-
3 ing problem of insurance fraud through improvements
4 in their procedures for their claim processes, disposition
5 of salvage vehicles, and issuance of policies.

6 (i) Automobile anti-theft campaigns at the local
7 level which have increased citizen involvement and
8 have been sponsored by the insurance industry have
9 been effective in reducing motor vehicle theft.

10 (j) An increased vigilance by used motor vehicle
11 dealers, motor vehicle dismantlers, recyclers, and sal-
12 vage dealers, and by motor vehicle repair and body
13 shops is crucial to curtail their important industries
14 from being used to facilitate crime through the disposi-
15 tion of stolen motor vehicles and their parts.

16 (k) The shipment of stolen motor vehicles and
17 their parts as well as farm and industrial equipment
18 outside the United States is a serious problem. The co-
19 operation of shippers and operators of the nation's ves-
20 sels, railroads, and aircraft is necessary to hinder such
21 illicit exportation.

22 (l) The continued assistance and cooperation of
23 our sovereign neighbors, Canada and Mexico, are key
24 ingredients necessary to aid us in our efforts to protect
25 our citizens' property by limiting the opportunity for

1 stolen motor vehicles to enter their respective countries
2 from the United States.

3 (m) An increased prosecutive emphasis must be
4 given by Federal, State, and local prosecutors to motor
5 vehicle theft violations with particular emphasis being
6 given to professional theft rings and "chop shops".

7 (n) The commendable and constructive efforts of
8 the Attorney General, Secretary of Transportation,
9 Secretary of the Treasury, Secretary of State, and
10 Secretary of Commerce in the formation of the Inter-
11 agency Committee on Auto Theft Prevention, with the
12 cooperation from the private sector, should be contin-
13 ued and expanded upon.

14 SEC. 102. The purposes of this Act are to—

15 (a) improve the standards for security devices for
16 motor vehicles;

17 (b) improve the identification numbering systems
18 for motor vehicles and their major components;

19 (c) increase the Federal criminal penalties for
20 those persons trafficking in stolen motor vehicles and
21 their parts; and

22 (d) establish procedures to reduce opportunities for
23 exporting stolen motor vehicles.

1 **TITLE II—IMPROVED SECURITY FOR MOTOR**
 2 **VEHICLES AND MOTOR VEHICLE PARTS**

3 **SEC. 201.** Section 103 of the National Traffic and
 4 Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is
 5 amended by adding at the end the following new subsection:

6 “(j) Standards established by the Secretary under this
 7 section shall include standards to reduce the theft of the
 8 motor vehicle and its parts, taking into account—

9 “(1) the cost of implementing the standard and
 10 the benefits attainable as a result of the implementa-
 11 tion of the standard;

12 “(2) the effect of implementation of the standard
 13 on the cost of automobile insurance;

14 “(3) savings in terms of consumer time and incon-
 15 venience; and

16 “(4) considerations of safety.”

17 **SEC. 202.** (a) In exercising the authority given to the
 18 Secretary of Transportation under section 103(j) of the Na-
 19 tional Traffic and Motor Vehicle Safety Act of 1966 (15
 20 U.S.C. 1392), as added by section 201 of this Act, the Secre-
 21 tary shall consult closely with the Attorney General, the In-
 22 ternational Association of Chiefs of Police, the International
 23 Association of Auto Theft Investigators, the National Auto-
 24 mobile Theft Bureau, and other groups and individuals inter-
 25 ested in or affected by the motor vehicle theft problem.

1 (b)(1) Within twelve months after the date of enactment
 2 of this Act, the Secretary of Transportation shall issue pro-
 3 posed notices of rulemaking covering the areas of unauthor-
 4 ized starting of the motor vehicle and major component iden-
 5 tification.

6 (2) The proposed rule covering the prevention of the
 7 unauthorized starting of the motor vehicle shall take into
 8 consideration ongoing technological developments relating to
 9 the utilization of the microelectronics in the motor vehicle,
 10 automatic activation of the security system, and possible
 11 elimination of the existing metallic mechanical key system
 12 presently used to activate the motor vehicle.

13 (3) The proposed rule relating to the theft of motor vehi-
 14 cle parts shall take into consideration ongoing technological
 15 developments, including laser marking machines, to place
 16 identification numbers on those major components which are
 17 the primary target of the “chop shops”.

18 (4) After an appropriate comment period and the analy-
 19 sis thereof, the Secretary of Transportation shall issue final
 20 rules as soon as possible, but not later than twenty-four
 21 months after the date of enactment of this Act. The initial
 22 effective date of such final rules shall be as soon as practica-
 23 ble but before the introduction of two model years or two
 24 calendar years, whichever is shorter, following the issuance
 25 of any final rule. Any final rule shall encourage and permit

1 the manufacturer to conform to its requirements before the
2 rule's mandatory effective date.

3 SEC. 203. Whenever there is in effect a Federal motor
4 vehicle security standard relating to a motor vehicle's start-
5 ing system, the locking systems for the engine, passenger,
6 and trunk compartments, and component part identification
7 established under this title, no State or political subdivision of
8 a State shall have any authority to establish or to continue in
9 effect, with respect to any motor vehicle or motor vehicle
10 part, any security standard relating to those same systems
11 which is not identical to such Federal standard.

12 TITLE III—ANTIFENCING MEASURES

13 SEC. 301. (a) Chapter 25 of title 18, United States
14 Code, is amended by adding after section 509 the following
15 new sections:

16 "§ 510. Altering or removing motor vehicle identification 17 numbers

18 "Whoever knowingly removes, obliterates, tampers
19 with, or alters any identification number for any motor vehi-
20 cle or part thereof required under regulations issued by the
21 Secretary of Transportation shall be fined not more than
22 \$5,000, imprisoned not more than five years, or both.

1 "§ 511. Forfeiture of motor vehicles and their parts which 2 have had identification numbers altered or 3 removed

4 "(a) PROPERTY SUBJECT TO FORFEITURE.—Any
5 motor vehicle or motor vehicle part required to have an iden-
6 tification number pursuant to regulations issued by the Secre-
7 tary of Transportation which has had such number removed,
8 obliterated, tampered with, or altered shall be subject to
9 seizure and forfeiture to the United States unless—

10 "(1) such motor vehicle part has been attached to
11 a motor vehicle owned by an innocent purchaser of
12 such part; or

13 (2) such motor vehicle or motor vehicle part has a
14 replacement identification number which is authorized
15 by the Secretary of Transportation or is in conformity
16 with the applicable law of the State where such motor
17 vehicle or motor vehicle part was seized.

18 (b) FORFEITURE PROCEDURES.—All provisions of law
19 relating to the seizures, summary and judicial forfeiture pro-
20 cedures, and condemnation of vessels, vehicles, merchandise
21 and baggage for violation of customs laws; the disposition of
22 such vessels, vehicles, merchandise and baggage or the pro-
23 ceeds from such sale; the remission or mitigation of such for-
24 feitures; and the compromise of claims and the award of com-
25 pensation to informers in respect of such forfeitures shall

1 apply to seizures and forfeitures incurred or alleged to have
 2 incurred under the provisions of this section, insofar as appli-
 3 cable and not inconsistent with such provisions. Such duties
 4 as are imposed upon the collector of customs or any other
 5 person in respect to the seizure and forfeiture of vessels, ve-
 6 hicles, merchandise and baggage under the customs laws
 7 shall be performed with respect to seizures and forfeitures of
 8 property under this section by such officers, agents, or other
 9 persons as may be designated for that purpose by the Attor-
 10 ney General."

11 (b) The table of sections for chapter 25 of title 18,
 12 United States Code, is amended by adding at the end thereof
 13 the following new items:

14 **"§510. Altering or removing motor vehicle identification**
 15 **numbers.**

16 **"§511. Forfeiture of motor vehicles and their parts which**
 17 **have had identification numbers altered or**
 18 **removed."**

19 SEC. 302. Section 2311 of title 18, United States Code,
 20 is amended in the definition of "Securities" by inserting im-
 21 mediately after "voting trust certificate;" the following:
 22 "motor vehicle title until it is cancelled by the State indicated
 23 thereon or blank motor vehicle title;"

24 SEC. 303. Section 2313 of title 18, United States Code,
 25 is amended—

1 (1) by striking out "moving as, or which is a part
 2 of, or which constitutes interstate or foreign com-
 3 merce," and inserting in lieu thereof "which has
 4 crossed a State or United States boundary after being
 5 stolen,"; and

6 (2) by inserting "possesses," immediately after
 7 "receives,".

8 SEC. 304. (a) Chapter 113 of title 18, United States
 9 Code, is amended by adding at the end the following new
 10 section:

11 **"§2319. Trafficking in motor vehicles or their parts which**
 12 **have had identification numbers altered or**
 13 **removed.**

14 "Whoever buys, receives, possesses, or obtains control
 15 of, with intent to sell, transfer, distribute, dispense, or other-
 16 wise dispose of, any motor vehicle or motor vehicle part,
 17 knowing that an identification number required pursuant to
 18 regulations issued by the Secretary of Transportation has
 19 been removed, obliterated, tampered with, or altered, shall be
 20 fined not more than \$25,000, imprisoned not more than ten
 21 years, or both."

22 (b) The table of sections for chapter 113 of title 18,
 23 United States Code, is amended by adding at the end thereof
 24 the following:

1 §2319. Trafficking in motor vehicles or their parts which
2 have had identification numbers altered or
3 removed.”.

4 SEC. 305. Section 1961(1) of title 18, United States
5 Code, is amended—

6 (1) by inserting “sections 2312 and 2313 (relating
7 to interstate transportation of stolen motor vehicles),”
8 immediately after “section 1955 (relating to the prohi-
9 bition of illegal gambling business),”; and

10 (2) by inserting “section 2319 (relating to the
11 trafficking in motor vehicles or their parts with altered
12 or removed identification numbers),” immediately after
13 “sections 2314 and 2315 (relating to the interstate
14 transportation of stolen property),”.

15 SEC. 306. (a) Section 3002 of title 39, United States
16 Code, is amended—

17 (1) in the section heading, by inserting “and ma-
18 nipulative devices” after “keys”;

19 (2) in subsection (a), by striking out “subsection
20 (b)” and inserting in lieu thereof “subsection (c)”;

21 (3) by redesignating subsections (b) and (c) as sub-
22 sections (c) and (d), respectively;

23 (4) in subsection (c), as redesignated by paragraph
24 (3) of this section, by inserting “and subsection (b)”
25 immediately after “subsection (a)”;

1 (5) by inserting after subsection (a) a new subsec-
2 tion (b) to read as follows:

3 “(b) Except as provided in subsection (c) of this section,
4 any manipulative type device which is designed or adapted to
5 operate, circumvent, remove, or render inoperable the igni-
6 tion switch, ignition lock, door lock, or trunk lock of two or
7 more motor vehicles, or any advertisement for the sale of any
8 such manipulative type device is nonmailable matter and
9 shall not be carried or delivered by mail.”; and

10 (6) by adding at the end a new subsection (e) to
11 read as follows:

12 “(e) Upon evidence satisfactory to the Postal Service
13 that any person is engaged in a scheme or device for obtain-
14 ing money or property through the mail by advertising or
15 offering for sale any motor vehicle master key or manipula-
16 tive device made nonmailable by this section, the Postal
17 Service may issue an order of the same kind and with the
18 same incidents as that authorized by section 3005 of this
19 title.”.

20 (b) The table of sections for chapter 30 of title 39,
21 United States Code, is amended in the item relating to sec-
22 tion 3002 by inserting “and manipulative devices” after
23 “keys”.

1 SEC. 307. (a) Section 1716A of title 18, United States
2 Code, is amended in the section heading by inserting "and
3 manipulative devices" after "keys".

4 (b) The table of sections for chapter 83 of title 18,
5 United States Code, is amended in the item relating to sec-
6 tion 1716A by inserting "and manipulative devices" after
7 "keys".

8 TITLE IV—IMPORTATION AND EXPORTATION
9 MEASURES

10 SEC. 401. (a) Chapter 27 of title 18, United States
11 Code, is amended by adding after section 552 the following
12 new section:

13 **"§ 553. Unlawful importation or exportation of stolen self-**
14 **propelled vehicles, vessels, or aircraft.**

15 "(a) Whoever imports, exports, or attempts to import or
16 export (1) any self-propelled vehicle, or part of a self-pro-
17 pelled vehicle, vessel, or aircraft, knowing the same to have
18 been stolen, or (2) any self-propelled vehicle or part of a self-
19 propelled vehicle, knowing that its identification number has
20 been removed, obliterated, tampered with, or altered, shall be
21 fined not more than \$10,000, imprisoned not more than five
22 years, or both.

23 "(b) For purposes of this section, the term—

24 "(1) 'self-propelled vehicle' includes any auto-
25 mobile, truck, tractor, bus, motorcycle, motor home,

1 and any other self-propelled agricultural machinery,
2 self-propelled construction equipment, self-propelled
3 special use equipment, and any other self-propelled ve-
4 hicle used or designed for running on land but not on
5 rail;

6 "(2) 'vessel' has the meaning given to it in section
7 401 of the Tariff Act of 1930 (19 U.S.C. 1401); and
8 "(3) 'aircraft' has the meaning given to it in sec-
9 tion 101(5) of the Federal Aviation Act of 1958 (49
10 U.S.C. 1301(5))."

11 (b) The table of sections for chapter 27 of title 18,
12 United States Code, is amended by adding at the end thereof
13 the following:

14 **"§ 553. Unlawful importation or exportation of stolen self-**
15 **propelled vehicles, vessels, or aircraft."**

16 SEC. 402. The Tariff Act of 1930 is amended by adding
17 after section 624 (19 U.S.C. 1624) the following new sec-
18 tions:

19 **"SEC. 625. UNLAWFUL IMPORTATION OR EXPORTATION OF**
20 **STOLEN SELF-PROPELLED VEHICLES, VESSELS,**
21 **OR AIRCRAFT; CIVIL PENALTY.**

22 "(a) Whoever knowingly imports, exports, or attempts
23 to import or export (1) any stolen self-propelled vehicle,
24 vessel, aircraft, or part of a self-propelled vehicle, vessel, or
25 aircraft, or (2) any self-propelled vehicle or part of self-pro-

1 pelled vehicle from which the identification number has been
2 removed, obliterated, tampered with, or altered, shall be sub-
3 ject to a civil penalty in an amount determined by the Secre-
4 tary, not to exceed \$10,000 for each violation.

5 “(b) Any violation of this section shall make such self-
6 propelled vehicle, vessel, aircraft, or part thereof subject to
7 seizure and forfeiture under this Act.

8 **“SEC. 626. INSPECTION OF USED SELF-PROPELLED VEHICLES**
9 **TO BE EXPORTED; DEFINITIONS.**

10 “(a) A person attempting to export a used self-propelled
11 vehicle shall present, pursuant to regulations prescribed by
12 the Secretary, to the appropriate customs officer both the
13 vehicle and a document describing that vehicle which in-
14 cludes the vehicle identification number, before lading if the
15 vehicle is to be transported by vessel or aircraft, or prior to
16 export if the vehicle is to be transported by rail, highway, or
17 under its own power. Failure to comply with the regulations
18 of the Secretary shall subject the exporter to a penalty of not
19 more than \$500 for each violation.

20 “(b) For purposes of this section and section 625, the
21 term—

22 “(1) ‘self-propelled vehicle’ includes any auto-
23 mobile, truck, tractor, bus, motorcycle, motor home,
24 self-propelled agricultural machinery, self-propelled
25 construction equipment, self-propelled special use

1 equipment, and any other self-propelled vehicle used or
2 designed for running on land but not on rail;

3 “(2) ‘aircraft’ has the meaning given to it in sec-
4 tion 101(5) of the Federal Aviation Act of 1958 (49
5 U.S.C. 1301(5)); and

6 “(3) ‘used’ refers to any self-propelled vehicle
7 other than a new self-propelled vehicle which is ex-
8 ported by the original manufacturer or by such manu-
9 facturer’s authorized agent.”.

10 SEC. 403. The Tariff Act of 1930 is further amended by
11 adding after section 588 (19 U.S.C. 1588) the following new
12 section:

13 **“SEC. 589. ADDITIONAL AUTHORITY FOR UNITED STATES CUS-**
14 **TOMS SERVICE.**

15 “A customs officer, as defined in section 401(i) of this
16 Act, may (1) carry firearms, execute and serve search war-
17 rants and arrest warrants, and serve subpoenas and sum-
18 monses issued under the authority of the United States, and
19 (2) make arrests without warrant for any offense against the
20 United States committed in his presence or for any felony
21 cognizable under the laws of the United States if he has rea-
22 sonable grounds to believe that the person to be arrested has
23 committed, or is committing, such a felony.”.

24 SEC. 404. (a)(1) Section 7607 of the Internal Revenue
25 Code of 1954 (26 U.S.C. 7607) is repealed.

1 (2) The table of sections for subchapter A of chapter 78
2 is amended in the item relating to section 7607 by striking
3 out "Additional authority for Bureau of Customs" and insert-
4 ing in lieu thereof "Repealed".

5 (b) A prosecution under section 7607 of the Internal
6 Revenue Code of 1954 (26 U.S.C. 7607) for any violation of
7 law occurring before the effective date of subsection (a) of
8 this section shall not be affected by the repeal made by such
9 subsection or abated by reason thereof.

10 (c) Civil seizure, forfeiture, and injunctive proceedings
11 commenced under section 7607 of the Internal Revenue
12 Code of 1954 (26 U.S.C. 7607) before the effective date of
13 subsection (a) of this section shall not be affected by the
14 repeal made by such subsection or abated by reason thereof.

15 TITLE V—REPORTING REQUIREMENTS

16 SEC. 501. (a) Within eighteen months after the date of
17 the enactment of this Act the Attorney General, after consul-
18 tation with the Secretaries of Agriculture, Commerce, Trans-
19 portation, and the Treasury, shall submit to the Congress a
20 report on the developments in the area of the theft of off-
21 highway vehicles and the steps being taken to help prevent
22 their theft as well as hinder their subsequent disposition, and
23 facilitate their recovery. Included in the report shall be—

24 (1) the progress being made by the various manu-
25 facturers of off-highway vehicles to develop identifica-

1 tion numbering systems effective in identifying such
2 vehicles;

3 (2) the effectiveness of the location and manner by
4 which such identification numbers are affixed to the
5 off-highway vehicle by the manufacturer, including the
6 affixing of such number in a confidential location;

7 (3) the degree to which the various manufacturers
8 are reporting the characteristics of their numbering
9 identification systems for off-highway vehicles to the
10 National Crime Information Center (NCIC) so that ap-
11 propriate edit controls over entries and inquiries can be
12 established by NCIC;

13 (4) the progress being made toward the establish-
14 ment within the off-highway vehicle industry of an in-
15 dustry-wide unique identification numbering system;

16 (5) the degree to which manufacturers of off-high-
17 way vehicles have affixed unique identification numbers
18 to the major components of the vehicle;

19 (6) the degree to which manufacturers of off-high-
20 way vehicles have established record systems which
21 permit a cross-referencing between the identification
22 numbers of the vehicle and those of the major compo-
23 nents;

1 (7) changes being made to the format and proce-
2 dures of the NCIC to better deal with the theft of off-
3 highway vehicles and their major components;

4 (8) the degree of cooperation of the various manu-
5 facturers of such off-highway vehicles with the Na-
6 tion's law enforcement community to reduce the theft
7 problem in this area;

8 (9) the efforts being made by the owners of exist-
9 ing off-highway vehicles to affix an owner applied
10 number (OAN) to such vehicles and the major compo-
11 nents thereof;

12 (10) the passage of any State laws relating to the
13 titling or deeding of off-highway vehicles;

14 (11) the passage of any State laws which make it
15 a State crime to remove, obliterate, tamper with, or
16 alter the identification number affixed by the manufac-
17 turers to any off-highway vehicle or major component
18 of such vehicle;

19 (12) the passage of any State laws permitting the
20 seizure by law enforcement for investigative purposes
21 and possible forfeiture of any off-highway vehicle or
22 major component thereof which has had its manufac-
23 turer's affixed identification number removed, obliterated,
24 ed, tampered with, or altered;

1 (13) the degree to which manufacturers of off-
2 highway vehicles have developed a manufacturer's cer-
3 tificate of origin which contains adequate internal secu-
4 rity features to guard against forgery, alteration, and
5 counterfeiting, lists the serial number of the vehicle
6 itself as well as the serial numbers of any major com-
7 ponents, and can serve as a de facto title for such vehi-
8 cle by assignment to subsequent purchasers;

9 (14) the steps being taken by those elements of
10 the private sector which auction off, make loans on,
11 and insure off-highway vehicles to help deter stolen
12 off-highway vehicles from being reintroduced into the
13 channels of legitimate commerce; and

14 (15) any assessments of the scope of the problem
15 as well as any recommendations the Attorney General
16 may deem appropriate.

17 (b) For purposes of this section, the term "off-highway
18 vehicle" means a vehicle or work machine that is self-pro-
19 pelled or pushed or towed by a self-propelled vehicle and the
20 primary function of which is off-highway in application. Any
21 on-highway operation is incidental to the vehicle's primary
22 function. This includes self-propelled agricultural, forestry,
23 industrial, construction, and any other non-transportation
24 special use equipment.

1 SEC. 502. On or before the first June 30 which occurs
 2 at least fifteen months after the date of enactment of this
 3 Act, and on or before each June 30 thereafter for the follow-
 4 ing nine successive years, the Attorney General, in consulta-
 5 tion with the Secretary of Transportation, the Secretary of
 6 the Treasury, and the Postmaster General, shall submit to
 7 the Congress a report on the implementation and develop-
 8 ment of the provisions of titles II, III, and IV of this Act and
 9 the effectiveness of such provisions in helping to prevent and
 10 reduce motor vehicle-related theft.



GENERAL COUNSEL OF THE
 UNITED STATES DEPARTMENT OF COMMERCE
 Washington, D.C. 20230

28 SEP 1979

Hon. Harley O. Staggers
 Chairman, Committee on
 Interstate and Foreign Commerce
 House of Representatives
 Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the views of this Department
 on H.R. 1955, a bill

"To improve the physical security features of
 the motor vehicle and its parts; increase the
 criminal penalties of persons trafficking in
 stolen motor vehicles and parts, and to cur-
 tail the exportation of stolen motor vehicles
 and for other purposes."

As a member of the Federal Interagency Committee on Auto Theft
 Prevention, the Department of Commerce fully supports the bill
 which provides, inter alia, the following:

1. Requires automobile manufacturers to install more secure
locking systems, and to place the vehicle identification numbers
(VIN) on all principal body parts;
2. Makes it a Federal offense punishable by a \$5,000 fine
or 5 years imprisonment or both, to alter the VIN. Professional
"chop-shop" operators could be fined \$25,000 or imprisoned 10
years, or both;
3. Amends the National Stolen Property Act to include vehicle
titles, so as to restrain fraudulent titling schemes;
4. Expands the racketeering influence and corrupt organi-
zations (RICO) statute to cover "chop-shop" operations. Those
individuals who traffic in stolen vehicles and their parts could
have their businesses seized by Federal authorities, and forfeited;

5. Prohibits the sale or advertisement of devices used to break into automobiles;

6. Permits the U.S. Customs Service to arrest individuals attempting to export a stolen vehicle. Currently, Customs Agents can only arrest narcotics or navigation law violators;

7. Gives authority to the Secretary of Treasury to make it more difficult to export stolen motor vehicles;

8. Directs the Attorney General to conduct a comprehensive study of the growing theft of agricultural and construction equipment;

9. Requires that on or before the first June 30 which occurs at least 15 months after the enactment of this legislation and on or before each June 30 thereafter for the following four successive years, the Attorney General, in consultation with the Secretaries of Transportation and Treasury, and the Postmaster General submit a report to the Congress on the implementation of various provisions of the Act and the effectiveness of such provisions in helping to prevent and reduce motor vehicle related theft; and

10. Finally, the bill grants the Secretary of Transportation authority to establish vehicle standards to reduce theft.

Motor vehicle theft imposes costs primarily on the vehicle owner either directly or through the owner's insurer. We recognize that there are moral hazards and law enforcement aspects as well. However, because of the predominance of private costs, the criteria for establishing standards should be clearly directed at the costs and benefits to the vehicle purchaser. These include monetary, inconvenience, and safety dimensions.

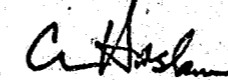
One of the options open to the Secretary of Transportation should clearly be no standard at all. Alternative means of theft prevention, such as consumer education about the risks and costs of theft and insurance premium incentives for theft control, should be actively considered along with evaluation of the feasibility and effectiveness of vehicle standards.

Notwithstanding our comment above, the Department of Commerce strongly endorses the enactment of such legislation as a very important initiative in combating the theft of motor vehicles. The United States Department of Justice estimates that the cost to the American consumer and taxpayer for automobile theft and enforcement efforts exceeds \$4 billion annually. It is also of great concern to the Department of Justice that few Americans realize that the crime of automobile theft is no longer one confined to the recalcitrant youth interested in joyriding. The problem of auto theft is one in which organized crime elements in our society have become involved and is "the most lucrative illegitimate business today" according to the FBI.

You have also requested our views on H.R. 4178, a bill for the same general purpose. We would defer to the views of the Attorney General and the Secretary of Transportation as to which of these bills is better suited to meet the objective of reducing motor vehicle thefts.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,



C. L. Haslam
General Counsel

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

NOV 26 1979

Honorable Harley O. Stagers
Chairman, Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for our views on H.R. 1955 and H.R. 4178, both of which are entitled the "Motor Vehicle Theft Prevention Act of 1979." H.R. 4247, which is identical to H.R. 1955, will also be covered by our report.

Both H.R. 1955 and H.R. 4178 are based upon H.R. 14252 of the 95th Congress. H.R. 14252 was submitted to the Congress for its consideration by this Department on September 6, 1978. The various modifications made to H.R. 14252 by H.R. 1955 and H.R. 4178 are improvements and generally meet with the approval of this Department. We do, however, have three suggested changes which we will make reference to later in our report. We have attached hereto a memorandum which details the differences between these bills. Since H.R. 4178 is the most comprehensive of the measures and includes all the additional provisions of H.R. 1955, we consider H.R. 4178 to be the primary bill. As of this time H.R. 4178 has over 45 co-sponsors in the House. An identical version to H.R. 4178 has been introduced in the Senate (S. 1214). Because the section-by-section analysis for S. 1214 is applicable to H.R. 4178, we are attaching a copy of a Senate Congressional Record reprint* which pertains to S. 1214.

* Not Printed.



Basically, the changes made by H.R. 4178 to H.R. 14252 consist of (1) an improved articulation of the findings and purposes of the legislation; (2) the imposition of time limits for the implementation of the regulations required under the bill relating to component identification and unauthorized starting of the motor vehicle; (3) the removal of the possibility of seizure and forfeiture of motor vehicles and motor vehicle parts in two limited situations where their required identification number has been removed, obliterated, tampered with or altered; and (4) expansion of the scope of the study relating to theft of off-highway vehicles used in the construction and farming, industries.

There are three areas in Title II of H.R. 4178, however, where we would recommend change. They are:

1) Section 202(b)(2) and (3) state that the Secretary of Transportation must take into account in the proposed and final standards certain specific ongoing technological developments. While we believe that the specific technological areas cited should be fully considered, we are apprehensive that focusing the rulemaking process by statute on specific technology could predetermine the result and undermine the whole program. Accordingly, we recommend that section 202(b)(2) be amended to read:

"(2) the proposed rules concerning the prevention of the unauthorized starting of the motor vehicle and the theft of motor vehicle parts shall take into account ongoing technological developments."

Section 202(b)(3) should then be deleted and paragraph "(4)" should be renumbered paragraph "(3)". The specific technological areas presently cited could then be set forth in the section-by-section analysis of the bill. This approach would accomplish the purposes of the provision without unduly prejudicing the rulemaking process.

2) In Section 202(a) of the bill there is reference to several specific groups with which the Secretary must consult closely in exercising his authority. While each of the specific groups mentioned should be consulted there are undoubtedly others. Accordingly, we recommend that Section 202(a) be amended to read in relevant part:

" . . . , the Secretary shall consult closely with the Attorney General, the law enforcement community, the insurance industry, the motor vehicle manufacturers, and any other groups and individuals interested in or affected by the motor vehicle theft problem."

Of course, the specific groups now listed as well as other equally capable groups could be set forth in the section-by-section analysis of the bill.

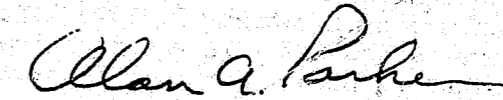
3) Finally, we believe in the section-by-section analysis of Section 201 of the bill it would be advisable to use appropriate language to show that the cost/benefit analysis that the Secretary must make is one of judgment and that an absolute conclusiveness for his determination is not required, if such were indeed possible, in such an area where the various contributing factors to motor vehicle theft are not humanly controllable and are constantly changing.

Motor vehicle related theft is a serious national crime problem. Thefts of the motor vehicle, its contents and its accessories accounted for over 45 percent of all larcenies reported to law enforcement in 1978. The combined costs to the public attributable to these thefts approached \$4 billion in 1978. Of course, all of us as consumers and taxpayers must bear the costs of these vehicle related crimes. Motor vehicle theft has over the past decade evolved more and more into a professional crime. While juveniles arrested for motor vehicle theft still constitute more than 50 percent of those arrested, the juvenile participation rate has been declining. In fact, the solution rate itself for motor vehicle theft has declined from 24.3 percent in 1967 to 16.3 percent in 1978. This represents a decline of 33 percent. Moreover, the value recovery rate of 86 percent of all stolen motor vehicles in 1967 has dropped to 61 percent in 1978. These statistics clearly indicate that professional thieves have increasingly entered into the stolen motor vehicle area of crime. Especially alarming is that the initial crime reports for the first six months of this year show a national increase in motor vehicle theft of 13 percent over the corresponding time period of 1978. Some cities are experiencing increases of over 40 percent this year. The increase is reflected in all geographical areas, north, south, east, west, urban, suburban and rural.

The enactment of H.R. 4178 will provide government with important new tools and weapons in its fight against professional crime. The Department of Justice urges prompt passage of this legislation.

The Office of Management and Budget advises that the enactment of this legislation would be consistent with the objectives of the Administration.

Sincerely,



Alan A. Parker
Assistant Attorney General

Attachments

Comparison Between H.R. 14252, H.R. 1955
(including H.R. 4247) and H.R. 4178
"Motor Vehicle Theft Prevention Acts"

H.R. 14252 (95th Congress)

This bill was submitted to the Congress on September 6, 1978 by the Department of Justice. It was introduced by Congressman Green on October 5, 1978. It expired when the 95th Congress adjourned. It was identical to S. 3531 introduced by Senators Biden, Percy, and Thurmond in the Senate on September 27, 1978.

H.R. 1955 (96th Congress)

This bill was introduced by Congressman Green on February 8, 1979. It is very similar to the previous H.R. 14252 with two additions. They are:

- (1) Added to Section 101 of Title I - Findings and Purposes, was a new paragraph (k) relating to the need for increased prosecutive emphasis for motor vehicle theft violations; and
- (2) Added to Section 501(a) of Title V - Reporting Requirements was a new subparagraph (13) relating to developments concerning the use of a manufacturer's certificate of origin for off-road vehicles.

H.R. 4247 (96th Congress)

This bill was introduced by Congressman Gonzalez on May 30, 1978. It is identical to H.R. 1955.

H.R. 4178 (96th Congress)

This bill was introduced on May 22, 1979 by Congressman Green and 23 other co-sponsors. Since then it has acquired over 20 additional co-sponsors. It is identical to S. 1214 also introduced in the Senate on May 22, 1979 by Senators Biden and Percy. The bill represents a rewrite of H.R. 14252 and S. 3531 by the staffs of Senators Biden and Percy and Congressman Green in consultation with the Department of Justice. It includes all the changes made by H.R. 1955. A title by title analysis of the changes made to H.R. 14252 by H.R. 4178 follows.

TITLE I - Findings and Purposes

In general, H.R. 4178 retains all the findings and purposes of H.R. 14252. It rearranges their order and makes some linguistic changes. It places a greater stress on the organized crime aspect of the motor vehicle theft problem. In particular, it adds a new paragraph (f) to Section 101 relating to the theft of farming and construction equipment. It highlights in paragraph (h) of Section 101 the need for the insurance industry to improve its procedures. It adds a new paragraph (m) in Section 101 relating to an increased prosecutive emphasis for motor vehicle theft violations.

TITLE II - Improved Security for Motor Vehicle and Motor Vehicle Parts

Section 201 This provision was changed in H.R. 4178 to specifically require the Secretary of Transportation to issue anti-theft standards instead of merely permitting the issuance of such standards. Also, the word "consumer" was added to line 14 in order to clearly show it was consumer time and consumer inconvenience which the Secretary had to take into account.

Section 202 This section is all new. It requires consultation with the law enforcement community in the promulgation of the anti-theft standards. It imposes time limits on the issuance of the regulations and it requires a careful examination of ongoing technological developments in the design of such regulations.

Section 203 This is new. Although the National Traffic and Motor Vehicle Safety Act of 1966 had a federal preemption provision, it was felt that such was not quite adequate to deal with the component part numbering aspect.

TITLE III - Anti-fencing Measures

Section 301 Significant changes were made to the corresponding provision in H.R. 14252. First of all, two exceptions were created to the statutory right of seizure. They were in those situations where a part whose number had been removed or falsified had been attached back to a vehicle of an innocent purchaser of such part and where the vehicle or part, having lost its original number applied by the manufacturer, had had a replacement number applied in accordance with appropriate laws. It was never intended to permit seizure in the latter situation and the new language makes this clear. The former exception is intended to ease the burdens on a person who has his car repaired and, unknowing to him, the repairman uses stolen parts with falsified or removed identification numbers to fix it.

Another major change is that instead of the mandatory seizure called for under H.R. 14252, the provision now permits a discretionary use of such authority. The final major change is the incorporation by reference of the custom law's procedures for the disposal of any seized motor vehicles or parts.

Section 303 This change to present 18 USC 2313 was not in H.R. 14252.

TITLE IV - Importation and Exportation Measures

The only change in this title is that the term "motor vehicle" in H.R. 14252 has been replaced by the term "self-propelled vehicle." This does not change at all the scope and coverage of the title.

TITLE V - Reporting Requirements

Section 501 H.R. 4178 expands upon the scope of the study. It changes the term "off-road motor vehicle" to "off-highway vehicle." It adds three new subparagraphs to the study (ie. 13 - 15). It changes the definition of "off-highway vehicle" to exclude those components which are not pushed or towed by a self-propelled vehicle.

Section 502 H.R. 4178 increases the number of annual reports to Congress from 5 to 10 years. It was felt that this extended period was necessary to fairly judge the Act's effectiveness since the requirements of Title II will not show up in manufactured motor vehicles until 4 or so years after the enactment of the legislation. After which, it will take several additional years of such new vehicles to materially affect the total vehicle population.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOV 5 1979

Honorable Harley O. Stagers
Chairman
Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Office of Management and Budget on H.R. 4178, the "Motor Vehicle Theft Prevention Act of 1979."

For the reasons stated in the report sent to you by the Department of Justice, the Office of Management and Budget supports enactment of H.R. 4178, subject to the changes recommended by the Department.

Sincerely,

James M. Frey
James M. Frey
Assistant Director for
Legislative Reference



DEPARTMENT OF STATE
Washington, D.C. 20520

SEP 28 1979

Dear Mr. Chairman:

On behalf of Secretary Vance, I am responding to your request for the views of the Department of State on two bills, H.R. 1955 and H.R. 4178, dealing with procedures and programs designed to curb the theft and disposition of stolen motor vehicles and their parts.

The Department of State has no objection to the enactment of either H.R. 1955 or H.R. 4178.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

J. Brian Atwood
Assistant Secretary
for Congressional Relations

The Honorable
Harley O. Stagers,
Chairman,
Committee on Interstate and Foreign
Commerce,
House of Representatives.

Mr. SCHEUER. We will now hear from our first witness who is a convicted felon under custody of the authorities who may be asked to testify in criminal cases. We intend thoroughly to protect his anonymity. We will call the witness "John Doe." He is experienced in every aspect of car theft, all the way from entering into a locked, parked car to changing the vehicle identification number to fraudulently securing official documents, which makes it possible to sell the car to unsuspecting parties.

We will not ask any questions that will require the witness to refer to his identity or any questions that might jeopardize the pending Federal investigations.

We had a very talented young lady from the Department of Justice, an attorney with the U.S. attorney's office in the eastern district of New York, Mrs. Shira Scheindlin, and we have asked her to interrupt very rapidly if any of us, by mischance or peradventure, ask any questions which might jeopardize the Federal anticrime effort.

Ms. Scheindlin, I hope you will interrupt us in midair if any of us are guilty of a slip of the tongue.

We are very grateful to Ms. Scheindlin and the Department of Justice for their splendid cooperation which makes it possible for us to have this expert witness, and I do mean expert.

Many of us have seen John Doe downstairs in the garage of this Federal building show us how easy it is for a skilled thief to overcome all of the existing mechanical safeguards that are built into autos.

We will now hear from him on other aspects of this crime and other aspects of the auto theft business as it exists today.

Mr. John Doe, we appreciate your being here. We appreciate your making your expertise available to us and we now give you the floor and suggest that you simply proceed in informally chatting with us just as if you were in our living room and tell us what you know about the organized auto theft business.

Mr. DOE. I will be glad to. I will start by reading this prepared statement, then.

Mr. SCHEUER. You can read it or you can just talk to us, whichever you prefer.

How long is the statement?

Mr. DOE. I do not believe it is very long. It is a few minutes.

Mr. SCHEUER. Why do you not read it?

Mr. DOE. You might see some part of it that you want to ask a question about.

Mr. SCHEUER. Very good.

STATEMENT OF JOHN DOE

Mr. DOE. My experiences with stolen automobiles started in 1963 and ended in 1979. During that time, I have been involved with the theft and resale of approximately 150 automobiles, about 75 percent of these cars being late model luxury cars manufactured by General Motors.

Mr. SCHEUER. What made you honor General Motors rather than Ford or Chrysler?

Mr. DOE. It is the biggest selling item. There is a high demand for it. Stop me whenever you would like to, no problem.

During 1979, I participated in the theft and resale of stolen construction equipment manufactured by Caterpillar, and trailer tractors manufactured by Mack.

My first experience with auto theft and resale was much like my last. This process involved using the documents from late model wrecked automobiles on the stolen duplicate of that wrecked automobile for resale. Naturally, the identification numbers of the stolen autos were altered to match the documents from the wreck.

Occasionally you would receive a junked vehicle form with a wreck instead of an open New York State title. What you had to do before New York State Motor Vehicles would issue a title was have the car inspected. An inspection without showing the car cost \$10.

The only change that has taken place in the procedure of using wrecked vehicle documents on stolen vehicles is the expense.

Forging and counterfeiting motor vehicle registrations and titles has always been popular and relatively easy. The key element here is a printer willing to make titles. Due to the lack of correspondence between motor vehicles of different States, exchanging counterfeit titles for good ones without being detected can be accomplished.

The issuance of the new NYS titles did create a slight problem. To overcome this, titles from States that did not use the complex printing techniques used on NYS titles were duplicated.

My personal involvement in the auto theft for parts business was a limited one. Had I wanted to I could have been deeply involved. There were, and to my knowledge still are, standing offers for parts that could keep a crew of four men busy 7 days a week. A standing order would be all the late model GM noses and doors you could deliver for a set fee.

The crews that I was associated with filled orders for body shops. These crews would have a few body shops as customers, and they would supply them with all the major crash parts that they needed.

The mechanics of stealing an auto is not a complex procedure. The tools you need can be bought at any auto supply store. They consist of a metal ruler, a body dent puller and a replacement ignition. The ruler is used to gain entry, the body dent puller to pull out ignition and the replacement ignition used to start the car. The whole process takes about 3 to 5 minutes from approach to target auto.

Right now, construction equipment is high priority amongst thieves. This is due to the large amount of money they are worth and the ease with which they can be stolen. Machines manufactured by Caterpillar are the ones most sought after. The market for this equipment is an international one, and with the right connection you can sell as many as you can deliver.

Mack trailer tractors are another internationally sought after item. The most popular model is the R700 series.

Construction equipment and trucks are not the only commodities sought after internationally. American cars are, also. And once this stuff leaves American soil, it is impossible to detect.

Mr. SCHEUER. Is that the end of your statement?

Mr. DOE. Yes, that is pretty much a summary of it.

Mr. SCHEUER. I am going to turn to Congressman Green and ask you, Bill, if you have any questions.

Mr. GREEN. You mentioned the export market for which you stole. Would you have any knowledge of what percentage of the stolen calls wind up either whole or in parts for export as opposed to being used domestically?

Mr. DOE. From my knowledge, most of them are staying right here in the automobiles. There are some crews that ship 20 cars a month, 25 cars a month, out of the country.

Mr. GREEN. Those would be whole cars?

Mr. DOE. Whole cars, complete cars, with counterfeit titles or documents and they ship them right out.

Mr. GREEN. So that the export market is basically a whole car market rather than a parts market?

Mr. DOE. Yes.

Mr. SCHEUER. What percentage of all of the cars that get stolen are destined for the overseas market?

Mr. DOE. That is hard to say.

Mr. SCHEUER. Any guesstimate?

Mr. DOE. Myself, I have never shipped a car overseas. I was involved with shipping heavy equipment, not automobiles, although I did supply certain crews with certain items they needed for shipment overseas.

To my knowledge, they were shipping, like I said, 20 cars a month.

Mr. GREEN. What is the basic modus operandi in the business? Could you explain your relationship to the chop shops and the chop shop's relationship to its customers, whoever they may be?

Mr. DOE. I guess it is a simple one. A car gets smacked up and gets into a body shop. It is a late model GM car and it might cost legitimately \$3,000 in parts to put the car together. So the body shop gives an auto theft crew an order for the parts he needs and he may spend \$1,000 to \$1,200 for the parts.

Mr. GREEN. So that basically you would be stealing to order?

Mr. DOE. With the body shop, like I mentioned, the guys that filled the orders for the body shops, those are all orders. They fill orders, but there are enough orders to keep these guys very busy.

From my experience, all body shops are susceptible to stolen parts.

Mr. GREEN. What is the price that you charge the body shop for stolen parts as compared with the price of legitimate parts?

Mr. DOE. Well, a late model Cadillac, just say you got one of the nose and the doors and the interior, you might get like \$1,500 off the guy for the parts. Now, if he wanted to buy it, I am sure it is going to cost him close to \$4,000 to \$4,500.

Mr. GREEN. I heard some estimate that a car that had originally cost \$5,000 could be broken into parts and sold for as much as \$25,000 in parts.

Does your experience verify that?

Mr. DOE. That is legitimately speaking. If you were to sell each part legitimately, you could probably get more than the original cost of the car. But when you are selling as stolen, the price depreciates a great deal.

Mr. LUKEN. Would the gentleman yield for one question?

Mr. GREEN. Yes.

Mr. LUKEN. We are talking about "noses," and I would like to identify the nose. Is that the external parts of the automobile, the hood and the fender and the bumper?

Mr. DOE. It is just the front fenders, the hood and the bumpers if the guy wants them. It is pretty much the three parts in the front.

Mr. LUKEN. Nothing to do with the engine or anything like that?

Mr. DOE. No.

Mr. SCHEUER. Would these vehicle inspection numbers that we are talking about, in your opinion, discourage car theft, discourage their being delivered at chop shops for resale?

Mr. DOE. I think at first it might. If they can find a way of forging or counterfeiting these numbers, they are just not going to stop. In other words, if a guy can buy a wreck and then renumber the stolen parts to match the numbers of the wreck he bought, he is pretty much covered.

If you ask him, "Where did you get that?"

"Oh, I bought it here. Here is the wrecked papers for that part."

You look at it, and if it is a good counterfeit job on the numbers, how would you tell unless you put an expert on it and analyzed the numbers to see if they were counterfeited or not.

But a general motor vehicle inspector, or an inspector who inspects cars for insurance companies, he does not know a damn thing.

Mr. SCHEUER. So you are a little skeptical as to the value of the vehicle identification numbers being stamped on them?

Mr. DOE. Yes and no.

Mr. SCHEUER. If it is not susceptible to being counterfeited, you think it might work?

Mr. DOE. Exactly. If it cannot be counterfeited or it cannot be forged, it seems like it would be a good idea.

Mr. GREEN. I get the impression from what you say that there is a good deal of laxity in the operation of State titling systems. Would you care to comment on that?

Mr. DOE. You can go to a number of States in this country with a counterfeit title and register a car and receive a good title in exchange for it, and the counterfeit title you give them, they just bury in their paperwork. They do not send it back to the State that supposedly issued this counterfeit title to verify its being counterfeit or legal.

Mr. GREEN. Are there any States in particular that you tended to use for this purpose because they were less careful than any other States?

Mr. DOE. This would be just word of mouth. I never myself did it. I heard that Virginia was one, Pennsylvania was one. I understand Connecticut, you can sell a car to a dealer with a counterfeit title and he issues a Q-1 form and never turns in the title to the Motor Vehicle Bureau, and on the Q-1 form, a title issued.

You would have to look into that yourself, but there are some States that you can bypass with the counterfeit title.

Mr. GREEN. That is all I have, Mr. Chairman.

Mr. SCHEUER. There is a Federal sticker in the door jamb of a car now that identifies that car. Supposedly it is put on in such a way that it cannot be removed, that you would have to destroy it to remove it.

Can you remove it without destroying it? Please do not say how. Just tell us if it can be removed without destroying it.

Mr. DOE. It can be removed intact and reused any way you want to reuse it.

Mr. SCHEUER. How long would it take you to remove it?

Mr. DOE. To remove it, it might take maybe 5 minutes.

Mr. SCHEUER. Have you ever stolen a car from an organized crime figure by accident?

Mr. DOE. Yes.

Mr. SCHEUER. What happened?

Mr. DOE. We had to return it.

Mr. SCHEUER. You did not get shot in the knees?

Mr. DOE. No; we were just told to return it and no questions would be asked.

Mr. SCHEUER. Would a national title certificate like the New York title make it harder to forego titles?

Mr. DOE. Absolutely. I think so. The printing is a complex one and the average printer cannot duplicate it.

Mr. SCHEUER. You think that would be harder to duplicate than the VIN—or the Vehicle Inspection Number—being stamped on the parts?

Mr. DOE. Well, now you are talking about counterfeit. If you are concerned about the parts business, the title has nothing to do with that.

Mr. SCHEUER. I understand that. What you are saying is you are a little skeptical about the vehicle inspection number, the so-called VIN, as the key to stopping auto theft, because you say it can be counterfeited or forged?

Mr. DOE. If it can be. You see, if a person that owns a wrecking yard has every make and model of GM car in his yard, OK, or a paperwork for every make and model of GM car in his yard, then he can resell those parts over and over again.

If you ever go into his yard to have him verify his parts as being legal and he has the paperwork to cover it, and if he can renumber those parts to match the paperwork, then he is covered.

Mr. SCHEUER. Can you tell us something about the so-called confidential VIN's, where they are located and how confidential they really are?

Mr. DOE. To my knowledge, there, you are talking about paperwork that is hidden under the dashboard and in the interior of cars, and no one ever looks at that stuff. You just take it out of the car. That is just a piece of paper. You can have any printer make it for you and duplicate it yourself.

If you are talking about numbers on rails, well, if the car is worth it, it pays to raise the body and reforge those numbers. If the car is not worth it, you either do not do it or do not use the parts.

Mr. SCHEUER. Did the numbering, the vehicle inspection numbering on transmissions and on motors have any effect in making it more dangerous to sell that part?

Mr. DOE. No; because those numbers can be changed very easily.

Mr. SCHEUER. You think the automobile companies are going to have to figure out a better way of putting on a vehicle inspection number than the present system of numbering engines and transmission?

Mr. DOE. I guess they would have to figure out a better way. Then again, motors and transmissions are not, from my experience, the big resale item.

Mr. SCHEUER. If we ask you for some advice on what kind of a system we could produce that would be, let's say, forge-proof, that you

and your inspired colleagues could not break, what would your suggestions be?

Mr. DOE. A locking system.

Mr. SCHEUER. A locking system that you could not open up in 15 to 30 seconds as you did downstairs a few minutes ago?

Mr. DOE. That is hard to say because pretty much any locking system that you make locksmiths are immediately shown how to get through it. Once a locksmith is shown how to bypass a locking system, every thief knows because locksmiths are the ones who taught me how to break into cars.

Mr. SCHEUER. So you do not rely very much on improving locks. How about on improved vehicle inspection numbers?

Mr. DOE. You mean body numbers and stuff like that?

Mr. SCHEUER. Improved vehicle inspection numbers in terms of making them less susceptible of being forged.

Mr. DOE. If you can accomplish that absolutely.

Mr. SCHEUER. Do you have any other ideas on how we can improve the system to make it more dangerous and less profitable to steal cars, reduce the benefits and raise the risk?

Mr. DOE. With inflation, that is hard.

Mr. SCHEUER. How much does a person get paid who lifts one of these cars and then drops it off?

Mr. DOE. Just for a theft of a car, a guy could probably get \$250 just for the theft of the car.

Mr. SCHEUER. Just picking it up and delivering it 10 or 20 or 30 blocks or 1 mile away?

Mr. DOE. Absolutely.

Mr. SCHEUER. Congressman Luken?

Mr. LUKEN. You mentioned remembering to match renumbering a vehicle. Now these VIN numbers, just how are they impressed upon the automobile, the parts of the automobile?

I was under the impression that it was difficult to renumber them. Is not it some kind of glass that puts a blemish, scars the vehicle if it is erased, or attempted to be erased?

Mr. DOE. You mean on the Federal stickers?

Mr. LUKEN. No. I am not sure what I mean, that is why I am asking the question. Federal stickers are just some kind of paper, plastic, are they not?

Mr. DOE. Yes, it is a piece of plastic.

Mr. LUKEN. But the VIN number that you have been talking to the Chairman about, this is a newer kind of impression that is made, a numbering system which I understand the technology is totally different.

Mr. DOE. You have a VIN plate on the dashboard that can be counterfeited very easily.

Mr. LUKEN. Counterfeited, but now are you going to remove that plate? Are you going to erase it and substitute it?

Mr. DOE. You take the plate off and put another plate on it.

Mr. LUKEN. Is it just a plate?

Mr. DOE. The VIN tag on the dashboard is only a small piece of metal.

Mr. LUKEN. Like the old serial numbers?

Mr. DOE. Exactly, the same thing, only now it is visible on the dashboard.

Mr. LUKEN. That is no problem, is it?

Mr. DOE. No problem at all.

Mr. LUKEN. I was just talking to some one of the experts downstairs who told me the VIN numbers, either now or in prospect, are going to be placed on in such a way that they are stamped into the metal and that because of the particular properties of what is used, any attempt to remove them or alter them would scar the metal and would show an attempt to deface has occurred.

Could that not be done?

Mr. DOE. It sounds like something like that could be done. It has not been done, to my knowledge. You are not speaking about VIN tags. You are speaking about some other number stamped in the automobile.

Mr. LUKEN. You have never seen that?

Mr. DOE. I have never come across that.

Mr. SCHEUER. I think Ford and General Motors are experimenting with that kind of a system.

Mr. LUKEN. I was just trying to test this witness's knowledge on it, since he is on the very practical end of it. In the ring we read about, the automobile theft ring and so on, without describing your particular situation, who does the theft, that is, the one who actually steals the automobile, who does he usually know in such a situation?

Mr. DOE. Whoever is paying him, or whoever is ordering the automobile.

Mr. LUKEN. He just knows one person?

Mr. DOE. He just knows one usually. Sometimes he will know more than one, but usually he will just know the person who gives him the order for the car. Many times a thief is just a drug addict supporting a habit and he will go out and steal two cars a day for the guy and deliver them somewhere and that will be the end of it.

Mr. LUKEN. Your principal part was in stealing the automobile?

Mr. DOE. To be honest with you, I have not stole a car in quite a few years. I have pretty much covered every aspect of the auto theft in depth, except parts. I was involved in a lot of counterfeiting and things like that.

Mr. LUKEN. In the international operation, you said you really have not been involved in that, have you?

Mr. DOE. With cars?

Mr. LUKEN. With cars, shipping them overseas.

Mr. DOE. Right.

Mr. LUKEN. Is the shipper in such a case a knowledgeable party or is the shipper an innocent shipper who is simply used?

There has to be somebody at this end and somebody to receive it.

Mr. DOE. The person receiving it, I am sure he would not even care. Once the car gets where it is going, or once the machinery gets where it is going, it is put through legal channels and it never presents a problem to the person who bought it. The shipper could not care anyway, because he is getting business. He is making money on shipping an item. He does not look twice at it as long as, for all intents and purposes, it looks okay and you have papers for it.

He will say, "OK, bring it down on the 21st and we will load it on the ship and it will go."

Mr. LUKEN. Sort of like a common carrier, this kind of thing?

Mr. DOE. Sure. You book passage on a ship and he tells you when to deliver it and you deliver it and it goes on a ship.

Mr. LUKEN. Thank you.

Mr. GILMAN. What sort of papers are you required to have when you are preparing to ship it overseas?

Mr. DOE. This, I am really not sure about.

Mr. GILMAN. You have never shipped overseas?

Mr. DOE. At one time, I was making arrangements to ship some equipment overseas and I was never asked for paperwork. In fact, I was told that to facilitate the shipping for a small fee, the day I brought this machine to the docks, it would be put on a ship. In other words, this guy is telling me it will be safe from detection because once it is on the ship it is home free. As long as it is on the dock, it is in danger, and it seemed to me that he was reading between the lines that this was a piece of stolen equipment.

Like he said to me, "When you are ready to ship it, you let me know and I will tell you when to bring it and that same day it will be loaded on a foreign vessel."

Mr. GILMAN. Do you know if there is a substantial number leaving New York Harbor by vessel?

Mr. DOE. I would guess that, yes, a substantial number.

Mr. GILMAN. I thank the gentleman.

Mr. LUKEN. I have just one other question. If we required a VIN number which was actually stamped into the metal of the automobile, not just a couple of parts, but into various component parts, that would cause a lot of problems for the thieves in the theft rings, would it not?

Mr. DOE. I really do not think so. It might.

Mr. LUKEN. It is something that you have never run into?

Mr. DOE. Immediately it might cause a problem, but I am sure they will find a way to get around it if there is a way of getting around it. In other words, if just forging those numbers can keep a body shop within legal limits, or when he makes the order he says he wants all of these parts to fit this number or he does not want stolen numbers on the parts, if that can be feasibly done, then I would suspect it would be done.

Mr. LUKEN. Thank you, Mr. Chairman.

Mr. SCHEUER. Do you think the theft could be feasibly done unless the system were absolutely not susceptible to fraudulent forgery?

Mr. DOE. Absolutely. It seems in most cases the insurance company is required to release a check upon inspecting a vehicle being completed. It seems that maybe the insurance companies could assume some kind of the financial costs in assuring that this stuff is not stolen.

I mean, if this guy is going to give a check for the parts, who is going to check them?

Mr. SCHEUER. You think the insurance companies should be required to check that the parts were not stolen before giving the check?

Mr. DOE. I would think so. I mean, I have seen situations where the person bought a new car and had the duplicate of it stolen, wrecked it, renumbered it and had the stolen car wrecked, brought it to a body shop, had the insurance company guy come down and pay to have the

car fixed, but then just take the wreck and dispose of it and come up with the original god one and this guy thinks the car is fixed and he gives up a check for a car that was a stolen wrecked car.

They never look past the number on the windshield. I mean, I have seen them giving checks up for counterfeit Federal emission stickers that anyone could see that they were counterfeit, and never even look at them to see, just look at the tag on the windshield, give up the check and walk away.

Mr. SCHEUER. How long have you been in this business of car theft? You mentioned it before.

Mr. DOE. Since 1963.

Mr. SCHEUER. It is our understanding that in 1963, most of the car thefts were by kids for joy rides but that the whole name of the game has changed now, and that now most of them are by organized crime or by, as you said, by drug addicts who are picking up cars and delivering it on order to an organized crime syndicate.

Does that conform to your experience or do you have a different view?

Mr. DOE. That conforms to it.

Mr. LUKEN. I have one more question, Mr. Chairman.

Mr. SCHEUER. Yes.

Mr. LUKEN. Is the New York title law as effective as in any of the States? I mean, I just want to take a title law, which is a strong one, more foolproof than the others.

Mr. DOE. If you are dealing with rebuilding wrecked automobiles, I think New York is a very poor one.

Mr. LUKEN. What is a good one?

Mr. DOE. I have run across situations where cars in Jersey that were wrecked were not allowed to be put back on the road because they were wrecked so bad. That kind of a system would seem a lot better to me, when you are dealing with rebuilding wrecks of stolen automobiles.

Mr. LUKEN. So in your opinion, the New Jersey title laws are the ones that you know of which might be the most effective?

Mr. DOE. In dealing with wrecks, yes, because the situation, I think, when the police get the car, they declare it an unrebuildable wreck and the car can be sold for parts only; whereas in New York, regardless of how bad a car is wrecked, as long as it can be presented to an inspection station and pass inspection, it can be put back on the street.

Mr. LUKEN. If all laws, all State laws, were the same as New Jersey's, would that complicate the problem of the thieves and the theft rings?

Mr. DOE. In that situation, yes.

Mr. LUKEN. As far as parts?

Mr. DOE. I do not know about parts, but as far as retitling wrecked automobiles.

Mr. LUKEN. All right. As far as retitling wrecked vehicles?

Mr. DOE. Yes.

Mr. LUKEN. It would be a national law, national guidelines that would require all of the States to have similar legislation. That would cause you problems?

Mr. DOE. Yes.

Mr. LUKEN. Thank you, Mr. Chairman.

Mr. SCHEUER. Mr. Gilman?

Mr. GILMAN. Are you familiar with any of the stolen auto trafficking across our borders into Canada or Mexico?

Mr. DOE. No.

Mr. GILMAN. Have any of the cars which you have stolen ever been shipped across the borders?

Mr. DOE. Not to my knowledge. All of the cars went into the States.

Mr. GILMAN. You have no familiarity then with any of that sort of trafficking?

Mr. DOE. No.

Mr. GILMAN. Was a large share of your stolen car product shipped to other countries?

Mr. DOE. Cars? No.

Mr. GILMAN. Parts?

Mr. DOE. There, again, I, myself never got involved with the part business to any great extent. Through the crews I dealt with, you hear about things going on. Direct knowledge, no, I never have, but I have heard about parts being shipped out of the country.

Mr. GILMAN. You have had no direct involvement with that, either?

Mr. DOE. No.

Mr. GILMAN. Thank you.

No further questions, Mr. Chairman.

Mr. SCHEUER. John Doe, you have been very candid and forthright with us. You have answered your questions to the best of your ability and we appreciate your cooperation. Thank you very much.

Mr. DOE. You are welcome.

Mr. SCHEUER. The witness is excused, and we will go to the next witness.

We will have a panel next. Sergeant Frank Martin of the Auto Crime Unit here in New York City and Col. Clinton L. Pagano of the New Jersey State Police Headquarters from West Trenton, N.J.

Will the two gentlemen, Frank Martin and Clinton Pagano, come up to the table, please?

We will extend the courtesy of first testifying to Mr. Clinton Pagano and we will ask Congressman Luken to introduce you and to chair the session while Colonel Pagano is testifying.

Mr. LUKEN [presiding]. Thank you, Mr. Chairman.

I understand that Mr. Martin is a Sergeant with the New York City Police Department in the Auto Crime Division and that he has extensive experience in the Auto Crime investigations.

So that is Sergeant Martin and Colonel Pagano is the Superintendent.

**STATEMENT OF COL. CLINTON L. PAGANO, SUPERINTENDENT,
DEPARTMENT OF LAW AND PUBLIC SAFETY, NEW JERSEY
DIVISION OF STATE POLICE, ACCOMPANIED BY SGT. FRANK
CALDWELL, NEW JERSEY STATE POLICE; SGT. FRANK MAR-
TIN, AUTO CRIME UNIT, NEW YORK CITY POLICE HEAD-
QUARTERS; AND DETECTIVE GRINENKO, NEW YORK CITY
POLICE HEADQUARTERS**

Colonel PAGANO. I am Colonel Pagano, the superintendent of the New Jersey State Police. This is Sergeant Frank Martin on my left of the New York City Police and I brought with me Detective Sfc. Frank Caldwell of the New Jersey State Police.

I have not actually done, like your first witness, the work in the field in a number of years, so I need someone to nudge me once in a while to remind me of something I am going to miss, and that is Sergeant Caldwell.

Mr. LUKEN. Why don't you proceed with your testimony? I might add from my standpoint, so as to make the presentation as smooth as possible, we are looking at legislation and if you are aware of the proposed legislation that we are looking at you might comment on it in the context of your testimony so that we will not have to quiz you on it.

Colonel PAGANO. Surely. We have a prepared statement, Mr. Luken, which essentially goes toward the bill H.R. 4178, and we have tailored our comments to dovetail with those provisions of H.R. 4178 which we feel are important.

I am not going to read the entire statement, but I would like to highlight those points which we want to make.

Mr. LUKEN. Without objection your statement will be received into the record. You may proceed any way you wish.

[Testimony resumes p. 61.]

[Colonel Pagano's prepared statement follows:]

82898



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON, NEW JERSEY 08625
(609) 882-2000

May 23, 1980

H.R. 4178

✓
THE MOTOR VEHICLE THEFT PREVENTION ACT

INTRODUCTION:

The motor vehicle has become a significant influence in the life of each citizen. It has been reported that nearly every occupation in the United States is dependent, to some degree, directly or indirectly, on the motor vehicle or its use. Furthermore, one in every six jobs is dependent on the manufacture, distribution, service, or commercial use of motor vehicles.

Motor vehicle thefts in New Jersey have been steadily increasing over the past three (3) years at an alarming rate! The recovery rate has been decreasing!

In New Jersey, mounting public concern is surfacing in the form of various special interest groups. The insurance industry has formed the New Jersey Anti-Car Theft Committee (ACT), whose goals are to study the vehicle theft phenomenon and make recommendations in the form of legislative proposals, governmental programs designed to combat the problem, and public education. The N.J. Motor Truck Association and the Construction Industry Advancement Program have also formed Anti-Theft

Committees, whose goals are similar in nature.

Indeed the sole purpose of our presence here today is to give and hear testimony concerning the product of exhaustive studies and hearings completed by the United States Congress in response to the needs of our citizenry, H.R. 4178.

With this in mind, permit me to define the problem in New Jersey, describe our techniques for attacking the problem, demonstrate how H.R.4178 will aid us, and offer a suggestion for an additional program.

NEW JERSEY VEHICLE THEFT PROBLEM STATEMENT

An analysis of the uniform crime reports (UCR), compiled by the New Jersey State Police Uniform Crime Reporting Unit indicates that since 1977 the incidence of motor vehicle thefts has been increasing at an alarming rate. In 1977, there were 37,492 motor vehicle thefts. In 1978, an increase of 9.5% over the 1977 figures or 41,037 thefts was experienced. In 1979, an unprecedented increase of 24%, 51,006 thefts was reported.

The total value of motor vehicles stolen in 1978 was \$94.5 million. In 1979, the total value of stolen motor vehicles increased to \$130.5 million! In fact,

this figure represents 47% of the total value of all stolen property reported in the State, 277.6 million.

Even more alarming is the recovery rate. In 1967, the recovery rate was 83% and it has steadily declined to a catastrophic low of 60.3% in 1979. The value of stolen motor vehicles, which were not recovered, represents a loss of \$57.2 million to the citizens of New Jersey.

In an attempt to explain the increased activity in this criminal specialty, we, in New Jersey, must hypothesize utilizing intelligence and experience to arrive at a reasonable explanation. Intelligence gathered to date indicates a diversion by organized theft groups to vehicle stripping or dismantling operations. The parts market has become very attractive to organized theft groups. In fact, at the recent U.S. Senate Sub-committee hearings in Washington, testimony has established that a "relatively low priced car, with a \$5,741.00 sticker price, contains parts worth \$26,418.00 if they are purchased separately on the retail market (Newsweek, December 10, 1979, issue). In addition to the parts racket, our intelligence has indicated more incidents of the "phantom car fraud" scheme. In this scheme, non-existent motor vehicles are titled by presenting counterfeit proofs of ownership to the New Jersey Division of Motor Vehicles. A legitimate

certificate of ownership is issued. The actor insures the phantom vehicle, reports it stolen, and collects on the insurance claim.

Another hypothesis formed from experience in dealing with auto theft, is that complacency is a contributor to the high incidence of thefts and the low recovery rate. Organized criminals seek to indulge in criminal activities which offer the greatest monetary return at the lowest risk. Auto theft is treated as a juvenile crime. It is also characterized as non-violent in nature. The "hue and cry" of the public is not aroused by auto theft. Generally speaking, the media does not report to any great extent incidents of auto theft. Enforcement, prosecution, the courts and legislators respond to public outcry. As a result, the investigation of the theft of a \$10,000 automobile is treated as routine when compared to the investigation of a \$100.00 robbery. Enforcement manpower is not allocated in sufficient numbers to define and attack the problem. In fact, most New Jersey police departments assign one man to auto theft responsibilities, whose main responsibility rests with record keeping, identification, and releasing recovered vehicles. Prosecutors are more prone to plea-bargain in auto theft related crimes to clear their case loads and try cases having more public appeal. The courts are more likely to hand down suspended sentences and probation to persons found guilty of auto theft related crimes to save space in

the correctional institutions for criminals deemed a greater threat to society. Federal and State legislators are not likely to provide funds for programs and resources designed to attack the problem.

In New Jersey, as well as all over the country, re-sales of stolen vehicles claim another victim, the "innocent purchaser". In resale operations an organized group of criminals perpetrate a theft, change the identification of the motor vehicle by alteration of the vehicle identification number (VIN), and the acquisition of a bogus negotiable certificate of ownership, and sell the stolen vehicle at retail value to an unsuspecting innocent purchaser. When this vehicle is recovered and returned to its rightful owner, the innocent purchaser becomes a victim of fraud. He or she loses the car and the money paid for it. Statistics are not kept for the amount of monetary loss suffered by the innocent purchaser.

TECHNIQUES FOR ATTACKING AUTO THEFT IN NEW JERSEY

The techniques for attacking auto theft in New Jersey deployed by the New Jersey State Police are twofold. First, our road personnel receive training in the academy on techniques of effecting patrol related detection and perform accordingly. For the most part, this type of detection results in the arrests of individuals commonly

referred to as the "joy rider" or "transportation thief". For the purpose of this testimony, I will describe our techniques for combating organized or commercial auto theft operations. Within the Criminal Investigation Section, we have formed an Auto Theft Unit, comprised of twelve detectives, trained and experienced in dealing with the investigation of the commercial auto theft ring. The Auto Unit's main responsibility is to conduct "target type" or proactive investigations in the field of organized ring cases. The Auto Unit is mainly concerned with the actors who cause the 39.8% unrecovered stolen vehicle statistics reported for 1979. Unit personnel receive training in tactical intelligence analysis, which is utilized to analyze the significance of intelligence received from informants, contacts, and other sources. Once an analysis is completed, decisions are made as to the necessary amount of resources to be deployed to attack the problem. For instance, an analysis might dictate that probable cause exists to apply for court authorized wire-tapping and that this method of attack is the only one feasible in effecting the complete elimination of all the actors in a ring case. The theory behind the target-type investigation is to target in on a particular group engaged in a particular specialty in auto theft related crimes, i.e., re-sale on chop-shop operations,

and if successful, the statistics will fall accordingly. In engaging in these types of investigations, Auto Unit personnel work closely with the F.B.I., county and municipal police departments within the state and the same agencies in other states. In New Jersey the nature of our problems are both intrastate and interstate oriented. Cooperation with outside agencies is imperative. In furtherance of this cooperative effort with outside agencies, our Auto Unit personnel are encouraged to become members of the International Association of Auto Theft Investigators (I.A.A.T.I.), both the Northeast Chapter and the International Chapter, and the newly formed New Jersey Vehicle Theft Investigators Association (V.T.I.). Both chapters of I.A.A.T.I. hold seminars where enforcement personnel engage in dialogue of mutual concern involving the auto theft problem. V.T.I. meets monthly, and also holds annual training seminars. Our personnel have lectured at all of the above seminars and are recognized as experts in the field. In addition to conducting pre-active investigations, the Auto Unit assists the F.B.I., local, and county enforcement agencies engaged in auto theft investigations.

HOW H.R. 4178 AIDS AUTO THEFT INVESTIGATION

The most important aspect of H.R. 4178 in aiding New Jersey enforcement agencies in combating the auto theft problem is Title II, sec. 203, which relates to locking systems and component parts identification. It forces the state to enact laws identical to the Federal standard. As it pertains to component parts identification, it affords an investigator the opportunity to successfully conclude chop-shop investigations, by either identifying the part as being stolen and thus making the arrest for receiving stolen property, or in those instances where the VIN is removed or altered, an arrest can be made for buying stolen parts with the VIN altered. Auto Unit personnel have long been thwarted by this identification problem. I'm sure that organized crime will recognize this feature as a real risk in engaging in chop-shop type operations. New Jersey has a statute permitting the seizure of a motor vehicle with an altered or changed V.I.N., similar to Title II, but none for the seizure of component parts. Again, this provision thwarts the operation of chop-shops, and would be extremely useful to our personnel.

Perhaps, equally important is Title III, which provides increased penalties to discourage fencing operations. One

caution here is that although the increased penalties are provided, there is no guarantee they will be imposed. Our courts must recognize the significance of imposing the maximum sentence, our prosecutors must refrain from unrealistic plea-bargaining, and enforcement must provide both with the facts to justify their more stringent action.

The section under Title III, providing penalties for the mailing of certain items used to encourage and/or enhance motor vehicle theft, brings the U.S. Postal Authorities into the arena. Title IV, concerning Importation and Exportation of Stolen Self-propelled vehicles and their component parts, affords the state with the assistance of the U.S. Customs Service. Long an advocate of cooperative investigations, I welcome these allies and applaud the sections of this Act that make it possible.

Finally, Section V, Reporting Requirements, would require the Attorney General within eighteen months after the enactment of this Act, to submit a report to Congress to include developments concerning a V.I.N. System, the passage of State Titling Laws, the passage of State Laws concerning the altering of a V.I.N., and the development of a Manufacturer's Certificate of Origin for off-highway vehicles. I would add that our experience

dictates a need for the manufacturers of off-road equipment to develop a more sophisticated ignition locking system. We, in New Jersey, can report from our experiences in conducting investigations into the thefts of off-road equipment, that a State Titling Law is definitely needed. The construction industry has resisted a titling law in the past, because of a fear that the states would charge exorbitant fees for the service, but without a titling law, an off-road vehicle theft ring can make any representation concerning the origin of the unit to a prospective purchaser they deem necessary. When caught with a stolen off-road vehicle, a purchaser can produce any form and represent it as a receipt of purchase. Without a titling law, it just makes it easier for an off-road ring to operate.

SUGGESTION FOR AN ADDITIONAL PROGRAM (COMPUTER ANALYSIS PROGRAM)

Our experience has dictated a need to identify on a monthly and annual basis geographic locations of thefts and recoveries. It is also necessary to identify the condition of a motor vehicle when it is recovered, i.e., driveable - VIN changed or not changed, engine or transmission missing, burned, wrecked, or stripped of body parts. This data would tend to identify the types of theft rings operating in various geographic areas within this state and surrounding states. Most of the data needed to provide this type of report exists

within the data base of the National Crime Information Center (N.C.I.C.). My suggestion is that a study be conducted to determine the feasibility of providing this analysis service nationwide.

The types of reports indicated above can be correlated with profiles of theft groups gathered from intelligence and enable investigative personnel to define:

1. The types of operations, i.e. re-sale, stripping or chop-shops, insurance fraud, etc.
2. The extent of the operation.
3. The geographic span of a theft ring, including interstate.
4. The amount of personnel needed to attack the problem.
5. The need of outside agency cooperation.

The California Highway Patrol has had an analysis system (Vehicle Theft Information System) for several years which has proven to be quite effective. California's recovery rate is 87%.

CONCLUSION

Generally, as you may have gathered from my previous comments, I am in total agreement with H.R. 4178. The only area where I have some reservations is Title I, Findings and Purposes. I do not find any sub-section suggesting a need for federally funded programs. In the past ten (10) years,

most of the successful programs instituted around the country have begun with the assistance of a Law Enforcement Assistance Administration (LEAA) grant. In New Jersey, we have made great strides in the investigation of Organized Crime, Narcotics, Arson, and Official Corruption. These programs started with federal funding. Indeed, the highly successful October, 1978 Workshop on Auto Theft Prevention, received its start by virtue of a grant from LEAA. One of the resolutions passed at this memorable seminar encouraged federal funding through the Federal Highway Safety Act.

Finally, let me add that it is hearings such as this that best exemplify the magnitude of input and studies that go into the passage of important legislation. I have been honored by your invitation to testify, and I want to assure you of the desire of the New Jersey State Police to continue cooperating in matters of mutual concern.

Colonel PAGANO. Thank you.

If it pleases the committee, motor vehicle theft in New Jersey has been steadily increasing in the past 3 years at an alarming rate and the recovery rate has been decreasing. I might point out that I was assigned to auto theft in 1955 and was an auto theft specialist myself personally for 8 years.

My background in policing is in investigations and I was an investigator for 23 years before becoming superintendent in 1975.

In New Jersey, the insurance industry has formed the New Jersey Anti-Car Theft Committee whose goals are to study the vehicle theft phenomenon and make recommendations in the form of legislative proposals. As a result of this activity already in New Jersey, we have introduced legislation that will complement and go in the direction that H.R. 4178 directs.

Several other groups, the New Jersey Motor Truck Association and the Construction Industry Advancement Program have also formed auto theft committees.

When you analyze the uniform crime reports in New Jersey which are compiled by the New Jersey State Police, you will find that since 1977 the incidence of motor vehicle theft have been increasing at an alarming rate. In 1977, there were 37,000 motor vehicle thefts; in 1978, an increase of 9.5 percent over 1977, or 41,000 vehicles; in 1979, an unprecedented increase of 24 percent, 51,000 vehicles reported.

In 1977, the recovery rate was 83 percent and it has steadily declined to a catastrophic low of 60.3 percent in 1979.

Mr. LUKEN. I am sure I should know the answer to this, but are you aware of what the national figures have been in the same period of time? Have they been similar?

Colonel PAGANO. No. I think in New Jersey, we are kind of leading the pack in some respects, although there are areas where there are higher rates than ours. This, on the heels of my own recollection, when I went into the auto theft business in 1955 there was a recovery rate of 97 percent and obviously nowhere near the figures in total number of thefts.

Intelligence gathered to date indicates a diversion by organized theft groups in that vehicle stripping or dismantling the parts has become very attractive to organized theft groups. Incidents of phantom car fraud, scheming fraud, the kind of activity described by your John Doe witness, are increasing, not only in New Jersey but throughout the entire country.

In this scheme, nonexistent motor vehicles are titled by presenting counterfeit proofs of ownership to the New Jersey Division of Motor Vehicles. An automobile is never involved. It is strictly a fraudulent titling conversion activity.

Another hypothesis formed from experience in auto theft is that complacency has contributed to the high incidence of theft and low recovery rate. In most areas, auto theft is still treated as a juvenile crime. It is characterized as nonviolent in nature. The public is not aroused by auto theft and, to that extent, I think the committee should be complemented on the kind of in-depth program that you are doing because you are going to get to the heart of the problem.

The media does not report to any great extent incidents of auto theft. Enforcement, prosecution, the courts and legislators respond

to public outcry. Enforcement manpower is not allocated in sufficient numbers to define and attack the problem.

Prosecutors are more prone to plea bargain auto theft related cases to clear their case loads and try cases having more public appeal.

Mr. SCHEUER. Could prosecutors distinguish between some kid down the block who has taken a joyride and the kind of person who was described by John Doe who was a professional thief and who, in effect, is an extension of organized crime?

Colonel PAGANO. In most cases, Mr. Chairman, without doubt.

Mr. SCHEUER. It seems to me then that they would plea bargain less with the latter and be a little more lenient with the former.

Colonel PAGANO. I think it has gone a few steps beyond that. We are almost overlooking the latter and the former is the subject of the plea bargaining, the type that you had in here a few moments ago who actually, in my listening, sounded very, very credible. He was consistent; he was experienced; he was knowledgeable.

He is the kind of guy who, because of the lack of public appeal in an auto theft case, all too frequently is plea bargained out of the system. Your bill will make some changes in that kind of situation.

Mr. LUKEN. I do not quite follow that. If I understood the question, the question was can the prosecutors today make a distinction between the joyrider and the professional thief who is a part of that ring?

I understood you to say that yes, the prosecutor can.

Colonel PAGANO. That is right.

But the witness here, of course, was a professional.

Colonel PAGANO. That is right.

Mr. LUKEN. He would not, then, be the one who would be able to manage the plea bargaining?

Colonel PAGANO. That is the unfortunate part of it. I believe he is the one who does.

Mr. LUKEN. I thought you said that, but I did not follow in the context of how it follows. Would you explain it?

Colonel PAGANO. It becomes a case of volume. The volume is such that the prosecutor frequently does not even address himself, or the labor of plea bargaining, to a juvenile offender. He is moved into the PTT, pretrail intervention kind of situation, or his case is tried in an entirely different forum.

When you have 51,000 vehicles stolen, as we did in New Jersey in 1979, even that type of individual who was here represents part of an absolutely difficult volume to handle. So his kind of case is plea bargained.

Mr. LUKEN. I am not so sure you have explained it. The type of individual who was here, I believe he stated he has not stolen cars for some years.

Colonel PAGANO. That is right.

Mr. LUKEN. Yet he has been involved in the business, right?

Colonel PAGANO. Yes.

Mr. LUKEN. So it appears to me that probably he, or others similar to him, are hiring people, including young people, and that they very well might slip through the cracks and not be recognized by a prosecutor because of the volume and other problems as being part of the ring, part of the system which is the big problem here.

Colonel PAGANO. That is correct. Very infrequently is the supplier type thief that you are talking about here ever even apprehended because law enforcement does not direct its resources toward the apprehension of the thief.

We look for the individual who has been in business for 20 years, no longer steals, no longer gets his \$250, but the individual who actually is running the operation.

Mr. LUKEN. You are only going to catch the kid, or the person, or the supplier, as you call him?

Colonel PAGANO. The patrols frequently catch that type of individual.

Mr. LUKEN. You catch him only at that end, shortly after he has made the theft, but you do not catch him on the other end when you discover, if you ever do, the automobile having gone to a chop shop or having been sold or disposed of?

Colonel PAGANO. That is absolutely right.

Mr. GILMAN. Would the gentleman yield?

Mr. LUKEN. Yes.

Mr. GILMAN. Have you ever broken up a chop shop ring or a distributor operation?

Colonel PAGANO. We have had cases through the years where the dealer who ultimately sold the automobile, but frequently and more often than not, you never get down to the thief.

I think one thing that ought to be made clear that in a total of 51,000 thefts, with say a 60-percent recovery rate, 60 percent of that 51,000 were stolen by the juvenile type offender who comes into the system also and is in no way a part of the auto theft for resale business. He is just a car thief and in the auto theft for resale business. It is at that point in time, Mr. Gilman, that we frequently apprehend the thief.

We are apprehending those individuals where we feel we are making the most impact.

Mr. LUKEN. Are you saying, by the way, that only 60 percent of the automobiles stolen in New Jersey are recovered at all?

Colonel PAGANO. 60.3 percent last year.

Mr. LUKEN. Are recovered at all, ever?

Colonel PAGANO. That is right.

Mr. LUKEN. That is shocking.

Colonel PAGANO. That is why we need the kind of legislation that has been introduced in the Congress and in our own New Jersey Legislature.

Mr. GREEN. Actually, I think they are doing a better job than most.

Colonel PAGANO. Unfortunately, Mr. Green.

Mr. GREEN. That does show a professional larcenous operation.

Colonel PAGANO. That shows a situation that somebody has to do something about.

Mr. LUKEN. It is very prevalent.

Mr. SCHEUER. Do you think that States like New Jersey can handle the problem or is Federal legislation desirable or necessary?

Colonel PAGANO. I think that joint functioning is necessary, that your bill tied into the kind of situation that will be mandated for the States will be the most effective.

Mr. GREEN. John Doe seemed to be rather skeptical that improvements in the vehicle identification number systems and locking devices would really be effective against the professional. Why do you think that they could be?

Colonel PAGANO. I will go in two directions and I think Sergeant Martin can add to it in his testimony. First of all, the actual theft of the automobile will be mitigated. It will give enforcement and opportunity to possibly see or apprehend more frequently, but I am not convinced that any antitheft device will be totally impenetrable.

But contrary to Mr. John Doe, when you complicate—and I think that was Mr. Luken's word—when you complicate a situation you impede and you give government a better opportunity to apprehend and to solve and to take effective action.

So that VIN number is going to be very essential. It is not going to mean that much, maybe, in the long run. It means another chore for the thief; it means more work for him but if the profit is still there, he will function. He probably will not function as effectively nor will he function as much as he does volumewise.

Mr. SCHEUER. It may slow down the professional and it may weed out the amateurs, like these Congressmen who tried to open the door and blew it.

Colonel PAGANO. It might be, Congressman Scheuer. I can tell you what it will do. It will give enforcement some tools and backbone that we presently do not have. I think that this is very important.

Mr. LUKEN. I think we have allowed this to get a little disorderly here in the way we are approaching it, and I am reproaching myself on this, Mr. Chairman, and not anybody else, and that is totally bad because we are getting some good questions and good information.

But since I am chairing this segment of it, I would like to ask two questions, since we have already gotten there, and we will conduct the rest of your presentation on a question and answer basis, if you do not mind.

The two questions I would like to ask, one is a narrow one. What is the VIN system? You have heard some questions on that. What kind of numbering is there now and is there potentially, to your knowledge of the panel's knowledge, and the other is I would like to testify, without interruption hopefully, as to what you think, and I will try to abide by that, of the selling provisions of this legislation, why you think it is good.

You have just said it is the best approach, and what the drawbacks might be, or the defects or deficiencies. First of all, on the VIN.

Colonel PAGANO. On the VIN, the VIN is the vehicle identification number. Most frequently, it is observed by everyone on the dash of the vehicle, observed by every law enforcement officer who makes a vehicle stop for one reason or another and checked against the papers carried by the driver.

Also on some vehicle models, placed on the engine and the transmission so they can later be identified.

In virtually every instance it is placed in a confidential location known to very few people other than those specialized auto theft investigators who, in most instances, rely upon the National Auto Theft Bureau for technical examination.

The VIN number that we are talking about now is going to be placed on those component parts which are most often taken from stolen vehicles and sold into what we call a "chop shop" which is the newest development into the auto theft scheme.

Mr. LUKEN. How will it be attached or impressed on the part?

Mr. Luken, how will it be attached or impressed on the part?

Colonel PAGANO. We are going to plan, or we are looking now toward, an actual impression being placed.

Mr. LUKEN. Sort of a stamp?

Colonel PAGANO. A stamp by the manufacturer, but in New Jersey we have an additional plan of attaching a decal that is going to be furnished by the division of motor vehicles whenever a vehicle is being used by a legitimate individual who is reselling the nose, or as you referred to, Mr. Luken, the nose of that automobile.

We have a double kind of hit coming in in New Jersey. The bulk of the work in this area is done by legitimate operators who have a legitimate need to function. It is the illegitimate guy who has injected himself into the scene primarily because of the availability of its parts and the quick availability of parts.

Mr. LUKEN. Do the other members of the panel want to say anything about the technology of that VIN number?

Sergeant MARTIN. The VIN number itself, you seem to be stressing the type of impression it is.

Mr. LUKEN. Exactly.

Sergeant MARTIN. There is a way of making a VIN number, an impression, a number stamped into metal. There is a way of making it tamper-proof. Some of the foreign manufacturers have a system where the place where the VIN number is stamped in the engine or the transmission or the frame or whatever, has a very fine impression of the logo of the manufacturer.

As an example, Triumph motorcycles has a very small Triumph logo all across where the VIN number is stamped. Now, when the number is stamped over the top of these manufacturing logos, if that number is sanded in any way, it disrupts the miniature logo characteristic of that particular piece of metal and it is very easy to determine that the vehicle identification number was tampered with.

Mr. LUKEN. Of course, that is just the beginning of the process of unraveling it.

Sergeant MARTIN. Exactly.

Mr. LUKEN. All that says is there is something rotten in Denmark, but it does not say what.

Sergeant MARTIN. It just tells the trained and untrained eye that that particular number has been tampered with.

Mr. LUKEN. So we have to go further.

Sergeant MARTIN. The idea of the VIN number, regardless of how many numbers we put on a particular vehicle, I mean, we could number every part, you are not going to deter 100 percent vehicle theft. It is a big business.

Mr. LUKEN. We could set up a whale of a bureaucracy in the effort.

Sergeant MARTIN. Exactly. You make reference to different systems in different States. The problem is not with the individual States. Jersey has a particular system; we have a particular system in New York; Connecticut has a particular system. There are 50 different document

systems in the United States all of them having their own unique characteristics.

The problem is not the fact that one is bad and one is better and one is not so good, it is the fact that they are all different that makes it difficult to work with.

Mr. LUKEN. That is what I was getting at I was getting at picking out a good one and making it uniform.

Sergeant MARTIN. Actually, Congressman, you can pick any one of the 50, if you make it uniform.

Mr. LUKEN. Except Kentucky.

Sergeant MARTIN. I think you mean Alabama.

Mr. LUKEN. No; I mean Kentucky. I am familiar with Kentucky. It is right across the border. I think there are virtually none, so we will not count that.

Sergeant MARTIN. The point I am trying to make, Congressman, is regardless of the system you use, if every State was familiar with the documents with the forms used, with the requirements for that particular State, then you would not have counterfeit documents being slipped by clerks at motor vehicle offices that have no idea whether they are good or bad.

Mr. LUKEN. I do not want to monopolize this.

Colonel PAGANO. I think we have not covered that other part.

Mr. LUKEN. I think since that might take us more time than I am allotted, I will let the other members of the panel address those questions.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

How much of the auto theft is involved in international trafficking?

Colonel PAGANO. I do not think anyone can really give you a statistic that would be credible. I think that everyone would agree that there has always been an element of foreign shipping of stolen vehicles.

Mr. GILMAN. What about those coming out of New Jersey? Do you have any information about any trafficking going out of the Jersey harbors overseas?

Colonel PAGANO. Yes; we have.

Mr. GILMAN. Do you have any idea what that amounts to and how it goes out?

Colonel PAGANO. I would not even attach an adjective designator. I would not call it sizable or minimal. It is just something we know exists. We have had cases in that area and I think in that respect, your bill gives us a leg up because it ties in the Customs people now.

Mr. GILMAN. Do you have any information about border crossings into Mexico or Canada from this country?

Colonel PAGANO. We have had that kind of theft activity reported and it has come to our attention through the years, mostly outgoing. Frequently, of course, as a matter of procedure, we will get inquiries from the Canadian Government to check an automobile that went in on a routine business and was not reported coming out.

They really are looking not so much for the theft situation. They are looking for the resale and the tax end of it. A lot of that turns into, ultimately, an auto theft situation where a stolen car was taken to Canada.

Mr. GILMAN. You have never broken up any ring or any distribution route that was shipping overseas?

Colonel PAGANO. We have opened up a number of them through the years.

Mr. GILMAN. That were shipping overseas?

Colonel PAGANO. Yes.

Mr. GILMAN. What countries were they shipping to?

Colonel PAGANO. Generally the South American countries, but I can recall cases of special cars going to England.

Mr. SCHEUER. What do you mean by "special cars"?

Colonel PAGANO. Generally the larger luxury cars. Sometimes we would have vehicles that had antique value. Rolls-Royce was the one I am thinking of which was specifically stolen and sent back to England. This was a case a number of years ago.

Mr. GILMAN. Have you been involved with any cases consisting of parts shipments overseas?

Colonel PAGANO. Not that I am aware of. Frank?

Mr. CALDWELL. No; we have not really gotten into anything lately along those lines. I might add that the FBI just currently are involved, or have been involved, in investigations in involving recovery of about 160 cars that were being shipped overseas.

Mr. SCHEUER. To where?

Mr. CALDWELL. Well, they were being shipped to South American countries.

Mr. GILMAN. Was that one distributor who was shipping it all?

Mr. CALDWELL. I had no knowledge as to that.

Mr. GILMAN. Sergeant, do you have any information to add?

Sergeant MARTIN. The shipping of parts is a problem, particularly truck parts. We have had cases where components from trucks, any year, primarily Mack, they take these component parts and they weld them into containers. In other words, the containers are completely sealed. You cannot really tell what is being shipped and they label them "Miscellaneous Machine Parts" and they will ship them overseas that way.

Mr. SCHEUER. Do they get past the customs?

Sergeant MARTIN. Absolutely.

Mr. SCHEUER. Why do not the customs insist they be shipped in containers that can be inspected?

Sergeant MARTIN. I have met with customs on this problem and they do have the ability and the authority to inspect these containers, but the problem is that the shippers are in the business of shipping. The steamship lines are in the business of sailing and if you do open up one of these welded compartments and unload it, then it is the responsibility of customs to reload it.

It delays shipping and it is just an astronomical problem.

Earlier, one of you gentlemen asked John Doe whether the shipper was involved. They are not involved. They are in the business primarily of shipping goods, whether it be soybeans or coffee beans or automobiles.

You drive a vehicle onto a pier, for the most part, that vehicle will be loaded and shipped out without being inspected. The individual that accepts the property looks at a piece of paper. It could be any piece of paper.

In fact, you do not even need documents to ship vehicles.

Mr. GILMAN. Sergeant, have you interrupted any shipments out of the New York Harbor?

Sergeant MARTIN. Yes; we have. In fact, I have some slides which I have with me.

Mr. SCHEUER. Would you like to show the slides now?

Sergeant MARTIN. Whatever pleases you.

Colonel PAGANO. Incidentally, our experience concurs in detail with Sergeant Martin's presentation.

Sergeant MARTIN. In putting together this tray of slides, we tried to cover as many aspects of the problem as we possibly could fit in. What we are looking at is the building on the right of the collision shop, one garage door.

When you open the garage door, this is what we found. This is a typical cutting operation. I hesitate to say New York style but I do not think it has ever been duplicated.

What they did here was, they rented a building, an empty warehouse, and their method of operation was to work their way forward stacking these vehicles one on top of another after they took the desirable parts off of them and worked their way to the front of the building. When they filled up the building, they would walk away from it. They used a fictitious name to rent it, and they would leave the owner of the building with the responsibility of cleaning all of this out.

Now, the oldest vehicle you see here is a 1977, and I believe there is only one of those. The rest are newer than 1977. Most are 1978's, 1979's and a few 1980's. This operation was taken in 1979 so you can see the 1980's were barely on the street and they already had them stolen.

This gives you an idea of the colossal waste that chop shops engage in. Most of these vehicles will never be streetworthy again because they are stacked on top of one another, they are crushed. They do not even take the engines and transmissions out because the engines and transmissions have numbers on them.

As you can see, the doors and the nose clip and the tires, of course, are the primary targets for these particular thieves.

Mr. Scheuer, does that indicate to you that the vehicle identification number system works and that the elements of the cars that now have the VIN on them are not that appropriate for trade in the illegal market?

Sergeant MARTIN. Well, in this particular situation it works. They will get around any numbering system that we come up with because history has proven that they have gotten around any system that we have come up with.

I threw in a few of these slides just to show that many times when we go into a cutting operation there is no real way of telling the volume that that particular operation is handling. These are small parts that have no numbers and no means of identification but they are all from brandnew vehicles. This is often what you find along the walls of a cutting shop, windshields.

This is the exception. These license plates, of course, can be traced. This is primarily what a stripped vehicle looks like after a cut shop is finished with it. This particular piece, they needed the roof line. The reason for that is that it had a sun roof in it and what they do is

they cut the four posts off and they weld it onto another vehicle without a sunroof.

This is just to show that cutting shops are not strictly automobiles. This particular chop shop was a closed down movie theatre which they used to cut up tractor trailers. Since Detective Grinenko was down there, maybe he could comment on it.

Mr. GRINENKO. This was, as Sergeant Martin said, a movie theater in the heart of Brooklyn. We had 17 new trucks. Out of these 17 new trucks we were able to recover one engine. The purpose of cutting of trucks is primarily for the engine, transmission and drive train. After that, the rest of the vehicle is scrapped.

Here you have 17 trucks. The truck right there directly in the center was a 1978 Freightliner. It was one of three stolen from a New Jersey dealer.

Mr. SCHEUER. How much are they worth?

Mr. GRINENKO. That one in particular is worth over \$70,000. The other two are in the \$60,000's. The total value of the trucks in this particular operation is over \$580,000, the initial theft value.

The problem here is that most of the independents that lost their trucks here did not have insurance. They were not able to afford the insurance. Subsequently, they either went out of business or on unemployment.

Sergeant MARTIN. One of the problems with trucks that we have is that the numbering systems on the component parts do not necessarily match the VIN number in the truck itself. Many times an individual that requires a truck to be built for him will order a particular engine.

As an example, you can buy a Mack tractor with a Cummings diesel and a different name brand transmission, depending on the type of heavy duty work you have slated for that particular vehicle. So when you buy a truck it is not like buying an Oldsmobile off a production line.

You order the truck and then the truck is built to your specifications.

Mr. GILMAN. All of those numbers are known to the owner and are registered.

Sergeant MARTIN. The numbers are known to the owner, but unfortunately, depending on the manufacturer you are dealing with, Mack happens to be very, very good. They have all of their component parts cross-referenced at the factory to the original unit that that particular component was placed into.

But some of the other truck manufacturers do not have this ability to cross-reference these numbers. So it is very difficult for us when we stop a vehicle with a Cummings diesel in it. Let say we stop an old truck with a brand new engine. It is very difficult for us to immediately ascertain, number one, whether the component part is stolen and, number two, who in fact it belongs to.

Mr. GRINENKO. There were two trucks in this particular movie theater that were not cut up yet. Initially, they started stripping them but they were not cut up.

This one truck we managed to reassemble. This was a 1978 Freightliner, again, a very expensive model with a sleeper. The only thing that we were not able to recover from this particular truck was the transmission. Every other component part we had. Everything was cut, though, in such a fashion that it could be easily sold.

Now, what happens to these parts? We took a fleet of 11 trucks from one contractor. That fleet of 11 trucks was assembled with 26 stolen trucks. Every truck you see here had at least one stolen part, and in one instance, one truck entirely stolen, and in a few instances every component part was stolen, meaning dump body, engine cab. In one instance, tires we were able to identify as stolen.

Mr. GILMAN. Was this all from one company?

Mr. GRINENKO. This was all from one company, 26 stolen trucks to assemble 11 whole trucks.

Sergeant MARTIN. These are brand new vehicles that were taken from a dealership parking lot. We recovered them on the pier slated to be shipped out of the country. You can see they were slated for Beirut, but just about any South American country accepts vehicles. They were worth a tremendous amount of money outside of the United States, far more than they are worth within the Continental United States.

Mr. GILMAN. Have any identification marks been eradicated on those vehicles?

Sergeant MARTIN. No, sir. There is really no need to alter the vehicle to ship it out of the country.

Mr. SCHEUER. And Customs does not make a systematic check on vehicles to see if they are stolen?

Sergeant MARTIN. They do. Recently customs has become actively involved in inspecting these vehicles. In fact, the auto crime division has trained several of the customs officers in the confidential locations and that type of thing, but just from sheer volume they do not have the ability to inspect every vehicle. I have met with them. "What I believe should happen is that in order to ship a vehicle outside of the country, you should be required to bring that vehicle to the pier maybe 4 or 5 days in advance of shipment. This way it allows the customs people time to inspect the vehicle.

As it stands now, you can drive up 20 minutes before the ship is leaving and actually drive the vehicle right onto the ship.

Mr. GRINENKO. This is a Caterpillar, also slated for shipment. This was one of two stolen from the same contractor. This was the other one. It was already manifested. The number was slightly changed. This is the vehicle identification plate. It really was not a professional job. The only thing that was done to it, at the far right you see it is actually a number, that little number that is almost half the size of the rest of the numbers, it was just added on.

It was obviously a nonprofessional type of job and it was manifested, marked up, on its way to Maracaibo.

Sergeant MARTIN. This particular alteration on the VIN plate was not even necessary. No one would have picked up this vehicle. They just took an extra dye stamp and hit an extra number on the VIN just in case an inspector happened to run it in the computer. But it was highly unlikely that that would happen.

Just to give you an idea of how thorough the thieves are, these are all motor vehicle documents from various States. We were able to make several arrests on this. We executed a search warrant in a two-family house in Brooklyn and we recovered everything from counterfeit airline tickets to counterfeit Polish money to VIN plates which were blank, counterfeit VIN plates.

I do not know if you can make it out, but on the right there are some Porsche plates, Mercedes-Benz plates, Case heavy duty equipment plates. All of these plates, all that had to be done was to have the numbers stamped in the plates and put on a vehicle.

Mr. GRINENKO. We mentioned titles before. There you have a New Jersey title, a Connecticut title, a Florida title.

Sergeant MARTIN. That stack of titles, the green ones with the pink sitting on top of it, that particular title is a Connecticut title, I believe, and that stack represents 90 vehicles which can be insured in this State and have the insurance collected without ever having a vehicle meet the road.

Mr. GRINENKO. These are offset dyeplates to make the vehicle identification numbers for Mercedes and Case equipment. They even had full packages. If you wanted a new identity, they had birth certificates, licenses, whatever else you wanted.

Here is what we consider a full package, a stolen car. The VIN plate itself is an altered plate. This is the VIN plate, a counterfeit VIN plate, a counterfeit Federal sticker that normally appears on the door, a counterfeit Connecticut registration, a good Connecticut license plate that actually went to a 1962 Chevy.

Mr. LUKEN. Could we go back to the VIN plate? Now, that is the current state of the art for VIN plates, right?

Mr. GRINENKO. For a counterfeit. They are much better.

Mr. LUKEN. Is it a good counterfeit?

Mr. GRINENKO. That is a very poor counterfeit.

Mr. LUKEN. But it looks something like the original?

Sergeant MARTIN. Yes. It would get passed the average purchaser of a vehicle with no problem at all.

Mr. LUKEN. That is just a plate that screws on?

Sergeant MARTIN. Actually, you only see the front portion of it, Congressman. The padding of the dashboard goes over the rest of it, so you would only see the portion where the numbers sit.

Colonel PAGANO. It may not get past a good patrol officer. He would recognize it.

Mr. LUKEN. They could counterfeit the plate. If they are good counterfeiters, they can replace it and it can go undetected, right?

Mr. GRINENKO. Yes.

Mr. LUKEN. Thank you.

Mr. GRINENKO. Federal sticker, counterfeit registration, the good Connecticut plate, a counterfeit New York license and a social security card to back the license up and a board of elections card.

Mr. LUKEN. That is important.

Mr. GRINENKO. That is your full package.

Mr. LUKEN. Mr. Gilman.

Mr. GILMAN. Has there been a good interchange between the States and the FBI on auto theft?

Do you have a good interchange of information in the central computer?

Colonel PAGANO. There is an excellent relationship between our State and the FBI. You have the NCIC program which, essentially, gives you that centralized data base, but working with organizations like the New York City Police Department and the National Auto Theft Bureau, plays a very important role in bringing it altogether

from the insurance company view. The whole thing goes together in such a fashion as to maximize, if possible, those facilities that we do have.

Mr. GILMAN. Can the police officer out on the highway get a quick response if he suspects that the vehicle has been stolen out of a central computer bank?

Colonel PAGANO. In most instances, yes. In the instance of the vehicle that is altered, it depends upon his own observations, his own training, and the investigation that he takes for it, and obviously even with all of that full package as the slides portray, some officer somehow was able to detect the entire issue.

Mr. GILMAN. There is a national reporting system on all auto vehicles and that information is available to the officer out on the highway?

Colonel PAGANO. That is correct.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. LUKEN. Mr. Green?

Mr. GREEN. Under the bill the National Highway Traffic Safety Administration could only require numbering of additional parts if it found that it was cost effective to do so. Would you have any idea, in your judgment, as to what parts you think that would mean, or how many parts?

Colonel PAGANO. I think NTSA has a pretty good handle on this issue. I think what your bill does, H.R. 4178, kind of brings the law into the state of the art or in tandem with the state of the art. Right now, we are talking primarily about the noses, the engines and transmission, which are in every instance not numbered. But those parts which are clearly recognizable as being part of the theft problem.

Mr. GREEN. Because the National Highway Traffic Safety Administration, as you say, is already involved in this, we are not creating any new bureaucracy?

Colonel PAGANO. It is already there as a bureaucracy, for want of a better word, but I think that they have been active with the chiefs association, they have been active with the insurance industry.

I believe that in the scheme of government, NTSA has probably the best handle on what is going on in this area and probably, as a Federal agency, has been the most active.

Mr. GREEN. Just for the record—and I know we have to move on—I would like to be able to submit and include in the record a study on the cost-effectiveness issue which was done on the Senate side which I think might be useful.

Mr. SCHEUER. Without objection, it is so ordered. We will hold the record open for another 10 days or 2 weeks until you get the request in.

[The following information was received for the record:]

COST BENEFIT OF H.R. 4178 TO AMERICAN MOTORISTS

Cost:	Million per year
1. Additional parts numbering for estimated 10 million vehicles sold annually	\$50
2. Maximum estimated costs for effective antitheft device for estimated 10 million vehicles sold annually	360
Total	410

Benefit:	Per year
1. Savings in insurance payouts and overhead costs for unrecovered thefts	\$730,095,456
2. Savings in insurance payouts and overhead costs for amateur theft	158,220,000
3. Savings in out-of-pocket victim costs	100,000,000
Total	988,315,456
Net savings per year	578,315,456
Savings per \$1 of cost	2.41

Study prepared by the Senate Permanent Subcommittee on Investigations.

Mr. LUKEN. Mr. Chairman, unless you have something, I think that concludes this panel.

Ms. DURBIN. As you recall, our witness John Doe indicated he had learned his techniques for illegally entering a car from a locksmith. He did not believe that the locking system provision would be particularly helpful in deterring auto theft.

Could you comment on that?

Colonel PAGANO. It will deter a good number of thieves, because obviously from the statistics that we are quoting here today, the bulk of the thievery is still being carried on by people who are other than the professional.

I think it will deter them.

Frank?

Sergeant MARTIN. I think we have to realize that locks were made to keep honest people honest. The first person to buy a new lock that hits the market are the thieves, the idea being to defeat the lock.

I do not really believe that the whole answer is in improving the locking system or the numbering system or anything else. The idea is that we have to somehow take away the tremendous profits in auto theft in order to deter the thief.

It is a big business. These people are making hundreds of thousands of dollars each and every year. They look upon new legislation, new locking systems, new numbering systems, simply as annoying overhead costs which they have to overcome to continue on with their tremendously profitable business.

Along those lines, before you dismiss us, I would just like to make a few comments on the bill itself. I would like to preface my comments by saying that I am not here to, in any way, disparage your efforts or to knock the bill itself.

Mr. SCHEUER. Sergeant, let me make it clear. We are here to get your comments, to get your views, to get your suggestions, to get your criticism. The purpose of this hearing is to give us the knowledge that will improve our legislative capability and improve this product, so we want you to be completely forthcoming with us.

Any suggestions or criticisms that you may have, please give them. That is the whole purpose of this exercise.

Sergeant MARTIN. Congressman, I am not in the business of writing laws.

Mr. SCHEUER. We understand that.

Sergeant MARTIN. I am in the business of trying to enforce them after they come down through the channels.

Mr. SCHEUER. So, from your viewpoint, tell us how we can improve this legislation or make it work better.

Sergeant MARTIN. There are three areas which, when I looked through this bill, sort of struck me. The first and foremost is that we have to somehow put some presumptions in this law with reference to dealers.

On page 11, in one paragraph, I see two outs for every dealer in motor vehicle parts written right into this legislation and that being the comment. "With intent to sell" and the word "knowingly."

Now, I think if a police department or law enforcement officer enters into an auto parts dealer and finds an altered or stolen part in that dealership, it should be presumed that the part, that the owner of that dealership had intent to sell that part.

Mr. SCHEUER. You think we should require them to make an inspection? I do not know if you can impute knowledge unless you require him to make an inspection. We still have a Constitution in this country.

Sergeant MARTIN. If a parts dealer takes in a vehicle or a component part that has a number, he is required to enter that part number in his book, if he is a licensed dealer—and he has to look at the number. He is forced to by existing legislation.

I do not see where that is putting any undue responsibility on the part of the dealer.

Second, knowledge—I mean, if a man is dealing in auto parts, he should have knowledge when a number has been altered or wiped or eradicated or ground off. If it is obvious to the untrained eye that a number has been removed from an engine block, it should be obvious to a dealer. But if I go into court with this chap, the first thing he is going to say is, "I did not intend to sell that part. That was for my wife's car." And the second thing he is going to say is, "I did not know it was altered."

So there are two outs in that one paragraph which I think can be overcome with a slight change in wording.

Mr. SCHEUER. The word "intent" and the word "knowingly"?

Sergeant MARTIN. Exactly.

Mr. SCHEUER. OK.

Sergeant MARTIN. The other thing is under the forfeiture proceedings.

Mr. LUKEN. Mr. Chairman, I think that is an interpretation. I think the lawyers and the courts are going to insist that we keep that in there, but I do not think that is a subject to get into.

Mr. SCHEUER. Right now we are taking testimony, OK. We are ultimately going to be marking up the bill.

Sergeant MARTIN. The second thing is the portion of the bill which refers to forfeiture of the altered component parts or stolen parts. I think it is good, but we have to realize that the parts were never owned by the individual they were taking them from anyway. If he had them stolen for him or he got them in some illegal way, he did not pay for them. So by taking away these parts from him, we are not really hurting the dealer himself.

I believe that the equipment that is being used to cut these vehicles should be subject to forfeiture, the flatbed trucks. Any tow truck that is used for transportation of stolen or altered numbers should be the subject of forfeiture proceedings.

Mr. SCHEUER. Just the way you can forfeit a boat or airplane in which drugs are being transported?

Sergeant MARTIN. I think the only way you are going to deter auto theft is to take away the profits. Now, to remove stolen parts from an individual who did not legally possess them in the first place, you are not really hurting him because he can go out and replace them just like he did the original set. But if you take away \$100,000 worth of equipment that he has to use for his day-to-day business, he is going to think twice about being caught with altered or stolen equipment. That is all I had.

Mr. SCHEUER. Congressman Gilman?

Mr. GILMAN. Sergeant, in the city of New York, what do you estimate the loss of automobiles by theft to be last year?

Sergeant MARTIN. It was in the high 80,000's. I believe it was 87,000-some-odd vehicles.

Mr. GILMAN. 87,000 vehicles?

Sergeant MARTIN. In New York City, yes.

Mr. GILMAN. How many people are in your unit?

Sergeant MARTIN. Presently we have 53.

Mr. GILMAN. Do you have sufficient personnel to do an adequate job with that number of auto thefts?

Sergeant MARTIN. Well, that is kind of a loaded question and I am really not in a position to comment on the police department's allocation of their available manpower. I will say that traditionally and historically auto crime has been a property crime and it is sort of low on the ladder of priorities because it is "a victimless crime" although I would like to debate that with you if we had the time. But it is considered a victimless crime.

The victim is generally reimbursed by his insurance company, if not totally, almost totally, and it is really a property crime that is not taken very seriously.

Mr. GILMAN. The victim is really the other policyholders and the taxpayer, I guess?

Sergeant MARTIN. Exactly.

Mr. GILMAN. Thank you.

Mr. SCHEUER [presiding]. All right. Thank you very much. We appreciate your very thoughtful testimony.

Next we will hear from Mr. Albert Lewis, superintendent of insurance, the State of New York.

Mr. Lewis, we are happy to have you. We apologize for the mixup in scheduling. Your testimony will be printed in full [see p. 82] and if you would like to chat with us informally and hit the high spots, that would be fine.

STATEMENT OF ALBERT B. LEWIS, SUPERINTENDENT OF INSURANCE, STATE OF NEW YORK

Mr. LEWIS. Let me speak about the impact in the city of New York concerning theft. I will give some comparisons.

The national average premium of auto theft is \$29 to \$31. In New York it is \$277. Some say it is over \$200 and some of my people say \$300, but \$277 is the average cost of auto theft premium.

Mr. LUKEN. Is that the annual premium just for theft?

Mr. LEWIS. Yes. If in addition you have collision insurance it represents 30 cents of every dollar of your automobile premium. In other

words, you have liability, no fault, collision, and comprehensive; 30 percent of it is fire and theft and if you do not have the collision, 40 percent or more is fire and theft. Auto theft is moving out of the city and moving out into the rural and suburban areas, according to the latest statistics.

I want to say that New York has done everything that we could conceive, with the gentleman who was speaking here from the New York City Auto Theft Bureau assisting Senator Caemmerer and my department and DMV to try to approach some of our problems.

We have some different but similar statistics. We estimate that 60 percent of the vehicles stolen are stolen for parts and some 20 or more percent are stolen by people who steal their own cars for the insurance opportunity.

Mr. SCHEUER. What happens to the other 20 percent?

Mr. LEWIS. We do not have a breakdown of these statistics. Some of them we believe are phantom cars, cars that never existed and are insured, and the rest of them are those that go overseas, that either they are stolen before they go overseas or they are shipped overseas and then reported stolen.

Just recently I am sure you have seen, they found 104 vehicles on the dockside. They were not found by part of a normal routine examination but a Customs official just became suspicious and reported it to the FBI. This is a situation that does not only occur in New York City. It has been a fact in San Francisco also. In fact, the statistics in port of entry and port of export are higher for auto theft, especially the expensive cars.

Mr. SCHEUER. What made him suspicious?

Mr. LEWIS. I just read it from the newspaper article. He says, "U.S. Customs agent alerted the FBI after he became suspicious of cars awaiting transit to the ship," McDonald said. This happened 3 weeks or 1 month ago.

Mr. SCHEUER. It seems to me that these cars being weighed to be shipped abroad should be routinely and systematically inspected.

Mr. LEWIS. It is not enough, Congressman. If you inspect the documents and that car is not stolen, how do we know that that will not become a crime statistic. It would be foolish to have a car shipped abroad that is stolen. Why not ship it abroad not stolen and then report it stolen? There are no documentations to show it left the United States.

The question that I have on this bill what if it is exported and then reported stolen? Are those statistics going to be utilized? Are we going to utilize those statistics in a national computer?

New York State has moved that way. When I speak to you about phantom cars, those are cars that were insured not in just one company but were insured in several companies. The car never existed. Someone bought a wreck somewhere, bought indicia of title, and insured the car five, six, seven or eight times. Companies did not use a national computer to indicate that a car had been stolen.

We have changed the law in New York. We have selected NATB, the National Auto Theft Bureau, as a statistical reporting area or computer and we require that no car theft to be paid by insurance companies shall be paid unless they check with NATB, so we stopped that duplication.

We would expect that this legislation would require, and I am not selling NATB. I think it is nonprofit, but I am saying we would have to use NATB. So when the car is exported anyone knowing the United States, insuring that car that something is wrong, that car would have to be imported and checked accordingly.

I concur with what the Sergeant said and what John Doe said that no matter how many devices you are going to prepare you are going to find someone who is going to break it. I would ask, if you would, that General Motors had a summary of automotive theft and how it occurred. It was done on March 1, 1978. It was very interesting to see how the thefts occur even with a burglar alarm and all. The thefts occurred, and I give it to your committee and make it available.

What I want to say about why I think the bill has merit, especially in the theft for component crash parts, since we expect that the insurance industry would be the final stop in this whole proceeding. After all, the end result of this is an insurance company paying for these parts. That is where the money comes in and that would be the bottom line.

We would expect that, when this legislation is passed, insurance companies throughout the United States would not pay a claim, would not pay a claim for any part replacement, unless the part identification number is put into a schedule, the schedule is then reported to a central statistical computer agency that would indicate that that part is a part that is in the commerce as a properly manufactured replacement part: That part so serial numbered once used in a vehicle as a replacement would not be able to be used again.

So no matter how many times they changed the serial number, that serial number would have to have a logical source from whence it came and it would have to come from a recognized commercial situation.

New York changed the law. John Doe spoke about the fact that you could take a car, change the VIN number and get it reissued in New York State. Effective April 1, 1980, totaled cars, I mean totaled with the parenthesis, will not have the VIN number replaced, will not be able to be registered unless the DMV makes a full inspection at a cost of \$25 and they must check to see that the car didn't become a miraculous automobile but, in fact, was the car that started out and had been substantially changed.

Again, when you speak about the phantom car, this is how it arises, you pick up a wrecked or totaled car. The car has ceased to exist. You get the indicia of title. You come and insure it in New York. Insurance companies were not doing what they were supposed to do. In fact, insurance companies were somehow collusive in the situation because that car that was totaled by an insurance carrier and then their selling that title into the marketplace. It is interesting to see that the amount they sold that title for had nothing to do with the lump of junk that was left over. It was determined by the resale value of that car on what I would consider to be the illegal market.

So, if a Jag was wrecked, that Jag would be a bundle of steel that might be worth \$50 if they sold it for junk, yet they would sell that for \$1,000, just the indicia of title and somebody's stolen Jag would have a miraculous conversion into the VIN numbers of the junked vehicle.

That was a situation that we saw in New York. Again, we can't

reach out of New York State but we have required that New York insurance companies cannot sell their title papers or wrecked vehicles.

Mr. SCHEUER. What was their reaction to that legislation?

Mr. LEWIS. They have accepted it very well. We enforce it. Unfortunately, what they do in New York is great. What they might do in another State, I do not know.

Mr. SCHEUER. This points up to the national legislation, I take it.

Mr. LEWIS. Absolutely.

Mr. LUKEN. Do you mean uniformity?

Mr. LEWIS. I don't want to get into uniformity because I do not believe in uniformity.

Mr. LUKEN. What did you mean in answer to chairman's question?

Mr. LEWIS. I mean that if you are going to build a boat and you are going to build a hull and the hull is going to have to be watertight, you cannot leave a hole in it. I am saying not so much for uniformity, but for a situation that each State and the insurance companies operating in those States should do everything they can to protect another State or another insurance company from this type of situation.

I do not know if it is uniformity because I have testified before the Congress and said that sometimes uniformity insurance is not necessarily desirable because each State might have a particular problem that they recognize.

In this case, a wrecked vehicle that is totalled should not be allowed to come back to the marketplace unless there be some examination by someone who is reputable and objective, hopefully a governmental unit that will approve the car as being the car that was repaired. Otherwise, what has been happening in New York State and still happening, I would imagine, you get a wrecked vehicle. They get the title, they come in, they insure it, somehow they get a safety inspection from New York State and they insure it with five or six or seven companies.

Now, someone says "How many phantom cars are there?" It is hard to tell. We do not know. We know that we put in a photo inspection program where the car is examined, it is photographed. I do not think that is going to stop these thieves to that extent, but at least some of the honest thieves we have attempted to stop.

Mr. SCHEUER. The honest thief is the thief who can measure risks and benefits? If it becomes too expensive and too risky he gets out of that business?

Mr. LEWIS. I think if you asked this man who was here who sounded very intelligent, there is very little risk. I did some criminal defendant's work and an individual who was a schoolteacher told me that this was less tension than teaching because he picked up the car, there was no confrontation, there was never any physical violence.

Mr. SCHEUER. It is less hassling than the blackboard jungle?

Mr. LEWIS. Yes. I am just saying that it is not a theft, you do not have to carry a weapon. It is very simple.

Again, I am just saying that in New York we passed legislation effective April 1, 1980. We require that situation. We have increased the crime to an E felony.

Mr. SCHEUER. To a what?

Mr. LEWIS. An E felony for a fraudulent auto claim.

Mr. SCHEUER. What does that mean, an "E felony," for the benefit of my colleagues?

Mr. LEWIS. I think it is a year and a day to 3 years. It is worse than having your library card taken away. You have to serve time. I think it is a year to three. We have also given an opportunity to insurance companies to have immunity when they know that there is somebody that is pulling these shenanigans again and again.

The fact of the matter is, in the attempt to enforce this crime, I think you have the statistics, only 15 percent of the perpetrators are, in fact, apprehended.

Maybe the bottom line to what I want to say is that I believe, I tell you now, that the State has done everything they possibly could. There is no way I could comprehend, other than to be demagogic and say well, we need more police or that type of situation.

I do not think the State can move in any way now to inhibit auto crime. I think that if we got this legislation, if I understand that we would be using the export documents to trigger an NATB-type computer and we, the insurance industry, would move to require that no insurance claim is made unless that part that is replaced has an identification number that is referable to a commercial part. I believe that we can reduce insurance rates in New York by 18 percent and that, I think, is a very, very strong situation.

Mr. GREEN. How much per year is that?

Mr. LEWIS. You take your policy, Congressman, and if you do not have collision, it is more. What I am saying is that I believe that 60 percent of the claims could be arrested or prevented. This man said \$225. When I was representing criminals, they would pay a kid \$75 to \$125 for a car, and you must understand that there is another part of the crash part thing and that is the CPI index, which has nothing to do with the crash part index.

And I hope that if you have an opportunity, if you wish, you can see State Farm has done a check.

Mr. SCHEUER. CPI is what?

Mr. LEWIS. The Consumer Price Index.

Mr. SCHEUER. The cost of car parts is going up far higher than the Consumer Price Index, far faster?

Mr. LEWIS. I mean by six or seven times. When sales go down, crash parts go up.

Mr. SCHEUER. Why is that?

Mr. LEWIS. You had better ask the manufacturers. I really do not know, because you cannot buy it anywhere else.

It is interesting when I say that batteries, wheels, tires, they follow the CPI because you can buy them in a competitive market. Crash parts, a \$300 hood for a Cadillac is one single piece of maybe 7 or eight pounds of metal stamped out. When GM was making refrigerators, the refrigerators sold for less than the GM hood part.

Part of it, I do not know, because I have never been involved in their cost accounting. I do not know what their problem is, but I am just saying that that is where the pressure is and the impetus.

As the part goes up, they go out and steal.

Now, you do not need a body and fender shop to put up a sign that says, "Fellow, steal today GM." They have a teletype and I am speak-

ing about the normal, properly commercial operation. A teletype comes out, saying, "We need the following we need these and these are in short supply."

Any self-respecting auto thief will get that teletype and say, "This is what is hot and this is what we need."

Mr. SCHEUER. Where do they get it from?

Mr. LEWIS. Every auto part dealer who needs parts puts a request in, goes on the teletype and presto, would you believe it, the part comes in. I think if you were to follow the statistics I have, suddenly there is a rash of these cars.

About 1 or 2 years ago Chrysler was not making that many replacement parts for the new cars and so they were in tight supply. Well, there were more new Chrysler cars being picked up.

Mr. SCHEUER. Can you tell us how the auto insurance discount would work for an antitheft device?

Mr. LEWIS. I cannot tell you because we are not working on that in our legislation that passed April 1, 1980. We are trying to find out what we consider to be a secure device and we are trying to get the statistics.

How, and the way we work it, at this time we are still coming up with some ideas. We are considering burglar alarms, types of burglar alarms, factory-installed, nonfactory-installed. These statistics indicate to me that sometimes some type of burglar alarm protects, depending on the thief.

I mean, we have seen that if you have a burglar alarm that is hooked up to your battery, they spike your battery. When the acid comes out of the battery they come back and then take the car or else they will come with tow trucks and the tow truck picks it up and away you go.

New York City requires tow trucks to be licensed with a number. It is surprising how many tow trucks, when you are interesting in watching, have no number. I just wonder who and where they are taking the cars they have on them.

We are working on that. We have a mandate from the legislature to come up with something and when I do, I will submit it to you.

Mr. SCHEUER. Can the individual States, in your opinion, move effectively in requiring the manufacturers to upgrade their security features on the cars?

Mr. LEWIS. You could, but it is like throwing pebbles at an elephant. We have had some ideas. I think Senator Pisani in the New York State Legislature has put in legislation that New York State will not allow you to sell a car in their State unless the car has the following factors.

I recommended to the Governor at one time that maybe New York State should not buy their vehicles unless they have that number, but I think it is really in the province of the Congress to react to that, and no State can do it.

Mr. SCHEUER. What were the results of the temporary program requiring vehicle identification for cars scheduled for export?

Mr. LEWIS. I still have not received that report.

Mr. SCHEUER. That report from whom?

Mr. LEWIS. As I understand, the original legislation, they were supposed to report in 1979.

Mr. SCHEUER. Is that the New York State Legislature you are talking about?

Mr. LEWIS. I understand that the Federal Government went ahead and, by regulation, had the Customs do something, if that is the question you are asking. I do not know what that is. I imagine NATB would be able to give you some information on that. It was Federal.

Incidentally, just for the city of New York, we have gotten the cooperation of the Mayor. We had a situation of people stealing cars, not in the city of New York, leaving them in the city of New York, because you can take your license plate off to wash it and by the time you come back the next day there is no car if you park it in certain areas of New York, near incinerators and other places.

What we have done in New York now, we have gotten New York City and the insurance companies to agree on a pickup period. When a stolen car is recovered in the city of New York, the car is immediately picked up and taken to a safe place. That was not done and we found out it had an impact not only on the city of New York but, for the most part, on the surrounding counties.

[Testimony resumes on p. 95.]

[Mr. Lewis' prepared statement follows:]

TESTIMONY OF ALBERT B. LEWIS, N.Y.S. SUPERINTENDENT OF INSURANCE
BEFORE THE HOUSE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE
AND THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
AT 26 FEDERAL PLAZA
JUNE 2, 1980

CHAIRMAN YATRONE, CONGRESSMAN SCHEUER, AND MEMBERS OF
THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE AND THE COMMITTEE
ON INTERSTATE AND FOREIGN COMMERCE.

I THANK YOU FOR THE OPPORTUNITY TO TESTIFY AT THIS JOINT
HEARING TODAY. AUTO THEFT IS A MAJOR CRIME OPERATED BY ORGANIZED
CRIMINAL RINGS AND PROBABLY MAKES MORE MONEY THAN AUTO MANUFACTURERS
AND DEALERS OPERATING IN THE LEGITIMATE MARKETPLACE. IT IS ESTIMATED
THAT THE COST FOR THE YEAR 1978 OF STOLEN VEHICLES IS APPROXIMATELY
\$4 BILLION. AT ONE TIME AUTO THEFT WAS A SIGNIFICANT NORTHEAST
AND URBAN PROBLEM. RECENT STATISTICS, HOWEVER, INDICATE THAT AUTO
THEFT KNOWS NO GEOGRAPHIC BOUNDARY AND IT IS IMPACTING EVERY STATE
IN THE UNION.

IN 1978, 991,611 AUTO THEFTS WERE REPORTED, AN INCREASE
OF 2.4% OVER 1977. OF THESE THEFTS 24% OCCURRED IN THE SOUTHERN

AREA, AN INCREASE OF 10% OVER 1977, WESTERN AREA 23%, AN INCREASE
OF 7%, WHILE THE NORTHEAST SUSTAINED 30%, A DECREASE OF 3% AND THE
NORTH CENTRAL 23%, A DECREASE OF 1%. THESE STATISTICS, COMPILED
IN THE FBI'S UNIFORM CRIMINAL REPORT FOR 1978 ARE CLEARLY
SUBSTANTIATION OF THE MAGNITUDE OF THESE OCCURRENCES AND THEIR
WIDESPREAD GEOGRAPHIC DISTRIBUTION.

IN ADDITION TO THESE GEOGRAPHIC STATISTICS, THE AUTO THEFTS
IN RURAL AND SUBURBAN AREAS ARE ON THE INCREASE. BETWEEN 1977 AND
1978 URBAN (CITIES OVER 250,000) THEFTS DECREASED BY 3% WHILE
SUBURBAN INCREASED BY 4% AND RURAL BY 7%.

IN NEW YORK STATE MOTORISTS PAY 220% MORE IN AUTO
COMPREHENSIVE PREMIUMS THAN THE NATIONAL AVERAGE. NEW YORK STILL
SUSTAINS OVER 10% OF ALL NATIONAL AUTO THEFTS.

AUTO THEFT INSURANCE NATIONALLY AVERAGES \$29 PER YEAR AND
IN NEW YORK CITY IT AVERAGES \$277.

OF THE AVERAGE AUTO POLICY PREMIUM WHICH INCLUDES
COLLISION, COMPREHENSIVE AND LIABILITY, 30% OF SAME REPRESENTS THE
COMPREHENSIVE (FIRE AND THEFT) PORTION OF THE CHARGE. IN AN AUTO
POLICY WITHOUT COLLISION, IT REPRESENTS 43% OF THE PREMIUM.

CONTINUED

1 OF 6

PART OF THE PROBLEM IN THE COST OF THEFT INSURANCE IS THE NATIONAL PRICING OF CRASH PARTS. THESE ITEMS ARE MANUFACTURED BY AND ARE PRICED ENTIRELY UNDER THE CONTROL OF THE AUTO MANUFACTURERS. CRASH PARTS, WHICH INCLUDE FRONT END, DOORS, AND REAR TRUNK ASSEMBLY HAVE INCREASED FROM 1974 TO 1976 BY 74%. DURING THE SAME TIME THE CONSUMER PRICE INDEX ROSE BY ONLY 18.6%. THE COST FOR THESE CRASH PARTS CONTINUED TO ESCALATE AND FROM JANUARY 1976 TO JANUARY 1980 IT INCREASED BY 48.1 PERCENT. THE HIGH PRICE OF THESE CRASH PARTS IS THE REAL IMPETUS TO THE LARGEST PERCENTAGE OF AUTO THEFTS. IT GUARANTEES PROFITS TO THE AUTO THIEVES WHO STEAL FOR THESE PARTS.

AUTO THEFT IN NEW YORK HAS BEEN ESTIMATED TO RESULT FROM THE FOLLOWING ELEMENTS:

20% OF THE AUTOS ARE STOLEN BY THEIR OWNERS FOR THE INSURANCE,
 55% ARE STOLEN FOR THE STRIPPING OF CRASH PARTS,
 THE REMAINDER WOULD BE AUTOS STOLEN FOR SHIPMENT OVERSEAS, JOY RIDING, PHANTOM AUTOS AND FOR USE IN ANOTHER CRIME.

EVERY STATE OWES TO ITS CITIZENS ITS FULL AND COMPLETE EFFORT TO FIGHT THIS TYPE OF CRIME AND PROTECT THE CONSUMERS WHO PAY THE HIGH PRICE OF INSURANCE PREMIUMS. GOVERNOR HUGH CAREY AND THE LEGISLATURE IN NEW YORK STATE HAVE ACTED IN THOSE AREAS WHERE THEY COULD EFFECTIVELY FIGHT AUTO CRIMES. THEIR RESPONSE WILL HELP PREVENT SOME OF THE CAUSES OF THE ESCALATION OF LOSSES AND THE ESCALATION OF PREMIUMS. THESE LEGISLATIVE RESPONSES ADDRESSED THE CAUSES OF AUTO THEFT AS FOLLOWS:

TO PREVENT THE THEFT OF CARS BY INSURED, NEW YORK HAS INITIATED A MANDATED PHOTO INSPECTION PROGRAM TO INDICATE PRIOR DAMAGE AND TO MITIGATE AGAINST A PROFIT INCENTIVE TO THE INSURED TO GET RID OF A DAMAGED OR WORN OUT CAR FOR AN INSURANCE CLAIM.

NEW YORK HAS NOT BEEN ABLE TO MEASURE AUTO THEFT STATISTICS WHICH INCLUDE PHANTOM AUTOS OR THOSE THAT DID NOT PHYSICALLY EXIST PRIOR TO THEIR BEING INSURED. THIS SITUATION COMMENCES WHEN A CAR HAS BEEN DESTROYED IN AN ACCIDENT OR HAS BEEN TOTALLY DESTROYED BY FIRE OR THEFT

AND THE INSURANCE COMPANY PAYS THE LOSS AND TAKES POSSESSION OF THE WRECK AND INDICIA OF OWNERSHIP. THE INDICIA OF OWNERSHIP TO THIS CAR IS SOLD BY THE INSURANCE COMPANY. THE PURCHASER THEN INSURES THE WRECK AS A PERFECT AUTO WITH SEVERAL INSURANCE COMPANIES. IT IS THEN REPORTED STOLEN. NEW YORK STATE'S PHOTO INSPECTION PROGRAM IS USED TO PREVENT THIS FRAUD. THIS INSPECTION WILL PROVE THAT AN AUTO EXISTS AND IS IN GOOD CONDITION.

WE HAVE ALSO HAD THE COOPERATION OF THE MAYOR AND THE CITY COUNCIL OF NEW YORK CITY IN LEGISLATION THAT PROVIDES IMMEDIATE PICK UP OF LOCATED VEHICLES, TO OBTAIN MAXIMUM RECOVERY OF VALUE AND THUS PREVENT THE STRIPPING AND VANDALIZING OF AUTOS ON THE STREETS. IN MANY CASES THESE AUTOS REPRESENT VEHICLES STOLEN BY THEIR OWNERS AND WHEN THE POLICE NOTIFY THE OWNERS OF THEIR RECOVERY, THE OWNER DOESN'T ACT OR INFORM THE INSURANCE COMPANY.

THE NEW YORK STATE AUTO THEFT REFORM ACT OF 1979, EFFECTIVE APRIL 1, 1980, WAS A COMPREHENSIVE BILL DEVELOPED OVER THE COURSE OF MY ADMINISTRATION AT GOVERNOR CAREY'S

DIRECTION AND IN COOPERATION WITH SENATOR JOHN CAEMMERER, TO DEAL EXCLUSIVELY WITH AUTO THEFT IN THE STATE.

THE ACT INCLUDED A NUMBER OF PROVISIONS AFFECTING THE INSURANCE LAWS AS WELL AS VEHICLE AND TRAFFIC LAWS OF THE STATE.

(A) IT ESTABLISHED A CENTRAL ORGANIZATION, THE NATB, TO ACT AS A CLEARING HOUSE FOR INSURANCE COMPANIES WITH RESPECT TO INFORMATION ON AUTO THEFTS AND RECOVERIES. PRIOR TO THE IMPLEMENTATION OF THIS ACT MANY OF THOSE INSURERS WHO WERE ALREADY MEMBERS OF THE NATB FAILED TO COMPLY WITH NATB'S REPORTING AND VERIFICATION REQUIREMENTS. THE REGULATION DESIGNATING NATB ALSO REQUIRES INSURERS TO REPORT ALL TOTAL LOSSES TO THEM AND TO VERIFY THEFT AND FIRE LOSSES PRIOR TO PAYMENT AND, WITHIN SPECIFIED TIME FRAMES. IF ALL INSURERS COOPERATED NATIONWIDE IN SUCH A PROGRAM, "PHANTOM" CAR LOSSES AND DUPLICATE CLAIM PAYMENTS WOULD BE VIRTUALLY ELIMINATED.

(B) THE ACT PROVIDED FOR INSURANCE RATE MODIFICATION COMMENCING AUGUST 1, 1980, AS AN INCENTIVE TO USE ANTI-THEFT

DEVICES.

(C) THE ACT RAISED THE CRIME OF A FALSE INSURANCE CLAIM OR FALSE WRITTEN STATEMENT ALLEGING A CAR THEFT FROM A MISDEMEANOR TO AN "E" FELONY.

(D) INSURANCE COMPANY ACTIVITIES IN THIS AREA ARE CONTROLLED BY REQUIRING INSURER COMPLIANCE WITH REQUIREMENTS OF THE INSURANCE LAW AND THE VEHICLE AND TRAFFIC LAW IN DISPOSING OF SALVAGE VEHICLES. IT SPECIFICALLY REQUIRED THAT ALL REGISTRATIONS OF TOTALLED VEHICLES BE VOIDED AND THAT SUCH VEHICLES NOT BE REREGISTERED WITHOUT DEPARTMENT OF MOTOR VEHICLE INSPECTION.

(E) THE DEPARTMENT OF MOTOR VEHICLES IS REQUIRED TO INSPECT TOTALLED, JUNKED OR SALVAGED VEHICLES FOR IDENTIFICATION PURPOSES TO ASCERTAIN THAT IT IS THE ORIGINAL REPAIRED AUTO BEFORE THEY MAY BE REGISTERED FOR USE ON THE ROAD. SUCH RENUMBERING MUST NOW BE REPORTED TO NATB.

(F) THE BILL ALSO REGULATED THE ACTIVITIES OF PEOPLE ENGAGED IN THE TRANSFER, SALE OR DISPOSAL OF SALVAGE VEHICLES AND PARTS. VEHICLE DISMANTLERS, SALVAGE POOLS, MOBILE CAR

CRUSHERS, ITINERANT VEHICLE COLLECTORS, VEHICLE REBUILDERS, SCRAP PROCESSORS, SCRAP COLLECTORS, REPAIR SHOPS AND DEALERS ARE SUBJECT TO REGULATION, REGISTRATION OR CERTIFICATION AND RECORD KEEPING PROVISIONS OF THE LAW.

(G) A MOTOR VEHICLE THEFT PREVENTION PROGRAM WAS ESTABLISHED IN THE DEPARTMENT OF MOTOR VEHICLES TO PROVIDE FOR INVESTIGATIONS OF POTENTIAL SOURCES FOR DISPOSING OF STOLEN VEHICLES, AND FOR THEIR COOPERATION WITH LAW ENFORCEMENT OFFICIALS. THE COMMISSIONER OF MOTOR VEHICLES MUST SUBMIT A REPORT TO THE GOVERNOR AND LEGISLATURE BY JANUARY 1, 1982, REPORTING ON THE OPERATION OF THIS THEFT PREVENTION PROGRAM.

THE MEASURES I HAVE DISCUSSED HAVE BEEN AND WILL BE PARTIALLY SUCCESSFUL. LOSS RATIOS FOR PHYSICAL DAMAGE INSURANCE HAVE DECLINED FROM 96.5% IN 1976, TO 71.2% IN 1977, 65.3% IN 1978, AND 64.6% IN THE FIRST THREE QUARTERS OF 1979.

THE THEFTS, HOWEVER, ARE CONTINUING AT TOO HIGH A LEVEL AND THE COST IS AN UNCONSCIONABLE BURDEN ON THE PUBLIC.

ALTHOUGH NEW YORK STATE'S APPROACH HAS HAD SOME EFFECT, IT DOES NOT AND CANNOT ATTACK AUTO THEFT FOR PARTS, NOR THE LOSS THAT OCCURS AS A RESULT OF VEHICLES BEING STOLEN AND SHIPPED ABROAD, OR VEHICLES BEING INSURED BY THE EXPORTER, SHIPPED ABROAD AND THEN BEING REPORTED STOLEN. ONLY A FEDERAL RESPONSE BY AN ENACTMENT OF LEGISLATION ENCOMPASSED IN H.R. 4178 COULD ATTACK THIS PROBLEM.

AN INDIVIDUAL STATE CANNOT CALL UPON AUTO MANUFACTURERS TO IMPROVE THE PHYSICAL SECURITY FEATURES OF THE CARS AND PARTS THEY PRODUCE, NOR TO UNILATERALLY IMPROVE THE VIN SYSTEMS FOR VEHICLES AND THEIR PARTS. NO STATE CAN IMPOSE CRIMINAL PENALTIES FOR PEOPLE TRAFFICKING IN STOLEN CARS AND PARTS BEYOND THEIR OWN BORDERS, DESPITE THE FACT THAT THE STATE MAY BE SERIOUSLY AFFECTED BY SUCH TRAFFICKING. NEITHER STATES NOR LOCAL GOVERNMENTS CAN ACT TO CURTAIL THE EXPORTATION OF STOLEN VEHICLES, A SITUATION AFFLICTING EVERY AREA NEAR A PORT FACILITY. NEW YORK CAN ENACT LEGISLATION TO INHIBIT THE "CHOP SHOP" OPERATIONS; HOWEVER, WE KNOW THESE OPERATIONS CAN EASILY BE MOVED OUT OF REACH ACROSS THE STATE BORDERS. THESE TYPES OF LOSSES ACCOUNT FOR THE NATIONAL STATISTICS OF 41.7% OF

THE STOLEN CARS NOT BEING RECOVERED. IN ANALYZING THE STATISTICS OF AUTO THEFT RECOVERY THE REAL USE OF STOLEN VEHICLES IS INDICATED. IN 1960, 92% OF STOLEN AUTOS WERE RECOVERED, AS COMPARED TO 41.7% IN 1979. IN COMPARING EFFECTIVE ARREST AND PROSECUTION IN 1960, 26% OF THE CRIMES RESULTED IN ARREST, TODAY APPROXIMATELY 15% ARE ARRESTED.

ORGANIZED CRIME IS HEAVILY INVOLVED AND DOZENS OF MURDERS HAVE OCCURRED IN ILLINOIS AND NEW YORK.

H.R. 4178 WOULD EFFECTIVELY ATTACK THE GENERAL PROBLEM OF AUTO THEFT IN THE COUNTRY AND THE SPECIALIZED PROBLEM OF STOLEN VEHICLES BEING EXPORTED TO FOREIGN COUNTRIES.

IT IS AN OMNIBUS BILL "TO IMPROVE THE PHYSICAL SECURITY FEATURES OF THE MOTOR VEHICLE AND ITS PARTS, TO INCREASE THE CRIMINAL PENALTIES OF PERSONS TRAFFICKING IN STOLEN MOTOR VEHICLES AND PARTS, TO CURTAIL THE EXPORTATION OF STOLEN MOTOR VEHICLES" AND "TO STEM THE GROWING PROBLEM OF 'CHOP SHOPS'."

IT GIVES ADDITIONAL STRENGTH TO LAW ENFORCEMENT AGENCIES IN THEIR FIGHT AGAINST PROFESSIONAL INVOLVEMENT IN VEHICLE CRIME.

IT DECLARES THAT "THE COOPERATION AND ASSISTANCE OF THE AUTOMOBILE INSURANCE INDUSTRY IS NEEDED TO CURB THE GROWING PROBLEM OF INSURANCE FRAUD THROUGH IMPROVEMENTS IN THEIR PROCEDURES FOR THEIR CLAIM PROCESSES, DISPOSITION OF SALVAGED VEHICLES, AND ISSUANCE OF POLICIES". WE NEED INSURANCE COMPANIES THROUGHOUT THE COUNTRY TO STOP THE SALE OF TOTALLED VEHICLES IN FURTHERING AUTO THEFTS OR FRAUDULENT THEFT CLAIMS.

THE ACT OF 1979 HAS A PROVISION FOR EXAMINATION OF MOTOR VEHICLES AND THEIR DOCUMENTS BEFORE THEY ARE SHIPPED OUT OF THE COUNTRY. UNTIL LAST NOVEMBER A SHIPPER DID NOT HAVE TO PRODUCE SUCH PAPERWORK UNTIL AFTER SHIPMENT. FOR THE PAST SIX MONTHS, A TEMPORARY AMENDMENT TO THE FOREIGN TRADE STATISTICS REGULATIONS HAS REQUIRED THAT DOCUMENTATION BE SUBMITTED TO CUSTOMS 48 HOURS IN ADVANCE OF THE SHIPMENT OF A MOTOR VEHICLE. THE REGULATION EXPIRED MAY 31, 1979. IN APRIL, 1980 IN NEW YORK AND NEW JERSEY 104 STOLEN VEHICLES WERE SEIZED ON THE DOCK ON THEIR WAY TO KUWAIT. THIS FORTUITOUS EVENT OCCURRED ONLY BECAUSE A CUSTOMS AGENT BECAME SUSPICIOUS. IT WAS NOT A PART OF HIS DUTIES.

PERHAPS THE MOST IMPORTANT PROVISION IN THIS LEGISLATION IS POWER GIVEN TO THE SECRETARY OF TRANSPORTATION TO REQUIRE IDENTIFICATION OF MAJOR COMPONENT CRASH PARTS OF AN AUTO.

IF WE COULD SERIAL NUMBER FIVE MAJOR PARTS OF AN AUTO AND CONTROL THESE NUMBERS BY A COMPUTER BANK, THEN 50 TO 60% OF THE AUTO THEFTS WOULD BE STOPPED. IF ALL DOORS, TRUNK LIDS, HOODS AND FRONT ASSEMBLIES WERE SERIAL NUMBERED, THEN THE THEFT FOR PARTS WOULD LOSE THEIR FINANCIAL INCENTIVE. NO INTELLIGENT AND ENTERPRISING THIEF WOULD BE ABLE TO MAINTAIN A PROFITABLE OPERATION WITH THE MEAGER MONIES OBTAINED FROM THE SALE OF WHEELS AND TIRES, RADIOS AND BATTERIES.

AUTO RINGS OPERATE WITH CERTAIN COSTS AND THEY MUST SHOW SUBSTANTIAL PROFITS WITH MINIMUM EXPOSURE. THEY USUALLY HAVE A GROUP OF AUTO PROCURERS THAT ARE PAID ON A PER CAR STOLEN BASIS. THIS COST RANGES FROM \$75 TO \$125 PER CAR. THIS CAR IS BROUGHT TO A LOCATION THAT IS RENTED FOR A SHORT PERIOD OF TIME. THE CAR IS STRIPPED OF ITS WHEELS, DOORS, HOOD, TRUNK, FENDERS AND FRONT END IN LESS THAN AN HOUR.

IF THIS LEGISLATION BECOMES EFFECTIVE, THEN NO INSURANCE

COMPANY WOULD PAY A CLAIM FOR ANY REPAIR THAT INCLUDES REPLACEMENT OF A MAJOR AUTO PART UNLESS THE PART'S SERIAL NUMBER WAS CHECKED BY THE ADJUSTER, INCLUDED IN HIS REPORT, AND VERIFIED IN THE COMPUTER AS A PROPER SALEABLE PART. NO STOLEN PART OF A CAR COULD BE USED TO RECEIVE AN INSURANCE PAYMENT.

I BELIEVE THAT PASSAGE OF THIS LEGISLATION WILL PROVIDE A LOSS CURTAILMENT THAT COULD REDUCE BY 18% THE COST OF AUTO INSURANCE IN NEW YORK, A SIMILAR AMOUNT IN PORT CITIES AND A LESSER PERCENT IN THE REST OF THE COUNTRY.

I URGE YOU TO PASS THIS LEGISLATION AT ONCE. IT IS VITALLY NEEDED TO PROTECT THE DRIVING PUBLIC IN THE STATE OF NEW YORK, AS WELL AS THE COUNTRY.

Mr. SCHEUER. Mr. Green?

Mr. GREEN. I have no questions.

Mr. SCHEUER. Mr. Luken?

Mr. LUKEN. Would you elaborate a little bit on the VIN? You seem to be placing a good deal of credence on the effectiveness of legislation which would require a VIN. Would you elaborate a little on what the specifics are of that VIN, how many component parts we want it on, what kind of a marking it should be—is there a tamperproof VIN or something akin to a tamperproof VIN?

Mr. LEWIS. Congressman, I am really not able to answer that. I would imagine that anything on there would be tampered with and be removed.

Mr. LUKEN. Of course, if it is stamped into the metal, then there would be some evidence left that something was done, if nothing else, then there was an obliteration that occurred.

Mr. LEWIS. Congressman, if you are riding through Queens to go back to Washington, you might come across wrecks that are out on the street. You will always find that the most expensive part of that wreck is always left on the street, and that is the motor, the engine, the power train.

Mr. SCHEUER. That is because they do have a VIN?

Mr. LEWIS. That is because it has an identification number.

Mr. LUKEN. It has an engine number stamped into the block.

Mr. LEWIS. Right.

Mr. LUKEN. Not any seal put on the outside.

Mr. LEWIS. Right.

But, Congressman, it would be my understanding that if they are going to tamper and take the number off, somehow that number has to have a response. Just as we could run a VIN number to see about the motor vehicle, the motor vehicle has to be a validly nonstolen vehicle.

What I am afraid of in this thing is that this is motherhood legislation. I consider it motherhood legislation. I am just afraid that the automobile manufacturers that I have discussed this with when they have come to me about problems involving insurance are not interested in it. Then when they get to something called Senate-House conference, what starts out like a horse ends up looking like a camel.

I am just afraid as we make it more difficult, the cost of this thing starts to become an area where the manufactures would back off.

I would like to see it simple. I would hope that the computer would be able to show us a way in which the insurance companies—that is where they have to stop it—the insurance companies do not pay until they get a valid part from a valid source.

Then they are going to have to look for another business. They will probably steal more votes. Then we will be here again.

Mr. SCHEUER. Not before this subcommittee. Thank you very much for your very thoughtful testimony.

We will now hear from Mr. Paul Gilliland of the National Automobile Theft Bureau.

Mr. Gilliland, we are running a little bit late as you know. We appreciate your patience and tolerance.

Your entire prepared testimony will be printed in full in the record [see p. 99]. So I would suggest that you just talk to us informally, hitting the highlights of your testimony, and then I am sure we will have some questions for you.

STATEMENT OF PAUL W. GILLILAND, PRESIDENT, NATIONAL
AUTOMOBILE THEFT BUREAU

Mr. GILLILAND. Thank you, Mr. Chairman. I would like to elaborate, if I may, just on certain points of the bill.

Mr. LUKEN. Mr. Chairman, for the uninformed, what is your bureau?

Mr. GILLILAND. The National Automobile Theft Bureau has been in operation since 1912. We are supported by approximately 500 of the major property casualty insurance companies in the United States. We have a staff of special agents that work throughout the United States. They are former law enforcement officers, FBI agents, State police officers, city police officers who work with the duly constituted authorities in dealing with commercial motor vehicle theft rings and in dealings with fraud operations.

Before the NCIC was created many years ago, the NATB maintained, for law enforcement, the one national stolen car file maintained in the United States.

Mr. SCHEUER. The NCIC is?

Mr. GILLILAND. The National Crime Information Center, which is controlled by the Federal Bureau of Investigation now under their authority. We still maintain a large, computerized file of stolen vehicles which are reported to us by the insurance industry. It not only includes automobiles but trailers, motorcycles, trucks.

Mr. LUKEN. So the central reporting system is your principal—

Mr. GILLILAND. Yes, including heavy equipment and marine equipment generally, stolen, transportable, uniquely identifiable equipment.

Mr. LUKEN. That ties in with law enforcement?

Mr. GILLILAND. Yes, sir.

Mr. LUKEN. Thank you, Mr. Chairman.

Mr. GILLILAND. If I might, one point that I have heard many questions addressed to this morning deals with the identification of a motor vehicle. If I could give you just a brief bit of the history: Many years ago there was a serial number, referred to as a serial number, that was normally affixed to the doorpost of a motor vehicle. There was also a motor number called a motor number which actually was an engine number, which was different than the serial number.

As the years progressed, these numbers developed into the vehicle identification number. This was moved to the dash area, or the windshield area of the vehicle, because of some search and seizure problems in one respect dealing with the opening of the vehicle door in order to copy down the vehicle identification number. It is always applied to an area that is least probable to be damaged and hoped to be the most permanent part of the vehicle. That is why it appears in the dash area.

Engine numbers and transmission numbers are derivatives of that number. Sometimes the entire vehicle identification number is not repeated but derivatives of the VIN are repeated for the purpose of identifying engines and transmissions.

Just recently, the National Highway Traffic Safety Administration has issued a standard which should go into effect with the beginning of next year's model which will standardize that VIN to 17 positions and that is the vehicle identification number—VIN—that the witnesses are talking about.

Mr. SCHEUER. Is that susceptible to forgery?

Mr. GILLILAND. It is, to some extent, and I would like to explain this to you.

Mr. LUKEN. The old engine numbers were stamped into the block?

Mr. GILLILAND. They were and are die stamped. The numbers that appear on the dash now are, for the most part, embossed, are pushed from underneath on a metal plate. These plates can be replaced; however, there are other areas to look—

Mr. LUKEN. Look for what?

Mr. GILLILAND. Look for additional numbers.

Mr. LUKEN. Those are the component parts?

Mr. GILLILAND. Yes.

Now, the point that I think is very important here is that the proposed legislation proposes component identification and this would increase the number of unique identifiers that would appear on that vehicle.

Now, certainly they can be ground off, they can be obliterated. Sometimes they are skillfully replaced, or restamped.

We are successful, in many instances, in restoring these numbers by the use of a heat process or by an acid electrolytic process where they are actually restored and can be read.

But the one major point that should be recognized is that the more numbers that are on a vehicle, the better the probability there is to identify the vehicle.

The second item of importance is that many of these valuable parts that you heard discussed, or referred to this morning, are not identifiable once they leave the vehicle, once they are disassembled from the vehicle. The proposed component identification would identify those parts.

As I read the proposed legislation, if one of the parts that was mandated to be identified by the Secretary of Transportation was found in the possession of an individual with that number missing or obliterated, that in and of itself it would be a violation of the law.

Mr. SCHEUER. Without any proof of intent or knowledge?

Mr. GILLILAND. I think you would have to assume that once it became common knowledge that these parts are identified and once everybody was notified that there should be an identification number there, I think that the courts then probably would accept the responsibility of knowledge.

We assume that everybody knows that there is a vehicle identification number on every automobile and the assumption would simply be broadened.

Mr. SCHEUER. You heard one of the former witnesses recommended that we take out the words "knowledge" and "intent." Do you support that?

Mr. GILLILAND. Knowledge is a very difficult element at law, as you know, to prove.

Mr. SCHEUER. Well, you have just said it isn't difficult in this case to prove.

Mr. GILLILAND. I am saying that if it is assumed that once everyone knows that these major component parts have identification numbers on them, that we would hope that the court would assume that everyone would have knowledge that there should be a number there and should look for that number.

Mr. SCHEUER. Are you saying that knowledge should be in the bill and intent, or should be left out of the bill and simply let the court impute knowledge?

Mr. GILLILAND. I really do not think that you can write the bill any differently than it is proposed, and maintain constitutionality.

Mr. SCHEUER. So you would not advocate that we change it to take out knowledge and intent?

Mr. GILLILAND. No, sir.

Mr. LUKEN. I think that whether we did or not, the Supreme Court would require the same degree of proof.

Mr. GILLILAND. That is right.

Mr. GREEN. I gather that you think that the vehicle identification system on additional parts, even though not foolproof, would be cost-effective in terms of dealing with auto theft problems?

Mr. GILLILAND. I think that it has to be.

Mr. GREEN. I gather that the cost to, say, half a dozen additional vehicle identification numbers would be something small. When you get to locking devices you are getting to something that is somewhat more expensive, and there the numbers get into two figures.

Do you think that improved locking devices would be of sufficient deterrence that they would be cost-effective even though they are a more expensive thing than the vehicle identification numbers?

Mr. GILLILAND. Right now, two of the major manufacturers, General Motors and Ford, have experimental programs where they are identifying major component parts so there will be some experience dealing with the results of this identification, hopefully available within the future.

As to locking devices, you saw the demonstration this morning that was presented here. Any of these recommendations that are included in this bill in and of themselves individually are not the total answer, but they are in combination a major step in the right direction.

If the locking device is more effective then there is more of a delay, the longer the delay the greater probability of the individual being observed and the greater probability of his being observed, the greater the probability of his apprehension and arrest and subsequent conviction.

Mr. GREEN. That is all I have, Mr. Chairman.

Mr. SCHEUER. Thank you very much, Mr. Gilliland. You have been very helpful and we very much appreciate it.

[Testimony resumes on p. 118.]

[Mr. Gilliland's prepared statement and attachment follows:]

National Automobile Theft Bureau

National Office

H.R. 4178

MOTOR VEHICLE THEFT PREVENTION ACT OF 1979

Testimony of

Paul W. Gilliland

President

National Automobile Theft Bureau

before the

Subcommittee on Consumer Protection and Finance
of the House Interstate and Foreign Commerce Committee

and the

Subcommittee on Inter-American Affairs
of the Foreign Affairs Committee

at

New York City

on

June 2, 1980

My name is Paul W. Gilliland. I am President of the National Automobile Theft Bureau. NATB is a crime prevention organization supported by more than 500 property-casualty insurance companies to provide assistance to law enforcement agencies, insurers and the public. The Bureau is an agency for the investigation, location and identification of stolen vehicles and for the promotion of auto theft, arson and fraud prevention activities. We appreciate the opportunity to present our views on the Motor Vehicle Theft Prevention Act before this Committee. NATB's position is that we favor sound anti-vehicle theft legislation at all levels of government.

The profile of motor vehicle theft has dramatically changed during the past 20 years. In 1960, vehicle theft was considered to be primarily a juvenile problem. Our records show that approximately 94% of all vehicles reported to NATB as stolen were located. (See Exhibit #1.)

In the years that followed the percent of "vehicles located" rapidly decreased as professional criminals became increasingly involved with vehicle theft. Law enforcement agencies engaged in combatting vehicle theft

agree that it is much more difficult to locate vehicles stolen by professional thieves.

By 1965 our percentage of locations dropped to 78%; in 1970, 69%; and in 1978 and 1979, NATB located 55% of all vehicles reported to the Bureau as stolen. It must be noted that some jurisdictions report greater recovery percentages and others report significantly less; however, today four out of every 10 cars stolen are never located--a significant indicator of organized crime's involvement in vehicle theft. (See Exhibit #1.)

Ring activities also are indicative of the growing participation of professional criminals in vehicle theft. In 1977, NATB participated in investigating 288 theft ring cases, locating 3,817 vehicles. During the next year, 339 new theft ring cases were investigated with 4,730 vehicles located. In 1979, the Bureau participated in the investigation of 402 new theft ring cases, which resulted in the location of 4,604 vehicles. This reflects a 39.6% increase in professional ring cases since 1978.

Currently, the United States finds itself in a position where organized crime is heavily entangled in motor vehicle crime. The increased involvement of the

the professional criminal necessitates a revamping of both federal and state laws in order to provide law enforcement agencies with the proper working tools which are so vitally needed if they are to efficiently cope with the situation. If enacted, the proposed Motor Vehicle Theft Prevention Act of 1979 will provide many of these tools.

At this point, I would like to examine the major provisions of the Act as analyzed by NATB.

Title I describes the extent of the motor vehicle theft problem in the United States today, offering a factual basis for the proposed legislation. NATB's independent data tends to support points set forth in Title I, indicating an alarming current upward trend in vehicle theft. During 1979, NATB processed 88.4% more theft reports than were processed in 1969, a decade earlier. The past year (1979) revealed a significant 11.4% increase in vehicle theft over the preceding year (1978). The 11.4% increase is ominous when compared to annual increases of a 3% growth in 1978 and a 1% increase in 1977.

Our records indicate 1979's upward trend of vehicle theft affected all geographic regions, with the Southwestern

Division reporting a 35.8% increase; the Pacific Coast Division up 23.5%; the Southern Division up 21.5%; the Western Division up 9.2% and the Eastern Division up 3.0%.

It would appear, therefore, that motor vehicle theft is a national problem whose substantial increases are not materially affected by population changes; changes in reporting procedures; or other variables. The increases must be directly attributed to an increase in organized crime's involvement.

Data for my next two comments is drawn from FBI and New York State Uniform Crime Reports. On the positive side, vehicle thefts were down 7.02% over the preceding year in the state of New York. The State also reported a 10.77% decrease in 1978 and a 0.12% increase in 1977. This is in contrast to a 14.81% increase in 1976. (See Exhibit #2.)

New York City reported a 7.98% growth of vehicle thefts in 1979 in contrast to an 11.97% decrease in 1978 and a 2.34% reduction in 1977. (See Exhibit #2.)

In our opinion, the favorable experience can be attributed, in part, to the meaningful anti-vehicle theft legislation enacted by New York's legislature during the past several years.

NATB data generally reflects the hard-core theft data on stolen vehicles normally not located and recovered within the first 48 to 72 hours after the theft. This data, therefore, is highly indicative of commercial activity. Our latest data available indicates a countrywide increase of 15.5% for January through April, 1980, compared to a 12.7% increase for the same period of time during 1979 over 1978. On the other hand, the first four months of 1980 show a 30.2% increase over the first four months for 1978--just two years ago.

NATB's statistics for the state of New York for January through April 1980, reflect similar increasing trends as compared to a 16% decrease for January through April, 1979.

Our New Jersey and Pennsylvania data also reflects meaningful increases for the first four months of 1979.

The vehicle theft problem does exist and it's growing every day. We must move aggressively to confront the problem. Meaningful legislation must be enacted at both the federal and state level to provide law enforcement agencies with the assistance needed in their confrontation with vehicle crime.

In the proposed federal legislative package, provisions included in Title II would give the Secretary of Transportation through the National Highway Traffic Safety Administration, authority to issue standards which will improve the security of motor vehicles and their parts.

A major section of Title II authorizes the placement of additional numbers on major component parts of a vehicle. The method of marking the parts would be selected after a year of study by the National Highway Safety Administration.

Earlier, I pointed out that approximately four out of every 10 stolen vehicles are never recovered. It's reasonable to conclude that many of these vehicles currently end up in chop shops. A new, late model vehicle can be disassembled by two chop shop employees in approximately 40 minutes. The sorry situation is that in most cases, the major component parts of a vehicle are not identifiable once they are separated from the vehicle. The placement of additional permanent numbers on major component parts would provide important assistance to law enforcement by offering the means to

identify the fruits of chop shop crimes. The end result would be increased prosecutions and convictions which are recognized deterrents to crime.

At this point, I would like to suggest that if numbers are to be placed on the major component parts of a vehicle, the placement should be made by the vehicle manufacturers at the time of assembly. Their engineering expertise, internal control, knowledge of the numbering system and experience in past identification processes are necessary to preserve the integrity of numbers placed on component parts.

While after-market identification procedures obviously have a deterrent affect--and are efficient as a theft deterrent to some degree--the possibility always exists that a car bearing after-market identification could already have been stolen and disguised before being marked. In this type of situation the after-market identification only compounds the vehicle's disguised identity.

A major section of Title II proposes to give the National Highway Traffic Safety Administration the authority to create standards which would increase the efficiency of existent vehicle security systems. In this

way, it would take a thief a longer period of time to circumvent the system. Reports from the field tell us that the experienced thief has reached a degree of expertise where many current locking devices serve to delay him no longer than 40 seconds. In recent years, several major changes have been implemented by the manufacturers to delay the thief. It's obvious, however, that if the problem is to be firmly dealt with the consumer who purchases a new car must be provided with a more effective and efficient security device than presently is being offered.

Title III of the proposed legislation will provide law enforcement with needed legal tools to combat professional vehicle theft. Currently, stolen vehicles transported in interstate commerce are dealt with under the Dyer Act, which was enacted many years ago. Today, our problem is not exclusively the interstate transportation of a stolen motor vehicle, but includes the interstate transportation of stolen expensive vehicle parts. It is not unusual for vehicles to be stolen, disassembled and the major component parts transported by surface or air across the United States in short periods of time.

Organized crime is involved in this highly lucrative activity. Federal law enforcement authorities must be given the jurisdiction to deal with the interstate transportation of this property.

Title 18 of the United States Code would be amended to make it a federal crime to remove, obliterate or tamper with a federally-mandated vehicle identification number.

In addition, any motor vehicle part with an altered number could be seized for further investigation and disposition.

Another provision of Title III amends the definition of "securities" in the National Stolen Property Act to cover motor vehicle titles until cancelled by the state of issuance. Certificate of titles for motor vehicles, which in some cases describe vehicles worth as much as \$50,000, are stolen or counterfeited, then trafficked in interstate commerce. Subsequently, they may be presented as collateral to secure fraudulent financing or used to secure certificates of title in another state for misrepresentation and fraud. In the past, this type of operation has not been subject to federal control even though it frequently has involved interstate commerce.

The proposed federal legislation would provide additional protection to the consumer and would assist law enforcement in combatting this type of operation.

Another section of Title III provides for a \$25,000 fine or up to ten years imprisonment, or both, for those who traffic in motor vehicles or motor vehicle parts which have had their identification numbers removed or altered. In addition, the RICO Statute (Racketeer Influenced and Corrupt Organizations) would be expanded to include trafficking in stolen motor vehicles and their parts. This would be accomplished by incorporating the present Dyer Act and the new trafficking statute just described, within the purview of the RICO Statute. This section of the law would serve to deter organized crime from investing in chop shop operations, since professional criminals will know their business and assets could be seized by the federal government. Enactment of this legislation will provide government prosecutors with additional legal mechanisms to prosecute organized crime involved in the theft and dismantling of stolen vehicles.

An additional provision of Title III amends the Master Key Act to prohibit the mailing of manipulative

devices designed to circumvent motor vehicle locking devices. A section of the Act also prohibits any advertisement of such a device. Currently, these types of tools are readily available for purchase by anyone with sufficient money. This portion of the proposed Bill is designed to help curb amateur thefts as well as to make it more difficult for the professionals to obtain necessary tools of the trade.

Title IV of the proposed federal legislation authorizes the Secretary of Treasury to issue regulations controlling the illegal exportation and importation of motor vehicles. Many vehicles which are the property of U.S. citizens are stolen and shipped out of the United States. Although we do not know of all such violations, we suspect that the number of vehicles illegally exported has a material impact on the deteriorating recovery percentage. For example, one expert warns that at least 10,000 stolen vehicles are taken annually to Mexico. (1) This estimate does not include seaport exportation of vehicles being sent to Central America, West Africa, the Caribbean, the Philippines and other countries.

(1) Howard S. Marks, Investigator to the Minority, United States Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, Washington, DC--Remarks before the 1980 Annual NATB Membership Meeting, Atlanta, Georgia, March 26, 1980

One indicator pointing to an increase in exported stolen vehicles is the number of NATB vehicle locations in Mexico. Our number of locations in 1979 increased 171% over vehicles located in 1978. If the current trends continue, we'll locate 46.3% more vehicles in 1980 than we did in 1979. It seems reasonable to assume that if more vehicles are being located out of the country, more vehicles are being stolen and transported outside the United States.

H.R. 4178 attacks the exportation of stolen vehicles by requiring exporters to record the VIN and to file the export declaration with Customs before sailing. In addition, Customs would be given new arrest powers. Moreover, anyone who exports or imports a vehicle with an altered federally-mandated VIN could be fined up to \$10,000 and given up to 5 years imprisonment. This section of the proposed legislation would give law enforcement needed powers where presently amazingly few exist. Protection of a U.S. citizen's stolen property illegally introduced into international commerce is a primary responsibility of the U.S. government.

The final segment of H.R. 4178, Title V, empowers the Attorney General to prepare a report on the growing

problem of "off-road" motor vehicle theft. The report would include steps being taken to help prevent off-road equipment theft.

Theft of off-road units--farm tractors, bulldozers, etc.--has emerged as a profitable enterprise of commercial crime. A recent segment on television's 60 Minutes described the problem to a national audience. Currently, a number of newspaper articles also have further depicted the problem. Latest data available from the Associated General Contractors of America estimates heavy equipment theft losses of \$13,869,000 for 1978. The Association's survey points out that these statistics are conservative in that they represent only losses for the general contracting segment of the construction industry. They believe other segments such as sub-contractors, suppliers, equipment distributors and rental firms probably have higher losses.

Lack of a standard system for identifying heavy equipment contributes to the theft problem. Unlike automobiles with vehicle identification numbers, heavy equipment is extremely diversified and is not identified by a universal system. Each manufacturer has its own method of marking equipment. As a result, in some instances, it's extremely difficult for investigators to identify the stolen equipment.

As a result of the growing commercial involvement in the theft of this type of equipment it is extremely hard to establish documentation and proof of ownership.

NATB currently is building a data base on stolen heavy equipment--both agricultural and construction--that should counter some of the problems which exist in this area. Records are cross-indexed by a product identification number and by other unique numbers on the principal sub-assemblies such as engines, transmissions and peripheral equipment. This information will be available to law enforcement agencies on a 24-hour, 7-day a week basis and is national in origin.

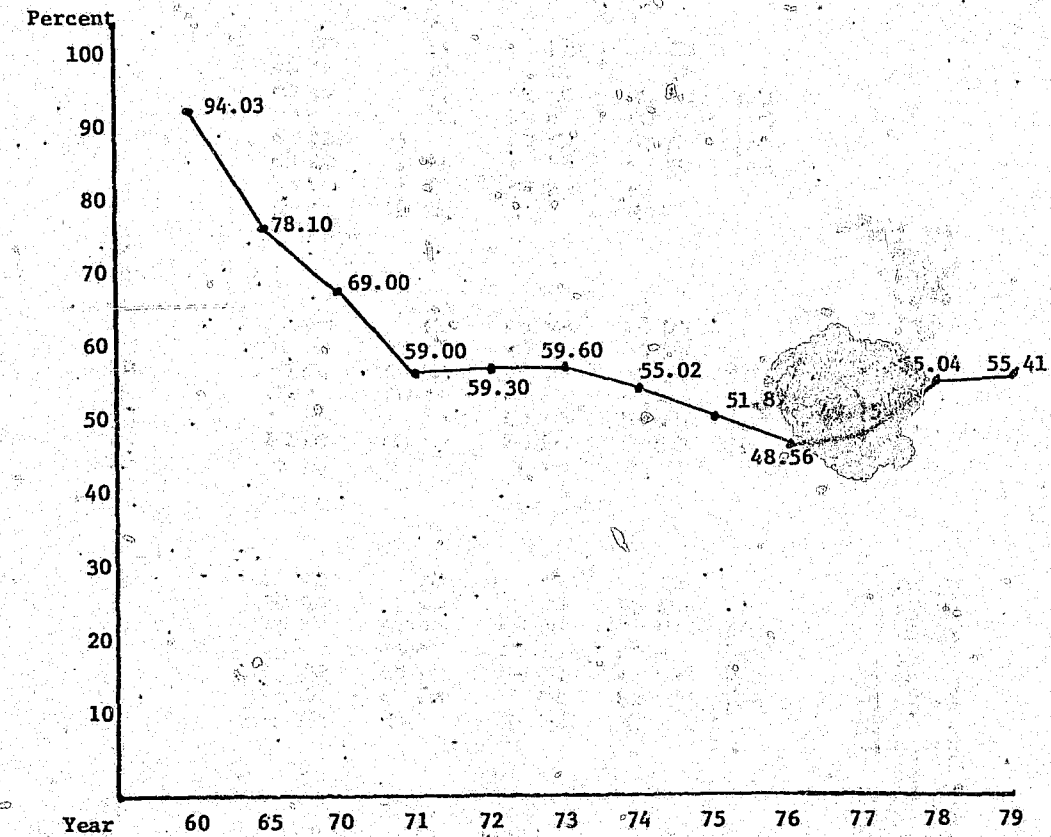
Currently, law enforcement agencies on the federal, state and local levels; the manufacturers; and NATB are cooperating in examining additional measures to combat off-road equipment theft.

Mr. Chairman, enactment of H.R. 4178 would serve to create standards which many states may adopt and expand upon. Adoption of this proposed legislation will provide law enforcement agencies with many of the tools needed to effectively battle vehicle theft on an interstate and an international level.

No one organization, no one industry; no one agency can stabilize and control vehicle theft and fraud. If we are to be successful, there must be massive, aggressive, cost-efficient, coordinated efforts by many organizations working together.

The NATB, therefore, endorses the concept of the Motor Vehicle Theft Prevention Act because of the much needed additional strength it will provide to law enforcement agencies in their continuing fight against professional involvement in vehicle crime.

###



Vehicles Located By NATB
By Percentage

Source: NATB

EXHIBIT #1

STUDY OF NEW YORK CITY AND
STATE MOTOR VEHICLE THEFTS
1975 Through 1979

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
New York City	83,201	96,682 +16.2%	94,420 -2.34%	83,112 -11.97%	89,748 +7.98%
New York State	116,274	133,504 +14.81%	133,669 +.12%	119,264 -10.77%	110,881 -7.02%
New Jersey	39,337	37,462 -4.76%	37,489 +.07%	41,075 +9.56%	Not Avail. ----
United States	1,100,500	957,600 -4.28%	968,400 +1.13%	991,611 +2.39%	1,100,688 +10.99%

Sources: FBI Uniform Crime Report
New York Uniform Crime Report

EXHIBIT #2

FBI UNIFORM CRIME REPORT
THEFT STATISTICS

YEAR	TOTAL THEFTS	+ INCREASE - DECREASE	+% INCR. -% DECR.	REC %	AVG. VALUE	% CLEARED BY ARRES.
1957	276,000					
1958	282,800	+ 6,800	+ 3			
1959	288,300	+ 5,500	+ 2	92	\$ 829.00	26.2
1960	321,400	+ 27,600	+ 9	92	830.00	25.7
1961	326,200	+ 7,700	+ 2	90	840.00	27.8
1962	356,100	+ 29,900	+ 9	90	866.00	25.0
1963	399,000	+ 42,900	+ 11	91	927.00	26.0
1964	463,000	+ 64,000	+ 16	89	1,048.00	26.0
1965	493,100	+ 30,100	+ 5	88	1,038.00	25.0
1966	557,000	+ 63,900	+ 13	90	1,029.00	23.0
1967	654,900	+ 97,900	+ 18	86	1,017.00	20.0
1968	777,800	+ 122,900	+ 19	86	991.00	19.0
1969	871,900	+ 94,100	+ 12	84	992.00	18.0
1970	921,400	+ 49,500	+ 6	84	948.00	17.0
1971	941,600	+ 20,200	+ 2	82	933.00	16.0
1972	881,000	- 60,600	- 6	74	935.00	17.0
1973	923,600	+ 42,600	+ 5	72	1,095.00	16.0
1974	973,800	+ 50,200	+ 5	66	1,246.00	15.0
1975	1,000,500	+ 26,700	+ 3	62	1,457.00	14.0
1976	957,600	- 42,900	- 4	59	1,741.00	14.0
1977	968,400	+ 10,800	+ 1	60	1,992.00	14.0
1978	991,600	+ 23,200	+ 2	60	2,325.00	15.0
*1979	1,100,676	+ 109,076	+ 11	59	2,675.00	14.0

* Beginning 1972, recovered percentage refers to value of vehicles.

** Estimated based on Jan - Sept 79 UCR Release EXHIBIT #3

Mr. SCHEUER. Now we will hear from Mr. Donald J. Bardell, executive director of the American Association of Motor Vehicle Administrators.

You have your colleague with you. Would you identify him, please?

STATEMENT OF DONALD J. BARDELL, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS, ACCOMPANIED BY ROBERT BROWN, DIRECTOR, PUBLIC AFFAIRS, AAMVA

Mr. BARDELL. This is Mr. Robert Brown, our Director of Public Affairs at AAMVA.

Mr. SCHEUER. Now, we are running late, as you know, and we want to apologize for that. We thank you for your patience and for your tolerance.

Did both of you have statements, or just yourself?

Mr. BARDELL. No, I only have a statement.

Mr. SCHEUER. Your statement will be printed in full.

Mr. BARDELL. Yes, with the appendices [see p. 122].

Mr. SCHEUER. So we hope you will simply talk to us informally and hit the high spots.

Mr. BARDELL. I will try and cut it down. I have a statement that is approximately 10 to 12 minutes long.

Mr. SCHEUER. We would rather you not read it because we only have 15 minutes.

Mr. BARDELL. You mentioned AAMVA, who we are. I do want to point out that the reason I am here, is that I have close identity with New York State. I was previously the general counsel and deputy commissioner of motor vehicles in the State of New York. I was involved with developing some of the administrative scheme relating to motor vehicle theft prevention.

I want to point out, at the beginning, that AAMVA vigorously supports the concept and the purposes of H.R. 4178 but we have three major concerns with respect to title II.

They are, No. 1—clarification of the question of preemption with respect to the extent of State enforcement of identical Federal standards adopted by the States pursuant to the National Traffic and Motor Vehicle Act of 1966 and as this act would be amended by title II of H.R. 4178.

No. 2—in view of the key role motor vehicle administrators play in the vehicle theft prevention system, an amendment that specifically designates AAMVA as one of the organizations named in section 202(a) to be consulted within the formulation of security standards.

And No. 3—to assure a meaningful consultative process, an amendment that directs the Secretary of Transportation to develop a consensus with the groups named in section 202(a) and to further consult with other interested parties.

If I may, and with your indulgence, Mr. Chairman, I would like to introduce on behalf, and at the request of, the International Association of the Chiefs of Police, a resolution passed at the IACP's last international conference which substantially supports our position with respect to our concerns of H.R. 4178.

Mr. SCHEUER. We will put that in the record immediately after your prepared text with your prepared testimony [see p. 264] if there is no objection.

With no objection, it is so ordered.

Mr. GREEN. May I ask you a question on the preemption issue?

The impression, both from hearing you and reading your prepared text, is that the problem with preemption is not limited to the amendment proposed to be made by this bill but that it, in fact, relates to the underlying legislation.

Mr. BARDELL. Yes; it is. Therefore, I believe you have to look to the underlying legislation in order to glean what the congressional intent would be; particularly with section 203 of your bill.

That is why I addressed myself to the underlying legislation and specifically section 103(d), the preemption section under the Motor Vehicle Safety Act of 1966.

Mr. GREEN. In terms of the consultative process to which you refer, would it be your feeling that the Secretary should not be permitted to go forward unless there is some percentage of people agreeing? Or do you think that is something that has ultimately got to be his judgment?

Mr. BARDELL. I think that what we are attempting to do, to be very candid, is to be sure that those parties who are directly affected by any standards promulgated by the Secretary have an opportunity to sit down with the Secretary, or his designee, prior to a notice of proposed rulemaking coming out so that they will be able to provide meaningful input to the Secretary. I am thinking in terms of the parties designated in section 202(a), and that in addition to them, it would be appropriate to add the Motor Vehicle Manufacturers Association, the Motor Equipment Manufacturers Association and the insurance industry. They would be directly affected and to insure that a consensus—which is not necessarily a majority and not necessarily unanimity—is reached. The Secretary, as the duly appointed authority, would make the final determination as to whether substantial agreement—consensus—has been developed.

We do not want to restrict the Secretary in his rulemaking, but we do want to make sure that a meaningful consultation takes place, because the consultative process, communicative rapport, changes with each Secretary. Each has a different philosophy. Each of us, as administrators, have a different philosophy and we want to make sure that there is a continuity of the philosophy of meaningful consultation, not only today but tomorrow.

Mr. SCHEUER. This whole question of preemption is a very complicated one. We understand that there is some concern on that matter. The business of requiring consensus in effect is a formula for doing nothing because it gives everybody a veto, or everybody has a veto and nothing happens.

So it is a complicated sensitive area and we will be exploring it in depth later this year or early next year. We will be consulting with you as well as some of the other interested parties on an informal basis to see if we can get consensus on whether there should be consensus.

Does anybody else have any questions?

This is our staff director.

Mr. ROVNER. In your testimony, you say you do not think it is likely, or is is not fruitful, to rely on inspection in the States that have auto inspection to ask the inspection facility to look at the VIN and the confidential VIN when they are in inspecting the car anyway.

Mr. BARDELL. No, I did not say that, I said that I felt it was unrealistic to only check the public VIN as it relates to a viable and meaningful antitheft program.

If they check both the public VIN and the confidential VIN, I would be foursquare with you.

Mr. ROVNER. That was the question I had.

Mr. SCHEUER. We assume you have been foursquare with us all along.

Mr. BARDELL. Not quite, Mr. Chairman, but fairly close.

Mr. SCHEUER. When people tell me they are going to be honest with me, I always ask them what they have been up to now.

You have been very honest and foursquare and thoughtful in your testimony and we appreciate it very much. Again, we may have some questions to submit to you in writing and we will get them to you right away.

We will hold the record open for 10 or 12 days.

[See letter dated June 6, 1980, p. 282, this hearing.]

Mr. BARDELL. Thank you very much.

Mr. SCHEUER. Let's go off the record.

[Discussion off the record.]

Mr. SCHEUER. Back on the record.

Did you have something further?

Mr. BARDELL. If I may, please.

I have made a number of suggestions relative to amending Congressman Green's bill as it relates to title II. I would suggest that possibly the committee staff and Congressman Green's staff might like to take a look at the legislation and more particularly the underlying legislation, to see whether or not it needs amendment or revision, as well.

If I may, let me go right to section 114 of the Motor Vehicle Act of 1966 and may I quote:

Every manufacturer or distributor of a motor vehicle or motor vehicle equipment shall furnish to the distributor or dealer at the time of delivery of such vehicle or equipment by such manufacturer or distributor the certification that each such vehicle or item of motor vehicle equipment conforms to applicable Federal motor vehicle safety standards * * *

I would assume that you also intend to require certification of that vehicle and equipment if it also meets Federal security standards, but there is nothing in your bill that would indicate such a requirement. That is the reason I raised that.

There are a number of other sections that I find are not in sync but I am no legislative draftsman.

Mr. ROVNER. The technical proposals, they are well taken.

Mr. BARDELL. Thank you.

Mr. SCHEUER. It is a pretty good rule in legislative drafting, as well as in everything else, to assume nothing. Your suggestion is well taken and very much appreciated.

Do you have any further suggestions?

Mr. BARDELL. Everything, I think, has been covered by the previous speakers. I do not feel it is necessary for me to repeat what has already been stated.

Mr. SCHEUER. We very much appreciate your testimony. You have been extremely helpful and thoughtful and very much to the point.

We again apologize for the delay and thank you for your time.

Mr. BARDELL. Thank you, Mr. Chairman. Thank you, Congressman Green.

[Testimony resumes on p. 285.]

[Mr. Bardell's prepared statement and attachments follow:]

AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS



An Association of State and Provincial Officials Responsible
for the Administration and Enforcement of Motor Vehicle
and Traffic Laws in the United States and Canada.

1111 CONNECTICUT AVE., N.W., SUITE 910 • WASHINGTON, D.C. 20036 • TELEPHONE 202/296-1955

Statement of Donald J. Bardell
Executive Director, American Association
of Motor Vehicle Administrators
Re: Motor Vehicle Theft Prevention Act (HR 4178)
Joint Hearing: Interstate and Foreign Commerce
Subcommittee on Consumer Protection and Finance;
and Foreign Affairs Subcommittee on Inter-American
Affairs
26 Federal Plaza, Room 2-120
New York, New York
June 2, 1980 10:00 A.M.

Mr. Chairman, and distinguished members of the subcommittees: I am very pleased to be accorded the opportunity to return to my home state--the State of New York--to offer comments on behalf of the American Association of Motor Vehicle Administrators (AAMVA) on the pending Motor Vehicle Theft Prevention Act (HR 4178).

I am Donald J. Bardell, Executive Director of the AAMVA. To put my statement into perspective, I would like to point out that the AAMVA is an association of state and provincial officials, responsible for the administration and enforcement of motor vehicle and traffic laws in the United States and Canada. Consequently, our members have a substantial role in both the administrative aspects of motor vehicle theft prevention, as well as the aspects of enforcement.

Prior to accepting the position as AAMVA Executive Director four years ago, I was Deputy Commissioner and General Counsel for the New York State Department of Motor Vehicles. In this capacity, I became acutely aware of the ever-growing vehicle theft problem--particularly as it applied to New York State. As a result, I became actively involved in helping develop an administrative scheme, designed to inhibit the incidence of vehicle theft.

The AAMVA generally supports the purposes of this legislation, as stated in Sec. 102. However, our Association has three major concerns with Title II and respectfully request serious consideration be given to these concerns. They are as follows:

- (1) Clarification of the question of preemption with respect to the extent of state enforcement of identical federal standards adopted by the states pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 as amended by Title II, Sec. 203 of HR 4178;

- (2) In view of the key role that motor vehicle administrators and traffic law enforcement officials play in the vehicle theft prevention system, an amendment that specifically designates the AAMVA as one of the named organizations in HR 4178, Sec. 202 (a); and
- (3) To ensure a meaningful, consultative process, an amendment that directs the Secretary of Transportation to develop a consensus with the named organizations in HR 4178, Sec. 202 (a), and further to consult with other groups and individuals interested in or affected by the motor vehicle theft problem.

One of our AAMVA members, Commissioner Virginia L. Roberts of the West Virginia Department of Motor Vehicles, has been carrying on a discussion on the preemption issue, via correspondence, with the office of Interstate and Foreign Commerce Committee Chairman Harley O. Staggers. An exchange of correspondence is appended to my testimony. Mrs. Roberts' letter to Rep. Staggers, dated April 18, 1980, is Appendix A; and a reply, on behalf of Mr. Staggers, from Interstate and Foreign Commerce Committee Professional Staff Member, John H. Allen, dated May 8, 1980, is Appendix B.

Mr. Allen's letter to Mrs. Roberts notes that he has discussed AAMVA's interest in this legislation with you, Mr. Chairman, and--taking note of this series of hearings--he suggests that whomever represents AAMVA will want to include in their testimony any preemptive implications that may be contained in HR 4178.

Along with Mrs. Roberts' letter to Chairman Staggers, she included two papers that the AAMVA has developed, relating to the proposed motor vehicle theft prevention legislation. These papers are attached, for the information of the subcommittees, as Appendices C and D.

The first of these papers, Appendix C, entitled "The American Association of Motor Vehicle Administrators and the Motor Vehicle Theft Prevention Act of 1979," details the AAMVA's interest in vehicle theft prevention, outlines our Association's concerns with the proposed legislation, examines the apparent extent of preemption intended, briefly reviews the legislative history of Sec. 103 (d) of the National Traffic and Motor Vehicle Safety Act of 1966 (known as the preemption section), relates this section to judicial and administrative interpretation, explains how this particular issue arose and AAMVA's involvement in the matter, and states AAMVA's conclusions. The first paper also suggested some proposed amendatory language to the motor vehicle theft prevention legislation; but after further study, the second paper, Appendix D, entitled "Motor Vehicle Theft Prevention Act of 1979," was developed, suggesting a more logical methodology for amending the National Traffic and Motor Vehicle Safety Act of 1966 to accomplish the objectives in Title II of the Motor Vehicle Theft Prevention Act.

As the result of AAMVA's research, contained in Appendix C, we do not question that the Secretary of Transportation has the authority (within certain prescriptions) to promulgate security standards under HR 4178, nor does it question that once the Secretary has promulgated a security standard, that no state may promulgate a standard which is dissimilar from that promulgated by the Secretary.

However, a state may adopt the identical standard if it so desires. The foregoing has been well settled as it relates to federal motor vehicle safety standards promulgated by the Secretary, pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 as amended, hereinafter referred to as the Motor Vehicle Safety Act. It also appears that HR 4178 would permit the states to adopt identical federal motor vehicle security standards pursuant to Sec. 203. But like Sec. 103 (d) of the Motor Vehicle Safety Act, Sec. 203 of HR 4178 is silent as to the extent of state enforcement of identical federal motor vehicle security standards adopted by a state. It is this parallelism that raises a deep concern for our Administrators. This concern is that, if our member-states should adopt identical federal motor vehicle security standards, to what extent may they enforce such standards at the state level, or are they totally preempted from enforcing such standards.

Since Title II of HR 4178 amends the Motor Vehicle Safety Act and contains a preemption provision similar to Sec. 103 (d) of the Motor Vehicle Safety Act, I believe that this Association is justified in saying that it must look to the legislative history of the Motor Vehicle Safety Act, more particularly, Sec. 103 (d), and any interpretations thereof, whether judicial or administrative, in order to determine to what extent a state may enforce a federal standard under the Motor Vehicle Safety Act, whether it be a federal motor vehicle safety standard or, prospectively speaking, a federal motor vehicle security standard. The foregoing is reinforced by the section-by-section analysis of S 1214 where it was stated that state enforcement is permissible "to the degree authorized by the Motor Vehicle Safety Act of 1966, as amended." (Emphasis added.)

Appendix C adequately details this Association's position with respect to the question of preemption as it relates to the extent of enforcement of federal standards adopted by our member-states. I believe that Mr. Allen's letter lends support to the conclusion reached by this Association in Appendix C, that States can develop enforcement schemes for a federal standard under the Motor Vehicle Safety Act which are not necessarily identical to the federal enforcement scheme, as long as those schemes do not frustrate the objectives of the Motor Vehicle Safety Act, nor create an undue burden on interstate commerce. Thus, the question, as stated by Mr. Allen, "appears to be one of how the state enforcement scheme is implemented rather than whether there should be an enforcement scheme." Therefore, the primary question before any tribunal should be, whether or not the state enforcement scheme frustrates the objectives of the Act. If it is found that it does, then the state is preempted, but if it is found that it does not, then the state is not preempted. If it is not preempted, it follows that the next question the tribunal should address is, does the state scheme create an undue burden on interstate commerce.

It is the position of this Association that the underlining objective of the Motor Vehicle Safety Act was highway safety and uniformity with a minimal interference in the initial marketing of a manufacturer's vehicles as well as its after-market replacement devices. As this Association sees it, the underlining objectives of HR 4178 are the prevention and reduction of auto theft, through the development of uniform security standards with a minimal interference in the initial marketing of a manufacturer's vehicles as well as its after-market replacement devices. Thus, any state enforcement scheme that would inhibit the initial marketing of a manufacturer's vehicles or after-market replacement devices would frustrate the objectives of the Motor Vehicle Safety Act and HR 4178, and therefore would be preempted. Contrariwise, any state scheme of enforcement which would not inhibit the initial marketing of a manufacturer's vehicles or after-market replacement devices, would not frustrate the objectives of the Motor Vehicle Safety Act and HR 4178, and would, accordingly, not be preempted. For example, a state could

require after-market replacement devices to be submitted for approval for sale in a state, provided the manufacturers are allowed to market the devices in that state while that state's enforcement scheme is being implemented (in process). If a state should find, during the course of enforcement implementation, that the devices submitted for approval do not meet federal standards adopted by the state, then the state could take appropriate action against the sale of those devices in the state.

I believe the foregoing clearly demonstrates the proper implementation of a state enforcement scheme, and is the proper "how," which Mr. Allen refers to in his letter to Commissioner Roberts. However, the Middle District Court for Pennsylvania, on remand in *Truck Safety Equipment Institute v. Kane*, 419 F. Supp. 688; Vacated and Remanded, 558 F.2d 1028; 466 F. Supp. 1242, found that any type of state enforcement scheme prior to first sale was preempted by the Motor Vehicle Safety Act (no matter "how" implemented).

We are somewhat confused by Mr. Allen's reference to the fact that the position of this Association and that of the Pennsylvania court decisions are not inconsistent. Mr. Allen seems to agree with the court's reasoning that a state enforcement scheme is so integrated with a federal motor vehicle safety standard that if the enforcement scheme is different (I would assume from the federal enforcement scheme), and creates a burden on the manufacturer, then the implementation of that scheme will substantively change the performance criteria of the federal motor vehicle standard itself, and therefore make it non-identical. It is extremely difficult for this Association to understand how a properly implemented state enforcement scheme could in some way be so integrated with the substantive criteria of a performance standard so as to change that standard and make the performance criteria substantively different just because it is state enforced. This is the reason for our confusion with respect to Mr. Allen's statement, referred to above, since he agrees that a state may have an enforcement scheme, but the court in Pennsylvania disagrees that a state may not have an enforcement scheme based upon the foregoing rationale. Accordingly, our position is at odds and not consistent with the Pennsylvania decisions.

The Pennsylvania court did not address the propriety of the implementation of the new Pennsylvania code as it related to its equipment enforcement scheme (Mr. Allen's "how"); nor was it of the opinion that it need address the constitutional question of an undue burden on interstate commerce. Yet, in order to arrive at its decision, the court weaves throughout its opinion matters related to the burden question. Indeed, this is the question that the Pennsylvania court should have addressed on remand, but it completely ignored the direction of the Third Circuit Court that it make a record on the question of burden. The Pennsylvania decisions, in effect, laid down a "per se" rule with respect to the question of preemption; that is to say, that any enforcement scheme by a state of an identical federal motor vehicle safety standard prior to first sale is preempted irrespective of the propriety of its implementation. However, a close reading of the Third Circuit Court decision makes manifest that it was extremely concerned that the District Court would take such an approach in determining such a sensitive issue as preemption of a state program related to highway safety, without having before it a record relating to undue burden.

In reviewing HR 4178, AAMVA found that Title II appears not to synchronize with the remainder of the Motor Vehicle Safety Act which it proposes to amend. On the other hand, Titles III and IV of HR 4178 appear to be technically correct, in that they appropriately amend acts to which these titles make reference. But this does not seem to be the case with respect to Title II. In view of this, and the other concerns of AAMVA, herein identified, our Association respectfully suggests the following amendments to the National Traffic and Motor Vehicle Safety Act of 1966:

Amend the purpose clause in the National Traffic and Motor Vehicle Safety Act of 1966 as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Congress hereby declares that the purpose of this Act is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents, and to improve the physical security features of the motor vehicle and its parts. Therefore, Congress determines that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to expand the national driver register; and establish physical security standards for the motor vehicle and its parts.

Amend Title I of the National Traffic and Motor Vehicle Safety Act of 1966 as follows:

TITLE I--MOTOR VEHICLE SAFETY, AND SECURITY STANDARDS

Amend Section 102 of PART A--GENERAL PROVISIONS, Subsection (2), into two subparagraphs, as follows:

(2) (a) "Motor vehicle safety standards" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria.

(b) "Motor vehicle security standards" means a minimum performance standard relating to a motor vehicle starting system, the locking systems for the engine, passenger and trunk compartments, and component part identification.

Amend Section 103 (a) as follows:

The Secretary shall establish by order appropriate federal motor vehicle safety and security standards. Each such Federal motor vehicle safety and security standard shall be practicable, shall meet the need for motor vehicle safety and security and shall be stated in objective terms.

Amend Section 103 (b) as follows:

The administrative procedures act shall apply to all orders establishing, amending, or revoking a federal motor vehicle safety and security standards under this title.

Amend Section 103 (c) by dividing that section into two subparagraphs as follows:

(c) (1) Each order establishing a federal motor vehicle safety standard shall specify the date such standard is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(2) (A) Within twelve months after the date of enactment of the Motor Vehicle Theft Prevention Act of 1979 the Secretary of Transportation shall issue proposed notices of rulemaking covering the areas of unauthorized starting of the motor vehicle and major component identification.

(B) The proposed rule covering the prevention of the unauthorized starting of the motor vehicle shall take into consideration ongoing technological developments relating to the utilization of the microelectronics in the motor vehicle, automatic activation of the security system, and possible elimination of the existing metallic mechanical key system presently used to activate the motor vehicle.

(C) The proposed rule relating to the theft of motor vehicle parts shall take into consideration ongoing technological developments, including laser marking machines, to place identification numbers on those major components which are the primary target of the "chop shops."

(D) After an appropriate comment period and the analysis thereof, the Secretary of Transportation shall issue final rules as soon as possible, but not later than twenty-four months after the date of enactment of the Motor Vehicle Theft Prevention Act of 1979. The initial effective date of such final rules shall be as soon as practicable but before the introduction of two model years or two calendar years, whichever is shorter, following the issuance of any final rule. Any final rule shall encourage and permit the manufacturer to conform to its requirements before the rule's mandatory effective date.

Amend Section 103 (d) as follows:

Whenever a federal motor vehicle safety or security standard is established under this title is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety or security standard applicable to the same aspect of performance of such vehicle or item of equipment or security systems or component part identification, which is not identical to the federal standard. Provided, however, that a state may adopt identical Federal Motor Vehicle Safety, and/or Security Standards promulgated by the Secretary, and enforce those standards to the extent allowed under state law, so long as such enforcement does not frustrate the objectives and purposes of this Act. Nothing in this section shall be construed to prevent the federal government or the government of any state or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable federal standard.

Amend Section 103 (e) as follows:

The Secretary may by order amend or revoke any federal motor vehicle safety or security standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

Amend Section 103 (f) by dividing that paragraph into two subparagraphs as follows:

(f) (1) In prescribing safety standards under this section, the Secretary shall:

(A) consider relevant available motor vehicle safety data, including the results of research, development, testing and evaluation activities conducted pursuant to this Act;

(B) consult with the Vehicle Equipment Safety Commission, and such other state or interstate agencies (including legislative committees) as he deems appropriate;

(C) consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed; and

(D) consider the extent to which such standards will contribute to carrying out the purposes of this Act.

(2) In prescribing security standards under this section, the Secretary shall:

(A) take into account the cost of implementing the standard and the benefits attainable as a result of the implementation of the standard;

(B) take into account the effect of implementation of the standard on the cost of automobile insurance;

(C) take into account savings in terms of consumer time and inconvenience;

(D) take into account considerations of safety; and

(E) develop consensus with the Attorney General, the International Association of Chiefs of Police, the International Association of Auto Theft Investigators, the National Automobile Theft Bureau, the American Association of Motor Vehicle Administrators, and consult with other groups and individuals interested in or affected by the motor vehicle theft problem.

In addition to the areas of AAMVA's specific concern with this proposed legislation, which I have identified, you--Mr. Chairman--in your May 14, 1980 letter to me, confirming this appearance, asked for our Association's views on four other issues related to HR 4178:

- The so-called "re-tag" problem;
- Uses and limitations of salvage titles;
- Prevalence of counterfeit titles; and
- The feasibility of adding Vehicle Identification Number (VIN) number confirmations to state motor vehicle inspections

Since each of these issue areas involve administrative control of vehicle theft prevention activities, I would like to comment briefly on the AAMVA's recent anti-theft programming initiatives, because they, too, involve administrative controls. Our Association's efforts are described in greater detail in my column, "Comment by the Executive Director, in the January/February 1979 edition of the AAMVA Bulletin, which is attached to my statement as Appendix E.

Heretofore, a vast majority of the emphasis in anti-theft efforts has been addressed to apprehension and prosecution. Although such activities are obviously important, they are limited to catching and prosecuting thieves--after a vehicle has actually been stolen. There are a growing number in our profession--motor vehicle administration--who believe that we currently have laws that are adequate for achieving most of our enforcement and prosecution objectives, with respect to vehicle theft problems. These individuals are firmly convinced that there are real limits to which after-the-fact remedies can usefully be pursued in preventing vehicle theft.

Many among AAMVA's membership believe that substantially greater inroads can be made in ameliorating the growing number of vehicle theft problems--especially as they relate to "professional" theft operations--by tightening the administrative controls that pertain to proof of ownership of a motor vehicle. These controls stress prevention of the theft before it occurs. By tightening these administrative controls, motor vehicle administrators can--we believe--make it significantly more difficult for the professional auto thief to operate. These controls can make it tougher for representatives of theft rings to successfully obtain false documents that make them appear to be the legitimate owners of vehicles that have been stolen.

These tighter controls over proof of vehicle ownership--from the time that a vehicle rolls off the assembly line until it is either salvaged, dismantled, or consigned to the shredder--also can be helpful in reducing other avenues of fraud, on which the professional theft rings have relied heavily.

The AAMVA already has taken one significant step toward formulating more effective administrative controls for motor vehicles. Pursuant to a resolution, adopted at our Association's 1978 Annual International Conference, we have developed security features for the Manufacturers Certificate of Origin (MCO)--the vehicle's "birth certificate." Although implemented in early 1979, almost one-third of the states--a total of 17--already have adopted use of the AAMVA-developed MCO with security features. Our Association also has several years invested in development of a unique Vehicle Identification Number (VIN); one that will provide a competent identifier for a vehicle throughout its useful life; a number that also can be usefully applied to programs such as component marking.

AAMVA believes that the two aforementioned programs are but two on a lengthy agenda of possible administrative controls that might successfully be applied toward prevention of vehicle theft. Others, as noted in my column, include: security features for vehicle titles, including return of titles involving inter-jurisdictional transfers; precise controls for transfer of ownership between entities such as the manufacturer, transporter, dealer, purchaser, body shop operator, and dismantler; specific salvage title procedures; and audit procedures (that presume licensing by the state motor vehicle agency) for shredders, to follow component parts once the vehicle has lost its identity. This list is, by no means all inclusive, but it touches upon some of the major areas that our Association feels logically should be considered.

As a prefacing caveat to AAMVA's commentary on the subjects where the sub-committees have asked for our views, I would like to point out that at the conclusion to the National Workshop on Auto Theft Prevention--a session held here in New York City, October 3-6, 1978--stressed that one of the major difficulties with the auto theft issue is that not enough accurate information is available. This also has proven to be a major source of frustration to the AAMVA.

Despite the major programming initiative by the AAMVA, in which our Association has sought to take the lead in developing and implementing anti-theft programs, as well as developing reliable statistical data on state participation in these efforts, we still are constrained to acknowledge that there is a dearth of reliable data that is available, to date, and which can be readily cited. Therefore, I would caution that the observations that the AAMVA offers are based on the best information that we could secure; that in some instances the comment may be addressed to the experiences of relatively few states; and, that in a few instances the information may appear to be contradictory.

All of the states contacted by AAMVA felt that "re-tagging" of vehicles is a major, theft-related problem. For example: Statistics furnished by the California Highway Patrol (CHP) indicate that approximately 160,000 vehicles are reported stolen in that state annually. The CHP estimates that 10 to 15 percent of the cars recovered have obviously been re-tagged. But the Assistant Chief of the CHP and Enforcement Services Director, further estimates that 50 percent of the vehicles that are not recovered--several thousand--are not recovered because they have been re-tagged in such a skillful manner that the re-tagging job is not discernible.

However, most of the states surveyed by the AAMVA firmly believe that the re-tagging of whole vehicles can be successfully controlled, by a combination of an effective salvage title law and VIN verification--of both the public and confidential VINs--either at the time that a rebuilt vehicle is retitled (i.e., is issued a negotiable title instrument), or at the time that an out-of-state vehicle is initially titled in any state. But the problem that is running rampantly out of control, and seemingly escalating, is the problem of "chop shops." Control of these operations, which we are finding in some instances have been taken over by elements of organized crime, require substantially greater administrative controls, working in tandem with vigorous enforcement of these laws and regulations.

Illinois has been one of the leaders in addressing both the re-tag problem and control of chop shops. In an initial effort to defeat re-tagging--which also is commonly known in the trade as a "salvage switch"--the Illinois Office of the Secretary of State, on June 1, 1978, implemented the use of a new title form with security features.

The Illinois title is printed on bank note paper, with a border of intaglio steel printing, making it virtually as difficult to counterfeit as currency. Moreover, the vital information on the title--make and model, year, body style and VIN--is covered by a film lamination, and any attempt to remove it destroys the printed information beneath. Illinois also issues a salvage certificate (title) for vehicles intended to be dismantled, recycled, or junked. Concomitant with the security title, Illinois also has formed a new title verification unit, assigned exclusively to checking certificates of title for suspicion of altering or counterfeiting.

New York State also has been active in formulating administrative controls to bolster its effort in combatting a rapidly escalating vehicle theft problem. Recently, it has added to its arsenal a Motor Vehicle Theft Prevention Program housed in the New York State Department of Motor Vehicles. The program is under the purview of the Office for Audit and Review, part of which is the investigative arm for the DMV--the personnel of which are peace officers.

The New York law empowers the investigators: To conduct detailed investigations in cooperation with other enforcement officials; to determine the reliability of applicants required to be registered; to provide assistance to law enforcement personnel in determining sources of outlets for stolen motor vehicle parts; to cooperate with law enforcement personnel in the investigation of organized motor vehicle theft rings; to examine motor vehicles prior to the issuance of a New York State motor vehicle title, at the discretion of the DMV Commissioner.

For years the DMV has been examining motor vehicles at the request of individuals whose VIN plates have been stolen or who wish to put a salvage vehicle back on the road, which does not have a public VIN. However, the Department has never been able to examine all those vehicles which have been declared junk and salvage, and which were being put back on the road and retitled. It now is the intention of the DMV--as mandated by the new law--to examine all of the salvage vehicles for which retitling is requested--if sufficient funding is provided by the legislature.

Pursuant to the DMV's new mandate, directing its investigators to confirm the public VIN and correlate it with the confidential VIN for vehicles being retitled, and for some out-of-state vehicles being licensed in New York State for the first time, the DMV has received authorization from the National Highway Traffic Safety Administration (NHTSA) to conduct a pilot program. Although this pilot study will not be completed until June 30, 1980, some of the preliminary statistics have important implications for vehicle theft. To date, the DMV has written letters to 414 salvage yards, requesting to confirm and correlate the public and confidential VINs on vehicles that they have requested be retitled. Out of the 414 vehicles on which physical inspection was sought:

- 25 percent failed to keep their appointment with the DMV to have the VINs inspected and confirmed, indicating that possible (a) the vehicle in question had been stolen; or (b) that it is a "phantom" vehicle for which a legitimate title is being sought, but which never--in fact--existed in the first instance. As of this writing, the DMV still is looking for a vast majority, a total of 102, of these no-shows.
- Of the vehicles that did keep their appointments, 8 percent required further investigation, due to: (a) altered VIN numbers; (b) non-conformance of the public and confidential VINs; and (c) apparent attempts to eradicate one, or both, of the VINs.
- 2 percent of those requested to bring vehicles in for inspection reported the vehicle stolen between the time that they received the DMV letter and the date of the appointment. Such action also led the Department to conclude that: (a) the vehicle probably was indeed a stolen vehicle; or (b) that the owner of the salvage title did not, in fact, have the car in question.
- 14 percent of the letters mailed by the DMV were returned by the Postal Service as "undeliverable."

Therefore, of the 414 vehicles on which the New York State DMV sought to perform physical inspection, nearly half produced happenings that cause the Department to suspect that they might be stolen vehicles. If the statistical sampling is a valid indication of statewide experience, then the implication is indeed one for great concern.

Governor Edward J. King of Massachusetts--the state that has led the nation for more than 15 years in motor vehicle theft rate--formulated a special Task Force on Automobile Theft late in 1979, to study problems in that state and develop recommendations for their solution. With respect to the "salvage switch" issue, the Massachusetts Task Force recommended that the VIN plate not be removed from salvage vehicles, a practice almost universally followed in other states; and enactment of a salvage title law, which would assist in establishing proof of ownership, provide a vehicle audit trail, and--most importantly--remove the standard (negotiable) title document from the marketplace, so that it cannot be used for illegal vehicle transactions.

Most of our states have found that when auto theft rings find it harder to move stolen cars intact, via the "salvage switch" routine, organized crime will inevitably then resort more and more to chop shops to make money on stolen vehicles.

Illinois has made inroads into frustrating that technique for auto thieves, too. In this state, the Secretary of State licenses nearly 700 scrap processors, junk yards, rebuilders, recyclers, and used parts dealers. State law requires the licensees to keep records of their transactions and empowers the Secretary of State to prescribe rules for the recordkeeping. They have experienced a modicum of success in enforcing these recordkeeping requirements, via use of administrative hearings.

Illinois has found that the administrative hearings are effective means of enforcement. In a criminal trial, proof must be beyond a reasonable doubt; while, in a civil administrative hearing, only a preponderance of the evidence is needed to justify taking away a license. If the Office of the Secretary finds anyone dealing in cars or parts without a license, a cease and desist order is issued. If an appropriate license is not obtained, the Attorney General takes the offender to court. In such circumstances, some operators obtain a license, while others drop out. Illinois currently is working on establishing an audit trail for essential components of dismantled cars, to complement the audit trail already in place for the cars themselves, in the motor vehicle agency's registration file.

New York State has recently initiated a somewhat similar procedure to provide stronger controls on all entities involved in the disposal of junk and salvage vehicles. There currently are nine entities that have been identified as being involved with junk and salvage vehicles. Five of these are required to be registered with the DMV. These are: (1) vehicle dismantlers; (2) salvage pools; (3) mobile car crushers; (4) itinerant vehicle collectors; and (5) vehicle rebuilders. The other four are required to be certified by the DMV. These include: (1) scrap processors; (2) scrap collectors; (3) repair shops which dispose of vehicular scrap to certified scrap processors; and (4) out-of-state concerns. This new law further mandates keeping of records by all of these entities, as well as specifying that these records are accessible to both police officers and agents of the Motor Vehicle Commissioner.

California also has laws that provide for the licensing of salvage and recycling operations that are administered by the California Highway Patrol. One point which AAMVA believes adds to the effectiveness of these laws is a provision that stipulates that the records that these operations are required to keep are the property of the State of California. These laws further provide that the records can be inspected, anytime, during normal business hours, by the CHP Commissioner, his representative, or other peace officer. Further bolstering the impact of this law in controlling vehicle theft operations--such as chop shops--is the fact it has twice been upheld in court tests.

As the subcommittees probably have concluded from the foregoing discussion on control of re-tag problems and chop shop operations, the AAMVA believes that the salvage vehicle title is a viable administrative tool to be used in the combatting of the incidence of motor vehicle theft; provided, at least from my personal perspective, that the program must have combined with it physical inspection of the VINs of the vehicles in question. The problem, however, is the funding reality of such a program.

As tangible evidence of our Association's policy on the salvage vehicle title, I have appended to my statement (as Appendix F) a resolution from AAMVA's 1977 Annual International Conference, which you can see from the legislative summary of this measure was adopted with but one dissenting vote. The measure, Resolution 3, entitled "Salvage Vehicle Title Procedures," calls upon the AAMVA membership to urge the Governors and Legislators of all states to enact such legislation as they deem necessary to implement a salvage title document.

Over and above funding considerations, there probably are some other limitations to the salvage title, but AAMVA firmly believes that they are far outweighed by this provision to remove negotiable certificates of title from commerce, since the regular certificate of title is the key document in the trafficking of stolen vehicles, or in fraudulent insurance claims.

At the moment, there is a relatively minor disagreement as to how many states have enacted salvage title laws. A 1979 study by the National Committee on Uniform Traffic Laws and Ordinances indicate that 21 states "after receiving the certificate of title, issue a salvage title certificate or a permit to dismantle." However, the 1979 Annual Report for the National Automobile Theft Bureau indicates that "to date 25 states have enacted varying degrees of salvage title legislation.

However, I would like to take this opportunity to assure you, Mr. Chairman, and the members of the subcommittees, that AAMVA--via its Standing Committee on Registration, Title, Vehicle Dealers and Manufacturers--is working vigorously toward securing enactment of viable salvage title laws in each and every state.

The prevalence of counterfeit titles has been the issue that AAMVA has encountered the most frustration in attempting to isolate. As I noted earlier in my statement, there are some areas in which there is a dearth of tangible statistics. This is one such area:

A new Illinois Title Verification Unit was able to identify a total of 379 altered and counterfeit titles in its first 18 months of operation. But checks with New York, California, Massachusetts, Texas, and Florida indicate that there is no statistical data compiled of this particular problem. However, I would suggest that the New York pilot study, to verify the public VIN and correlate it with the confidential VIN on rebuilt vehicles and vehicles coming from out-of-state--and the reluctance of many of those selected to participate in the verification study--indicates that there probably is a significant number of vehicles being placed back into operation that have what New York State DMV officials refer to as "funny paper" to support their existence.

As further evidence of the strong consensus that seemingly exists among motor vehicle administrators that there is a problem with the prevalence of counterfeit titles, I have appended to my statement (as Appendixes G and H) a resolution from AAMVA's 1979 Annual International Conference and a recommendation from our 1980 Registration, Title, Vehicle Dealers and Manufacturers Workshop.

The resolution, Resolution 8A, entitled "Concerning Universal Certificate of Title," calls on all AAMVA jurisdictions, in their concern to eliminate counterfeit and fraudulent use of title documents, to support efforts by the AAMVA and the American National Standards Institute D-19 Committee to expand the uniform certificate of title in terms of design, security features and universality of use by all jurisdictions.

The 1980 recommendation, Recommendation 1, entitled "Utilization by All Jurisdictions of a Title Document Containing Security Features," suggests that motor vehicle administrators in all non-title jurisdictions and all jurisdictions using a title without security features to take immediate steps to require the use of title documents containing security features.

Since the 1979 resolution was adopted with but one dissenting vote, and the 1980 workshop recommendation was adopted unanimously, I would respectfully submit--in the absence of tangible statistics either in support or to the contrary--that there is a strong consensus among the nation's motor vehicle administrators that there is a problem with the prevalence of counterfeit titles.

With respect to the feasibility of adding VIN number confirmations to state motor vehicle inspections, AAMVA and its members respectfully suggest that it is not a realistic objective.

The 1979 edition of Summary of State Motor Vehicle Inspection Laws and Regulations--a publication jointly produced by the AAMVA and the Motor Vehicle Manufacturers Association--indicated that 17 states check the VIN at the time of the safety inspection; but further study indicates that virtually all of these VIN checks is limited to confirmation of the public VIN, since there is neither time nor funding available to conduct the more rigorous correlation with the confidential VIN. We submit that in the absence of such correlation, that examination of the public VIN is of little value as an anti-theft tool.

For example, New York State is one of the 17 that indicates it checks the VIN at the time of the safety inspection. However, officials from the State DMV have indicated to our Association that in New York inspections, the incidence of transcription errors in the VIN is so high that it renders the data "totally useless."

In closing, Mr. Chairman, I would like--in behalf of AAMVA and the motor vehicle and traffic enforcement administrators throughout the nation--to thank you and the subcommittees for providing me an opportunity to share with you some of our concerns with HR 4178, as well as to share with you some of the things that we have been doing to develop effective administrative controls over the growing vehicle theft problem.

I respectfully suggest to you and members of the subcommittees that the AAMVA has been doing a great deal in formulating, and enlisting substantially broader state participation in, programs that are addressed to the crux of the vehicle theft problem. Consequently, we believe that if this legislation is adopted, the Secretary of Transportation can facilitate his charge to develop security standards by initiating a close and on-going consultation with the states, in order to benefit from the experience that they have gained. Therefore, we feel that the amending language that we have suggested are appropos.

But we feel that it is of paramount importance to clarify congressional intent with respect to federal preemption, and to clearly articulate in the context of this legislation the states' right to enforce identical standards; standards that serve to complement the federal effort under the Motor Vehicle Safety Act of 1966, as amended.

Thank you.

APPENDIX A

DEPARTMENT OF MOTOR VEHICLES

JOHN D. ROCKEFELLER IV
Governor

STATE OFFICE BUILDING
CHARLESTON, WEST VIRGINIA
25305

VIRGINIA L. ROBERTS
Commissioner

April 18, 1980

The Honorable Harley O. Staggers
Chairman
Committee on Interstate and Foreign Commerce
United States House of Representatives
2125 RHOB
Washington, D. C. 20515

Dear Mr. Chairman:

I was saddened to learn of your impending retirement at the close of the 96th Congress. The respite from public service and the opportunity to return home obviously are well earned. But your distinguished record of service to the citizens of West Virginia and the outstanding leadership record as Chairman of one of the most important committees in the world's greatest legislative body are qualities that will be impossible to impute to any successor.

This letter is to call your attention to my visit to your Capitol Hill office early last June, during the Orientation Seminar for State Motor Vehicle Administrators, sponsored by the American Association of Motor Vehicle Administrators (AAMVA). I was accompanied on this visit by the AAMVA Executive Director, Mr. Donald J. Bardell.

As you probably will recall, we held a lengthy conversation regarding the National Traffic and Motor Vehicle Safety Act of 1966, a landmark piece of legislation, enacted during your stewardship as Chairman of the Interstate and Foreign Commerce Committee. Our conversation was particularly addressed to Section 103(d) of this Act; especially the degree of federal preemption intended by this legislation. In this conversation, Mr. Bardell outlined to you some of the problems that state officials are encountering due to the lack of clarity as to the degree of preemption intended.

As we indicated to you, it has always been the position of state motor vehicle administrators, and the AAMVA, that states are empowered to adopt identical Federal motor vehicle safety standards, and to enforce them by any state scheme formulated, so long as the state enforcement scheme does not (a) frustrate the objectives of the Motor Vehicle Safety Act of 1966, and subsequent amendments; or (b) provide a burden on interstate commerce.

As you indicated, it has always been the intent of Congress that a meaningful partnership be present; a Federal enforcement scheme and a complementary state enforcement scheme. However, during my visit we also pointed out that there had been a District Court decision in Pennsylvania (Truck Safety Equipment Institute vs. PenDOT), in which the decision handed down runs contrary to the congressional intent that you expressed. For this reason, and because there are several other pieces of legislation pending in the Congress that have similar preemptive overtones, we feel that there is an urgent need to obtain from the source the intent of Congress with respect to the extent of Federal preemption under the National Traffic and Motor Vehicle Safety Act of 1966.

During our conversation, Mr. Bardell expressed our concerns relative to the preemptive implications of the pending Motor Vehicle Theft Prevention Act of 1979 (HR 4178), sponsored by your colleague from New York, Rep. William Green, et al. Subsequent to our conversation, another piece of legislation, the Commercial Motor Carrier Safety Act of 1980 (S 1390) has passed the Senate, and currently is under consideration by the House Committee on Public Works and Transportation. It, too, has preemptive overtones that concern state officials.

At the close of our conversation, you asked if I would, at the appropriate time, submit the information developed by the AAMVA relative to this matter. Therefore, I am enclosing some material on the motor vehicle theft prevention legislation for review by your staff, so that they can report back to you in the manner that you outlined.

Any assistance that you can provide in resolving this issue in the best interests of your fellow West Virginians will be deeply appreciated. On the other hand, if I can ever be of any assistance to you back here at home, please let me know.

With warmest personal regards.

Sincerely yours,

Virginia L. Roberts

Virginia L. Roberts
Commissioner

VLR:jb

Enclosures

APPENDIX B

Congress of the United States RECEIVED
House of Representatives
Committee on Interstate and Foreign Commerce MAY 14 8 54 AM '80
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

May 8, 1980

COMMISSIONERS OFFICE
DEPT. OF MOTOR VEHICLES
WEST VIRGINIA

NINETY-SIXTH CONGRESS

MARLEY O. STAGGERS, W. VA., CHAIRMAN	JAMES T. BROWNELL, N.C.
JOHN D. DINGELL, MICH.	SAMUEL L. DEVINE, OHIO
LOREL VAN DEERLIN, CALIF.	TIM LEE CARTER, KY.
JOHN N. BURNEY, N.Y.	CLARENCE J. BROWN, OHIO
DAVID L. BATTERFIELD III, VA.	JAMES M. COLLINS, TEX.
DOB EDWARDS, TEX.	NORMAN F. LENT, N.Y.
RICHARDSON PRETHER, N.C.	EDWARD R. MADIGAN, ILL.
JAMES H. SCHEUER, N.Y.	CARLOS J. MOORHEAD, CALIF.
RICHARD L. OTTINGER, N.Y.	MATTHEW J. RINALDO, N.J.
HENRY A. WALKER, CALIF.	DAVE STOCKMAN, MICH.
TIMOTHY E. WIRTH, COLO.	MARC L. MARNE, PA.
P. A. SHARP, IND.	TOM CONOHRAN, ILL.
J. J. FLORIO, N.J.	W. A. LEE, N.Y.
JOHN TOBY WOFFETT, CONN.	TOM LOEFFLER, TEX.
JIM SANTINI, NEV.	WILLIAM E. DANNEMEYER, CALIF.
ANDREW BAIRD, N.J.	
EDWARD J. MARKEY, MASS.	
THOMAS A. LUKE, OHIO	
DOUG WALGREEN, PA.	
ALBERT GOE, JR., TENN.	
BARBARA A. NICOLSKY, MD.	
RONALD M. MOTIL, OHIO	
PHIL BRAMAN, TEX.	
AL SWIFT, WASH.	
MECKY IELAND, TEX.	
RICHARD C. SHELBY, ALA.	
OSBERT T. MATSU, CALIF.	

KENNETH J. PAINTER,
CHIEF CLERK AND STAFF DIRECTOR

Mrs. Virginia L. Roberts
Commissioner
Department of Motor Vehicles
State Office Building
1800 East Washington Street
Charleston, West Virginia 25305

Dear Commissioner Roberts:

Chairman Staggers has discussed with me your letter dated April 18, 1980, with enclosures, and has asked me to respond to your specific inquiries concerning the degree of Federal preemption intended in section 103(d) of the Motor Vehicle Safety Act of 1966. He also wanted me to tell you how much he appreciated your visit with him last June and your willingness to share your views on this and other matters relating to motor vehicle safety.

As I am sure you realize, the issue of Federal preemption of State motor vehicle safety standards is a complex one, but I believe we are, to a great extent, in accord on this matter.

I would agree with you that Congress did not intend to preempt States from adopting safety standards which were identical to Federal standards. To the extent that the Federal government did not act in an area, the States were also free to act as they deemed necessary. I believe this is clear from the excellent legislative history prepared by the AAMVA which you were kind enough to provide.

As pointed out, the conference committee narrowed the scope of the preemption authority to, in the language of the conference report, "assure that there will not be any inadvertent preemption of a State standard applicable to an older vehicle by the issuance of a standard with respect to the same aspect of performance." Thus, the role established by the Congress for the States exists in two instances -- first, when no Federal standard exists and, second, when the vehicle being regulated is a vehicle in use.

In terms of the Federal standards, where you and I would agree preempt State standards, the question appears to be one of how the State enforcement scheme is implemented rather than whether there should be an enforcement scheme. This also appears to be the holding in the two decisions involving the Pennsylvania Department of Transportation. As I understand these decisions, the court held that enforcement of a standard was an integral part of the standard itself and to the extent a different enforcement scheme represented a burden on the manufacturer, it represented a non-identical standard. This decision is, I believe, consistent with your position that State enforcement is legitimate so long as it "does not (a) frustrate the objectives of the Motor Vehicle Safety Act of 1966, and subsequent amendments, or (b) provide a burden on interstate commerce." The adherence to these criteria in establishing a State enforcement scheme would result in complementary State and Federal enforcement schemes which you desire. It would also be consistent with the Congressional intent, as expressed in the House report, that the public and industry can be guided by one set of criteria rather than a multiplicity of diverse standards.

With regard to H.R. 4178, the Motor Vehicle Theft Prevention Act of 1979, this measure has been referred to the Subcommittee on Consumer Protection and Finance of this Committee. I have discussed your interest in this legislation with Subcommittee Chairman Scheuer and he has advised that hearings will be held on June 10 and 12. I understand that the American Association of Motor Vehicle Administrators has asked to appear before these hearings and Chairman Scheuer advises that they will be invited to attend for the purpose of presenting both oral and written testimony. I am sure that whoever represents AAMVA at these hearings will want to include in their testimony concern for any preemptive implications that may be contained in the proposed legislation.

I hope this information will be helpful and, if we can be of further assistance, please do not hesitate to call on us.

Sincerely,

John H. Allen
John H. Allen
Professional Staff Member

JHA:rmb

cc: Hon. Harley O. Staggers
Hon. James H. Scheuer

APPENDIX C
AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS



An Association of State and Provincial Officials Responsible for the Administration and Enforcement of Motor Vehicle and Traffic Laws in the United States and Canada.

CONNECTICUT AVE., N.W., SUITE 910 • WASHINGTON, D.C. 20036 • TELEPHONE 202/296-1955
THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979

(S. 1214 and H.R. 4178)

The American Association of Motor Vehicle Administrators (AAMVA)

The AAMVA is a nonprofit, voluntary international organization. Its membership is comprised of all of the States and Canadian Provinces and their respective territories. The voting members for these governmental entities are the chief public administrators, or their designees, having responsibility for the administration and enforcement of all motor vehicle and traffic laws in their respective jurisdictions. The scope of responsibility of these officials is broad and ranges from matters related to the traditional State and Provincial responsibilities of registering and titling motor vehicles, licensing drivers and traffic enforcement, to the national issues of energy conservation (DOE), clean air (EPA), vehicle recall, enforcement of Federal Motor Vehicle Safety Standards and "prospectively" Federal Motor Vehicle Security Standards (DOT), as well as, commercial truck carrier regulation (DOT), and standards development and certification (FTC) (CPSC).

Auto Theft and AAMVA

AAMVA's interest in PREVENTING the growing problem of organized theft of motor vehicles and the fairly recent development of "chop shop" operations is a major priority program of this Association. The Executive Column in AAMVA's Jan./Feb. 1979 Bulletin outlines what is felt to be a key element in preventing auto theft problems--the tightening of State and Provincial administrative controls.^{2/}

^{1/}For more detailed information on AAMVA, see AAMVA Fact Sheet, attached as Exhibit 1.
^{2/}AAMVA Bulletin, Jan./Feb. 1979, p. 2, attached as Exhibit 2; see also AAMVA Proposal on Auto-theft, attached as Exhibit 3.

In addition, and going hand in hand with the foregoing, is the vigorous enforcement of State regulation of certain businesses which relate themselves to organized, professional theft rings.^{3/}

The "Motor Vehicle Theft Prevention Act of 1979" (S. 1214 and H.R. 4178), obviously, then, is legislation that would be of keen interest to those of our administrators who desire to assist in developing a national program to prevent auto theft, trafficking in stolen autos, and the chop shop operation.

AAMVA's Concerns Relative to S. 1214 and H.R. 4178
(Assuming for these purposes that the Secretary has the authority to act in this area)

The proposed legislation presents the following concerns to AAMVA.

- (1) Sec. 202, and 203, should, as does Sec. 201, amend the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) by becoming new sub-sections (k) and (l), respectively.
- (2)(a) The failure to specifically name in Sec. 202, AAMVA, as one of the groups the Secretary is to "closely consult with," in view of the key role that motor vehicle administrators play within the theft prevention system (see supra, p. 1).
- (b) The consultative process referred to above in (2)(a) is not sufficiently developed so that input is insured by the named groups, as well as, other interested parties. Therefore, AAMVA proposes the following language (new language underscored):

Sec. 202 (a) In exercising the authority given to the Secretary of Transportation under section 103(j) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392), as added by section 201 of this Act, the Secretary shall consult closely and develop consensus with the Attorney General, the International Association of Chiefs of Police, the International Association of Auto Theft Investigators, the National Automobile Theft Bureau, the American Association of Motor Vehicle Administrators, and other groups and individuals interested in or affected by the motor vehicle theft problem.

^{3/} AAMVA Bulletin, March 1979, p. 2, attached as Exhibit 4.

(3) The extent of federal preemption.

Preemption is one of the primary concerns of AAMVA.

Preemption--To What Extent

Sec. 203 provides:

Whenever there is in effect a Federal motor vehicle security standard relating to a motor vehicle's starting system, the locking systems for the engine, passenger, and trunk compartments, and component part identification established under this title, no State or political subdivision of a State shall have any authority to establish or to continue in effect, with respect to any motor vehicle or motor vehicle part, any security standard relating to those same systems which is not identical to such Federal standard.

This section is almost in haec verba to Section 103(d) of the National Traffic and Motor Vehicle Safety Act of 1966 hereinafter referred to as the Act.^{4/} This section provides:

Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

^{4/} 15 U.S.C. 1392(d)

The section-by-section analysis of S. 1214, more particularly, Section 203, leaves no room for doubt that "Federal anti-theft standards would preempt any such state legislation which is not identical to the Federal standard."^{5/}

The analysis also makes plain that states would not be barred, however, from "enacting a state standard identical to the Federal standard and enforcing such standard to the degree authorized by the Motor Vehicle Safety Act of 1966, as amended."^{6/}

AAMVA would have no problem with the foregoing and the question of preemption, as it relates to security standards, but for the language, in the analysis which qualifies state enforcement activity. That is, "to the degree authorized by the Motor Vehicle Safety Act of 1966, as amended."^{7/}

This qualifying language begs the question that has been lingering since the Act's implementation in 1967, and for which AAMVA seeks a determinative answer in the forum where the ambiguity, if any, was created.^{8/}

THE QUESTION WAS AND IS UNDER SECTION 103(d) OF THE ACT AND IS AND WILL BE UNDER SECTION 103(j) OF THE PROPOSED LEGISLATION THE FOLLOWING:

TO WHAT EXTENT MAY A STATE ENFORCE IDENTICAL FEDERAL STANDARDS PROMULGATED BY THE SECRETARY UNDER THE ACT.

The answer to this question must be determined by Congressional intent at the time it enacted the Act; therefore, a brief review of the legislative history of Section 103(d) is warranted,^{9/} as well as, any judicial or administrative interpretations of the extent of preemption mandated by this section.

^{5/} Congressional Record, May 22, 1979, S. 6425.

^{6/} Ibid. (Emphasis added.)

^{7/} Ibid.

^{8/} AAMVA Capital Report, May 18, 1979, pp. 4-5, attached as Exhibit 5. It appears that industry also desires clarification; see MEMA Insight, June 1, 1979, attached as Exhibit 6.

^{9/} That history would also shed light, in AAMVA's opinion, with respect to the extent of Federal preemption under the proposed legislation (Section 203).

Brief Legislative History of Section 103(d) of the Act

The legislative history of Section 103(d) is revealing. As originally written, it read as follows.

Sec. 102... (b) No State or local government law, regulation, or ordinance shall establish a safety standard for a motor vehicle or item of motor vehicle equipment in interstate commerce if a Federal motor vehicle safety standard issued in conformance with the provisions of this title is in effect with respect to that motor vehicle or item of motor vehicle equipment; and any such law, regulation or ordinance purporting to establish such safety standards and providing a penalty or punishment for an act of noncompliance therewith shall be null, void, and of no effect.... (emphasis added).^{10/}

^{10/} In response to the House Committee's request, AMA (now known as MVMA) submitted a markup of the original Bill which includes a change in the preemption clause. The change suggested read as follows (with changes from the original section indicated by all capitals and line-outs):

"No State or local government law, regulation or ordinance shall establish a safety standard for a motor vehicle or item of motor vehicle equipment WHICH DIFFERS FROM ~~in interstate-commerce-if~~ a Federal Motor Vehicle standard issued BY THE SECRETARY in conformance with the provisions of this Title ~~is-in-effect~~ with respect to that motor vehicle or item of motor vehicle equipment; and such law, regulation, or ordinance purporting to establish such DIFFERENT safety standards and providing a penalty or punishment for an act of noncompliance therewith shall be null, void, and of no effect." (Emphasis added.)

In addition, the General Counsel for the Commerce Department responded favorably to the House Committee Report with respect to a mark-up of the original section, as follows:

"In the industry draft on the pre-emption of State Standards, there is a slight language change which will have the effect of permitting states to have their own safety standards for new motor vehicles so long as those standards do not differ from Federal Standards. We would have no objection to making the language clarification suggested. We understand that the effect of this language change would only be to permit independent enforcement by the States of a standard which is identical to the Federal Standard..." (Emphasis added.)

There is no room for argument. As originally written, the preemption contemplated was both complete and certain, and state penalties (Enforcement) for noncompliance with "any such law, regulation, or ordinance purporting to establish State safety standards" were declared to be "null and void and of no effect."

However, as finally written, it is clear to AAMVA that Congress did not intend to preempt state regulation and control except in areas where Federal standards have been issued, and not even then, except to the extent that state standards are not identical to an applicable federal standard. But, Congress did not directly address the question as to the extent of state enforcement activity contemplated under the 1966 Act; nor does S. 1214 or H.R. 4178 adequately address this question. However, a further examination of the legislative history of Section 103(d) indicates that the section should be read narrowly, and that the states are entitled to play a role in the motor vehicle safety area (and we assume the vehicle security area). The evolution of the preemption section, from the original bill to the final Act, indicates that at each stage of the legislative process, Congress narrowed the preemptive effect of the Act to the point where, instead of declaring the State standard void where a Federal standard was promulgated, as in the original bill, the section was changed to allow concurrent State regulation of a non-conflicting nature.^{11/}

Thus, the language which the Congress finally elected to use in Section 103(d) of the Act, would preserve to the States a significant role in the regulation of motor vehicles and items of motor vehicle safety equipment, including enforcement of identical Federal standards adopted by the States. For otherwise the section would be meaningless; it would be ridiculous for a state to enact a law adopting an identical Federal standard and then not be able to thereafter enforce that standard,

^{11/} S. 3005 and H.R. 13228; compare with 15 U.S.C. 1392(d); House Report, pp. 249-50; 277-78.

that is, to give "it affect." No state would involve itself in such an exercise of futility, nor could Congress have intended that it should.

Judicial Interpretation

There are very few Court cases on the issue of preemption and, more particularly, on the preemptive effect of Section 103(d) on state enforcement programs.^{12/} The Superlite cases have accounted for the majority of the litigation over preemption under the Act. These cases arose as a result of several States restraining the sale of Chrysler automobiles equipped with auxiliary headlamps. Chrysler went to Court to enjoin the States from taking this action. Three United States District Court decisions and two United States Court of Appeals decisions resulted from the litigation. The State of New Hampshire prevailed against Chrysler.^{13/} Chrysler prevailed at the District Court level in suits against Vermont^{14/} and against New York.^{15/} Chrysler's lower court victories were short-lived as the Court of Appeals reversed the decisions.^{16/}

In the Superlite cases, Chrysler argued that, with the passage of the Act, all State laws pertaining to the performance and equipment of new vehicles became void. The corporation asserted that Section 103(d) applied only to used vehicles. In the alternative, Chrysler argued that the State statutes were preempted as regulating an "aspect of performance," covered by Federal Motor Vehicle Safety Standard 108, the only Federal standard that deals with vehicle lighting. This standard requires that vehicles carry equipment such as "headlamps," "parking lights," and "turn signal lamps."

^{12/} But see TSEI vs Kane, *infra*, pp. 10-11.

^{13/} Chrysler Corporation v. Rhodes, 294 F. Supp. 665 (1968), affirmed at 416 F. 2d 319 (1st Cir., 1968).

^{14/} Chrysler Corporation v. Malloy, 294 F. Supp. 524 (1968).

^{15/} Chrysler Corporation v. Tofany, 305 F. Supp. 971 (1969).

^{16/} Chrysler Corporation v. Tofany, 419 F. 2d 499 (2nd Cir., 1969).

The courts eventually rejected both Chrysler arguments. The Tofany appellate court found that the plain language of section 103(d) and its legislative history mandated that the provision be applied to new vehicles and that auxiliary lamps were not covered within an "aspect of performance" of standard 108. The court noted that, where a State's police power is involved, preemption is not presumed, and it stated that the interests of traffic safety dictated that section 103(d) be construed narrowly. The court also relied on the Federal Government's position that it never intended Standard 108 to deal with an aspect of performance of a light such as Superlite.^{17/}

An Administrative Interpretation

It is well settled that, citation of authority is unnecessary, that administrative interpretations are to be given great weight with respect to laws which are to be enforced by a particular agency.

In 1971 NHTSA Administrator, Douglas Toms, in an interpretation regarding the limits on state enforcement procedures, stated:

It has been the position of this agency that the Act permits the States to enforce the standards, independently of the Federal enforcement effort, since otherwise there would have been no reason for the Act to allow the States to have even "identical" standards. The question raised by the ... petition is to what extent the States may utilize an enforcement scheme that differs from the Federal one established by the Act.^{18/}

Toms continued by stating that the effective date of a standard is established on the basis of the agency's judgement as to the length of time it will take manufacturers to design and prepare to produce a vehicle or item of equipment, and is not intended to allow time for obtaining governmental approval after production begins. He further stated that:

^{17/}The National Highway Traffic Safety Administration argued, as *amicus curiae*, that there was no preemption.

^{18/}Federal Register, Volume 36, No. 106 (June 2, 1971), pp. 10744-45.

It is the position of this agency, therefore, that under the Act and the regulatory scheme that has been established by its authority a State may not regulate motor vehicles or motor vehicle equipment, with respect to aspects of performance covered by Federal standards, by requiring prior State approval before sale or otherwise restricting the manufacture, sale, or movement within the State of products that conform to the standards.^{19/}

However, Toms made it plain that the legislative history of the Act did not offer specific guidance on the question, especially as it related to items of motor vehicle equipment. Toms referred to statements made by Senator Magnuson which related solely to the vehicle itself. Accordingly, at least from the foregoing, it is clear that states would be prohibited from having an enforcement scheme that would impede the free flow of commerce of new vehicles. However, whether a state may have an enforcement scheme, with respect to automotive parts and safety equipment, is another question. But that question seems to have been answered in favor of state enforcement by Toms when he stated that:

"This interpretation does not preclude State enforcement of standards by other reasonable procedures that do not impose undue burdens on the manufacturers, including submission of products for approval within reasonable time limits, as long as manufacturers are free to market their products while the procedures are being followed, as they are under the Federal scheme."^{20/}

From AAMVA's perspective, a reasonable interpretation of the last-quoted material would seem to make clear that a state could require products to be submitted for approval for sale in a state, provided, the manufacturers are allowed to market their products in that state while that state's enforcement procedures are being implemented. If the state should find, during the course of enforcement implementation, that the products submitted for approval do not meet Federal standards, then that state could take appropriate action against the sale of that product in the state. Obviously, the constitutional question of undue burden on commerce, may arise where a state program may have an effect on interstate commerce.

^{19/} Ibid.

^{20/} Ibid. (Emphasis added)

How the Issue Arose and AAMVA's Involvement

AAMVA has been designated as the Safety Equipment Approval Agent for 48 of the 50 States of the United States and seven Provinces of Canada. Under this program, the Association will issue a Certificate of Approval in behalf of the participating State or Province, to the manufacturers of safety devices, parts, material, assemblies, or test equipment. The program is designed to save the States, Provinces, and manufacturers time and money by offering a centralized system of equipment approvals.^{21/} The program went into effect on January 1, 1967, and had the support of industry at that time. However, subsequent to Mr. Toms' interpretation of Section 103(d), in 1971, a segment of the automobile parts industry took a different position. This segment of the industry took the position that the 1966 Act established a uniform Federal regulatory scheme and that this uniform Federal regulatory scheme preempts state enforcement and prevents any independent, parallel, or supplemental enforcement by the states. The uniform Federal regulatory scheme, emphasized by this segment of the industry, is primarily that of self-certification. In AAMVA's opinion, the self-certification scheme is of questionable value, as the present Congressional hearings on the DC-10 certification process indicate. Substantiation is unnecessary to support the statement that the Federal bureaucracy is unable to adequately police a self-certification program, and this holds fast whether it is the FAA or DOT. State enforcement schemes, whether pre-sale approval, market auditing and retesting in the safety field (safety equipment and not new vehicles) or junk and salvage enforcement in the vehicle security field, are needed to complement the Federal scheme if national programs are to succeed.^{22/}

^{21/} AAMVA Manufacturer's Guide for Safety Equipment Services, attached as Exhibit 7.

^{22/} There is no doubt that the Executive Branch comprehends the need for complementary state enforcement schemes of Federal standards. States are presently assisting in the national enforcement scheme of the Federal Highway Administration, Bureau of Motor Carriers Safety, with respect to the enforcement of truck weight standards. It was recently proposed by the FHWA that states assist with enforcement of Federal criteria as it relates to truck length and width. Moreover, Secretary Schlesinger has recently announced that he would favor, upon request from the states, their enforcement of certain DOE regulations.

Issue was joined in 1975 when a law suit was brought by the Truck Safety Equipment Institute (TSEI) against the Commonwealth of Pennsylvania.^{23/} TSEI argued that enforcement through a pre-sale approval program, such as that used by Pennsylvania, is preempted by the Act. It reached this conclusion by arguing that Congress intended that the Federal enforcement scheme is exclusive, that the Federal regulatory scheme has been so pervasive that there is no room for supplemental State regulation, that Congress intended that there be one set of criteria for manufacturers to follow, and that the goals and objectives of the national safety program are frustrated by Pennsylvania's pre-sale approval program.

Pennsylvania argued that Congress intended that the States participate in promoting traffic safety, the primary purpose of the Act. The State also argued that section 103(d) only prevents the States from adopting different standards than those adopted by the Federal Government and does not prevent the adoption of different enforcement procedures,^{24/} especially when such procedures accomplish the goals and objectives of the Act.

In view of the TSEI case, it can be readily seen that the states are concerned with the extent of their enforcement roles under S. 1214 and H.R. 4178. Those motor vehicle administrators familiar with the TSEI case were of the opinion that they were to play an active role in the enforcement of identical Federal Motor Vehicle Safety Standards as they relate to automotive parts and equipment. However, if the decision of the Pennsylvania case is indicative and does truly express the intent of Congress, then the role of the states is meaningless as it relates to their enactment of identical Federal Motor Vehicle Safety Standards, in the automotive parts and equipment area, as well as, identical Federal Motor Vehicle Security Standards.

^{23/} TSEI v. Kane (MDPA, Sept. 20, 1976), attached as Exhibit 8.

^{24/} TSEI v. Kane (3rd Cir., July 27, 1977), attached as Exhibit 9. TSEI v. Kane (MDPA, Feb. 26, 1979), attached as Exhibit 10.

As previously stated, and as indicated here, the Vehicle Theft Act of 1979 raises parallel and similar questions with respect to the extent of State enforcement of identical Federal Motor Vehicle standards. We have had no definitive, judicial interpretations of section 103(d), and the one administrative interpretation on the question at hand, to say the least, is somewhat conflicting. Therefore, the question is rightfully before the forum where it belongs, the U.S. Congress, in view of the fact that the Congress will be once again addressing section 103 of the Motor Vehicle Safety Act of 1966.

CONCLUSION

AAMVA is of the opinion that the intent of Congress in 1966 was not to bar the States from enforcing Federal Motor Vehicle Safety Standards under schemes promulgated at the state level.

Congress could not have intended that a state stand idly by and permit violations of Federal Motor Vehicle Safety Standards, which relate to auto parts and safety equipment, adopted by the state, and wait for a Federal initiative in order to preclude such activity from continuing where the state has an enforcement program in place.^{25/} The states, as Congress is well aware, under their police powers are obviously in the best position to protect the safety and welfare of their citizens. Moreover, state regulatory schemes contemplated by AAMVA serve to complement the Federal regulatory scheme which the Congress intended when it enacted the Act.^{26/}

So that there is no further misunderstanding of Congressional intent, the AAMVA respectfully requests that Section 103(d) of the Act and Section 203 in S. 1214 and H.R. 4178 be amended as follows:

^{25/} AAMVA Capital Report, March 14, 1979, attached as Exhibit 11.

^{26/} AAMVA Bulletin, March 1979, pp. 1, 7 (refer to Exhibit 4, attached).

Section 103(d)

"Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Provided, however, that a state may adopt identical Federal Motor Vehicle Safety Standards promulgated by the Secretary, and enforce those standards to the extent allowed under state law, so long as, such enforcement does not frustrate the objectives and purposes of this Act. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal Standard."

Section 203

"Whenever there is in effect a Federal Motor Vehicle Security Standard relating to a motor vehicle's starting system, the locking system, the locking systems for the engine, passenger, and trunk compartments, and component part identification established under this title, no State or political subdivision of a State shall have any authority to establish or to continue in effect, with respect to any motor vehicle or motor vehicle part, any security standard relating to those same systems which is not identical to such federal standard. Provided, however, that a state may adopt identical Federal Motor Vehicle Security Standards promulgated by the Secretary, and enforce those standards to the extent allowed under state law, so long as, such enforcement does not frustrate the objectives and purposes of this Act."

The added language would make plain that states can develop enforcement programs and systems which are not necessarily identical to the Federal enforcement programs, as long as, those programs and systems complement the Federal scheme of accomplishing the purposes and objectives of the Act,^{27/} and the proposed

^{27/} "That Congress hereby declares that the purpose of this Act is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents...." (15 U.S.C. 1392)

legislation; ^{28/} provided, however, that such state enforcement schemes do not frustrate the Federal scheme ^{29/} nor create an undue burden on interstate commerce. ^{30/}

^{28/} The purposes are to improve the standards for security devices for motor vehicles; improve the identification numbering systems for motor vehicles and their major components; increase the Federal criminal penalties for those persons trafficking in stolen motor vehicles and their parts; and establish procedures to reduce opportunities for exporting stolen motor vehicles. (S. 1214 and H.R. 4178, p. 5)

^{29/} Goldstein v. California, 93 S.Ct. 2303 (1973). Compare C.F. Jones v. Rath Packing Co., 97 S.Ct. 1305 (1977). (Attached as Exhibit 12).

^{30/} Raymond Motor Transportation, Inc. v. Rice, 54 L.Ed.2d 664 (Feb. 21, 1978).

The following pages (155-194) contain material protected by the
Copyright Act of 1976 (17 U.S.C.)

American Association of Motor Vehicle Administration

National Criminal Justice Reference Service

ncjrs

Copyrighted portion of this
document was not microfilmed
because the right to reproduce
was denied.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

SEP 20 1976
DEPARTMENT OF TRANSPORTATION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

TRACK SAFETY EQUIPMENT INSTITUTE,
an Illinois not-for-profit corporation;
ABEX CORPORATION, SIGNAL-STAT DIVISION,
a Delaware corporation; R. E. DIETZ
COMPANY, a New York corporation;
GROTE MANUFACTURING COMPANY, a
Kentucky corporation,
Plaintiffs

v.

ROBERT KANE, Attorney General,
Commonwealth of Pennsylvania;
JACOB C. WESSEL, Secretary, Pennsylv-
ania Department of Transportation;
SEYMORE G. HEYSON, Director, Bureau
of Traffic Safety, Pennsylvania
Department of Transportation;
WARD E. BAUMBACH, Chief, Inspection
Division, Bureau of Traffic Safety,
Pennsylvania Department of Transportation;
CAROLINE GARDNER, Supervisor, Automotive
Equipment Section, Bureau of Traffic
Safety, Pennsylvania Department of
Transportation; individually, and in their
official capacities,
Defendants

CIVIL No. 75-636

FILED
HARRISBURG, PA.
SEP 16 1976

DONALD R. BERRY, CLERK
PER _____ DEPUTY CLERK

MEMORANDUM
AND
ORDER

Presently before the court are cross motions for summary judgment filed by plaintiffs and defendants in the above-captioned case in which plaintiffs seek declaratory and injunctive relief. Both motions are filed pursuant to Federal Rule of Civil Procedure 56 together with supporting affidavits¹ and relate only to Count 1 of plaintiffs' two-count complaint, concerning an issue of preemption

¹ Plaintiffs have also submitted extensive documentation of the legislative history of the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act), 15 U.S.C. §§ 1381, et seq., as amended, which Act they contend preempts the particular provisions of the Pennsylvania Motor Vehicle Code, 75 P.S. §§ 101, et seq., providing for the state equipment approval program, and other materials evidencing the general background and nature of the Federal regulatory program for motor vehicle equipment.

under the Supremacy Clause of the Constitution, Article VI, Clause

Jurisdiction in Federal court in this case is predicated upon 28 U.S.C. § 1337 providing for jurisdiction in the district courts for civil actions arising under acts of Congress regulating commerce. See, GENERAL MOTORS CORP. v. VOLPE, 321 F.Supp. 1112 (D.Del. 1970), modified on other grounds, 457 F.2d 922 (3d Cir. 1972), and 28 U.S.C. § 1331 governing matters of a federal question. It has also been recently established that this court may properly consider the statutory preemption claim set forth in Count 1 and arising under the Supremacy Clause prior to convening a three-judge court under 28 U.S.C. § 2281, as it existed at the time of the filing of this suit, for the purpose of deciding the constitutional claim involving the Commerce Clause which is contained in Count 2. HAGANS v. LAVINE, 415 U.S. 526, 39 L Ed 2d 577 (1974).

Moreover, in light of the fact that we are restricted to review of the preemption claim under the posture of this case, we shall not consider defendants' challenge to the validity of the motor vehicle safety standards here in question as that challenge pertains to the absence of consultation between the Secretary of Transportation and the Vehicle Equipment Safety Commission (VESC) prior to the promulgation of the standards contained in 15 U.S.C. § 1381, et seq., and as purportedly required in § 1392(f)(2), 26 U.S.C.²

The pertinent section of the Safety Act governing the preemptive effect of the motor vehicle safety standards issued by the Secretary under that Act is § 1392(d) of the Act which states:

"Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no state or

² In any event, it appears that for at least certain of the standards issued by the Secretary pursuant to the Safety Act sufficient consultation with the various enumerated interest groups was undertaken prior to the issuance of such standards. AUTOMOTIVE PARTS & ACCESSORIES ASSN. v. BOYD, 407 F.2d 330, 334 n.5 (D.C.Cir. 1968).

any subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any state or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard."

Section 1397(b) further provides that the Federal standards are designed to apply to motor vehicles prior to and at the time of their initial sale and introduction into the market in interstate commerce; that is, to manufacturers, distributors and dealers, and that state standards are to be effective and enforced as to used motor vehicles in the possession of consumers in order to assure a continuing and effective national traffic safety program.

In light of these express terms establishing the scope and breadth of the Federal regulatory scheme of motor vehicle equipment, defendants concede that to the extent the State's standards regulating motor vehicle equipment are not identical to lawfully adopted Federal standards, they are null and void and unenforceable. Defendants maintain, however, that the State's standards in their entirety are non-identical with the corresponding Federal standards and that the State has recognized this fact and chosen to treat its own divergent standards as if they were identical to the Federal standards and to informally enforce these "conformed" standards without having actually formally enacted or issued either through the legislative branch or the administrative branch "identical" standards. While defendants represent that such identical standards are in the making and when enacted will be enforced independently of the Federal enforcement effort but with due regard to the Federal standards while the State enforcement procedures are being completed, they contend that at this time there

is no viable case or controversy which could establish jurisdiction of the Federal courts. And in the event that this court does find the existence of a concrete case or controversy underlying this present action, defendants finally maintain that the State has made no effort to impose civil sanctions or otherwise enforce the State standards against plaintiffs and that, accordingly, any case or controversy is not ripe for adjudication by this court.

We agree that to the extent the State standards governing aspects of performance for equipment on motor vehicles are co-extensive with Federal standards and non-identical such State standards are null and void and unenforceable. In view of the comprehensive nature of the Federal and State standards encompassing nearly the same motor vehicle equipment and covering many of the same aspects of performance however, it would be incredible that some of the standards were not identical. In many respects, the two sets of standards do contain different criteria as well as different standards of performance for like types of equipment, but in certain areas basic types of equipment are included in both sets of standards and are subject to identical standards. For instance, as plaintiffs point out both the Federal and State standards require that certain vehicles be equipped with two red taillights mounted on the rear; two stoplights, one mounted on each side of the rear; four red reflectors, with two mounted on the rear and one mounted on each side near the rear; two amber reflectors, mounted on the sides near the front; and four signal lights, two mounted on the front and two mounted on the rear. Compare, Pennsylvania Motor Vehicle Code, 75 P.S. §§ 801(d), (e), (f); 802(c) (1) and (c) (2) with Federal Motor Vehicle Safety Standard 108, 49 C.F.R. § 571.108, Tables I-IV. Cf, Appendix Vol.I, pp. 303, 307, 317, 347, 367, plaintiffs' motion for summary judgment. Adopting the same narrow construction of the "aspect of performance" language in the preemption section of the Act as was utilized in *CHRYSLER CORP. v. TOFANY*, 419 F.2d 499 (2d Cir. 1969), we are nevertheless compelled

to conclude that an actual case and controversy does in fact exist in this case upon which to establish jurisdiction in the Federal courts.³

Furthermore, defendants admittedly are informally enforcing the State standards as they exist at present while construing them so that they are in "conformity" with the Federal standards. Defendants have also indicated their intention to enact identical State standards in the future and to enforce them independently of but in conjunction with Federal enforcement procedures. While defendants contend they do not intend to prosecute under the present State standards and that they merely seek the voluntary cooperation of manufacturers and distributors, plaintiffs remain subject to the State standards and accordingly, under these circumstances, we believe there is a ripe, justiciable controversy at hand. Cf, Appendix Vol.I, pp. 422-423, plaintiffs' motion for summary judgment.

Recognizing that certain factual disputes apparently are raised in the briefs and affidavits submitted by both parties in support of their respective motions for summary judgment, we conclude that these disputed facts are neither critical to nor dispositive of the preemption issue posed before the court and, accordingly, we shall reach our decision in this case without having to resolve these matters. Confining our attention to the preemption issue, therefore, we further conclude that while neither express nor clear, the nature, scope and circumstances underlying the enactment of the Safety Act and the issuance of the related Federal motor vehicle safety standards necessarily imply that such provisions were intended to preempt both the creation and the enforcement of identical standards by the state concerning motor vehicle equipment up until the time of the vehicle's first purchase.

³ At the same time we frown on the possibility that defendants could avoid the effect of the preemption section by informally enforcing non-identical standards "deemed" to be in conformity with the Federal standards and essentially seeking voluntary compliance and cooperation by the manufacturers of motor vehicles under the independent state enforcement procedures through alleged "threats" of actual prosecution and enforcement.

The Federal program for enforcing the duly promulgated motor vehicle safety standards essentially consists of a self-certification process by each motor vehicle manufacturer, distributor or dealer in which they are required to certify that each vehicle or item of motor vehicle equipment subject to the standards are in compliance prior to the first purchase of the item. The Safety Act makes it unlawful to certify that an item of motor vehicle equipment conforms to an applicable Federal standard if the manufacturer in the exercise of "due care" has reason to know that such certification is false or misleading in any material respect. 15 U.S.C. § 1397(a)(1)(C). The Act is administered by the National Highway Traffic Safety Administration (NHTSA) of the United States Department of Transportation and the Secretary is afforded broad investigative powers to aid in enforcement of the Act's provisions. 15 U.S.C. § 1401. NHTSA enforces the Act by requiring, *inter alia*, detailed recordkeeping and data submission evidencing the manufacturer's compliance with the Act and the basis for their self-certification. 15 U.S.C. §§ 1401, 1418. In addition, NHTSA conducts compliance testing of equipment with the Federal standards on a random basis and also authorizes recall campaigns where equipment is not in conformity with the Federal standards or where it contains a safety-related defect. The Safety Act provides for civil penalties, 15 U.S.C. § 1398, and the United States is also permitted to seek injunctive relief in Federal district courts to restrain violations of the Act, 15 U.S.C. § 1399.

The Pennsylvania enforcement scheme of provisions in the Vehicle Code regulating motor vehicle equipment, on the other hand, entails the "approval" of each regulated item of equipment prior to its sale or use and also requires such approval prior to the sale, use or inspection of any vehicle on which such equipment is installed. See, 75 P.S. §§ 807, 808, 812 and 819(e). Approval must be sought either through the State itself by the filing of the necessary materials, or through the American Association of Motor Vehicle Administrators (AAMVA), Pennsylvania's recognized equipment

approval agent. In either event neither Pennsylvania nor the AAMVA conducts compliance tests itself, but rather they require the submission of test reports from approved laboratories upon which each relies in establishing the manufacturer's compliance with the applicable State safety standards. The AAMVA also periodically re-tests the equipment and spot-checks the market for unapproved equipment. Whether approval is obtained through the State or through the AAMVA, however, compliance with the Federal enforcement procedure and self-certification by the manufacturer that its equipment conforms to the effective Federal standards is not sufficient in and of itself to assure compliance with the State standards and receipt of the necessary "approval" under the corresponding State enforcement program. The State Vehicle Code provides criminal sanctions for violations of the equipment approval provisions, 75 P.S. §§ 807, 808, and also restricts the titling, registration or issuance of a certificate of inspection to motor vehicles containing unapproved equipment, 75 P.S. §§ 812(c), 819(a).

In view of the comprehensive nature of the Federal standards for the quality of motor vehicle equipment prior and up to the time of the first purchase of such equipment, we are constrained to conclude that the Pennsylvania motor vehicle equipment approval program is preempted by the Safety Act of 1966 to the extent the State program reaches federally-regulated equipment. Defendants appear to acknowledge that the preemption section contained in 15 U.S.C. § 1392(d) preempts and precludes any State standards which are "not identical" to corresponding Federal standards. The thrust of their primary argument in opposition to complete preemption is, however, that by virtue of the fact the states were enabled to retain "identical" standards it must necessarily follow that Congress intended that the states be allowed to observe different enforcement procedures, pre-sale and post-sale, provided that manufacturers be allowed to market their equipment where they have obtained compliance with the Federal procedures and

are awaiting pending state "approval". In support of this argument, defendants emphasize that the primary purpose of the Safety Act as expressly set forth in 15 U.S.C. § 1321 is the reduction of "traffic accidents and deaths and injuries to persons resulting from traffic accidents" and not the countervailing policy of uniformity in enforcement. Defendants stress the experience and expertise which the various states have acquired in regulating motor vehicle equipment and contend that their diverse enforcement practices would supplement and enhance the Federal enforcement effort in an otherwise burdensome task on a national scale; independent state enforcement procedures are deemed to be encouraged by the Act in order to advance the uniform Federal standard and the policy of less traffic accidents at the expense of uniform regulation, which is considered only a secondary consideration underlying the standards.

Assuming, arguendo, that the intent of Congress as evidenced by § 1392(d) and the legislative history of the Act was to establish a uniform national standard which was to be implemented and enforced pre-sale not only by the NHTSA but by independent enforcement programs of the states as well as according to the particularized customs and means, we do not believe that this scheme could be effectuated without necessarily resulting in either pointless duplicative efforts on the part of the states or, in the alternative, the institution of a different, "non-identical" standard by the states. To afford the states the authority to enact enforcement programs which are compatible but not necessarily identical to the Federal enforcement scheme in order to account for Congress' implied permission to the states to adopt "identical" standards appears to mask a distinction without a difference; where motor vehicle equipment is ultimately subject to the same identical standard whether scrutinized under both a state and a Federal enforcement scheme or solely under the Federal scheme, it does not appear that a separate state enforcement program, pre-sale, could be of benefit or legitimized in any way.

For instance, in the situation where a manufacturer has properly self-certified compliance with the Federal standards under the Federal enforcement procedure and is marketing the product while awaiting approval by the state on a pending application, can the state do otherwise than grant the approval without necessarily establishing or invoking a different "standard" by reason of its different enforcement procedure and thereby rendering the Federal enforcement procedure a nullity? Congress intended a uniform minimum national standard for specified aspects of motor vehicle equipment performance which would ensure that the vehicle would be admitted for market in all states, and it provided a comprehensive enforcement system under which all manufacturers, distributors and dealers are to certify compliance with this standard. Cf. Appendix Vol. II, pp. 786, 664, plaintiffs' motion for summary judgment. Under these circumstances, to allow a state's enforcement procedures to be more strict than the Federal enforcement scheme must do injustice to a uniform and identical Federal standard.

We believe that the language of § 1392(d) by its express terms cannot be construed to have a pre-emptive effect within the meaning of the Supremacy Clause, but in light of the fact that a uniform Federal standard pre-sale can only be maintained if identical enforcement procedures are employed, and adoption of such procedures would merely constitute a duplicative effort, we are constrained to conclude that preemption is implicit in the enactment of the Safety Act and the promulgation of extensive pre-sale motor vehicle equipment safety standards. Under the test enunciated in *FLORIDA LIME & AVOCADO GROWERS v. PAUL*, 373 U.S. 132, 10 L Ed 2d 248 (1963) and *HINES v. DAVIDOWITZ*, 312 U.S. 52, 85 L Ed 581 (1941) for determining when Federal preemption is necessary and justified,⁴

⁴ In *FLORIDA LIME & AVOCADO GROWERS v. PAUL*, 10 L Ed 2d, at 256-57, the Supreme Court stated: "Whether a State may constitutionally reject commodities which a federal authority has certified to be marketable depends upon whether the state regulation 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' *HINES v. DAVIDOWITZ*, 312 U.S. 52, 67 The test of whether both

it is evident that both the state and the Federal enforcement procedures cannot be executed pre-sale without creating doubts and confusion as to the applicable and required standard and thereby impairing the effectiveness of the Federal standard and the Federal method of enforcement, and frustrating the accomplishment of the Safety Act's full purposes and objectives. Cf. *MOTOR COACH EMPLOYEES v. LOCKRIDGE*, 403 U.S. 274, 29 L Ed 2d 473 (1971); *CAMPBELL v. HUSSEY*, 368 U.S. 297, 7 L Ed 2d 299 (1961).

The Federal enforcement scheme relies on a self-certification process, and because of the comprehensive nature and national application of the Federal standards the NHTSA is understandably unable to conduct actual tests on each item of equipment and verify its compliance with the Federal standards prior to its entrance into the market for sale. Clearly there is room for additional, stricter enforcement on a more localized basis and this we believe was the role intended by Congress to be given to the states — as to post-sale enforcement of the Federal standards during use of the equipment by the consumer.⁵ Congress' desire to involve the states in a consultative role during the formulation of the individual Federal standards, its express delegation to the states of the function of inspecting used motor vehicles; that is, motor vehicles after the first purchase, and its implied intention of allowing the states to have "identical" standards to the Federal standards can all be understood and given harmonious, coherent

n.4 contd:

federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.

"The principle to be derived from our decision is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." (Citation omitted)

⁵ The states have also been afforded, however, the role of enforcing the Federal standards in new equipment items by reason of the "approved" aspect of their program and the states' ability to act swiftly in cases where the new equipment poses an actual and immediate danger to the public. *CHRYSLER CORP. v. TOFANY*, 419 F.2d 499 (2d Cir. 1969).

meaning if it is recognized that the Federal standard was intended to be enforced by the Federal authorities at the manufacturer, distributor and dealer's level and by the states in a complimentary fashion on a post-sale basis in order to assure a continuing and effective national traffic safety program. Cf. Appendix Vol. II, p. 664, plaintiffs' motion for summary judgment. Moreover, it would appear that the Federal scheme entailing self-certification would be more proper and suitable at the manufacturing and distributing level which is more of a national character and scope and encompasses manufacturers and distributors dealing in a large volume of goods and engaged in interstate commerce, while regulation of motor vehicle equipment at the consumer level would be particularly conducive to localized state enforcement. Cf. Appendix Vol. II, pp. 624-625, plaintiffs' motion for summary judgment.

Furthermore, the Safety Act expressly reserves common law liabilities, warranty obligations and consumer remedies in 15 U.S.C. §§ 1397(c) and 1420, not as further evidence of the states' role in pre-sale regulation of motor vehicle equipment but rather as an indication that compliance with the Federal standards is no guarantee that safety-related or other defects do not exist in the equipment and to avoid foreclosure of remedies where defects do in fact exist.

Finally, defendants contend that this court should accord great weight to prior administrative constructions of the presumption section provided in the Safety Act in discerning the intent of Congress in adopting the language used in that section as finally enacted. Defendants particularly rely on an interpretation of the limits of state enforcement procedures prepared by Douglas W. Toms, Acting Administrator for the NHTSA, on May 13, 1971, and published in the Federal Register, Vol. 36, No. 106, June 2, 1971. In that opinion Mr. Toms states, in part, as follows:

"Although this section [1392(d)] makes it clear that state standards must be 'identical' to the Federal standards to the extent of the latter's coverage, the procedural relationship between

State and Federal enforcement of the standards is not explicitly stated in the Act. It has been the position of this agency that the Act permits the States to enforce the standards, independently of the Federal enforcement effort, since otherwise there would have been no reason for the Act to allow the states to have even 'identical' standards. . . . [A] State requirement of obtaining prior approval before a product may be sold conflicts with the Federal regulatory scheme [in that there is a difference in the lead time between the state's approval process and the Federal method of self-certification]."

Relying on a statement offered by Senator Magnuson that the bill was designed to set a minimum standard which if complied with should enable the vehicle or equipment to be admitted to all states, Mr. Toms concluded that states could continue with independent enforcement procedures provided that manufacturers were allowed to market their products conforming to the Federal scheme while the state procedures were completed.

A similar position had been reached by a predecessor of Mr. Toms on June 5, 1968. In a letter written in response to an inquiry by the Superintendent of the Illinois State Highway Police, Doctor William Haddon stated that "where State standards are validly in effect, Federal law does not exclude or restrict their enforcement either in regard to new (pre-sale) or used vehicles." At the same time, however, Doctor Haddon expressed uncertainty as to how and to what extent state standards covering the same vehicle or aspect of performance must conform to Federal standards and concluded that this decision must be reached as to each standard and its specific provisions.⁶

While the interpretation of the preemption issue which was offered by Mr. Toms purports on one hand to follow the concept

⁶ Plaintiffs maintain that Doctor Haddon's views represent the most extreme position taken by the NHTSA in advocating no preemption. Plaintiffs deem the subsequent interpretation issued by Mr. Toms to be a softening of that position in that it recognizes preemption to the extent that the state approval programs preclude the marketing of products which have conformed to federal enforcement procedures but are awaiting state approval. Plaintiffs also contend that a more recent opinion of the Chief Administrator of NHTSA in 1973, Doctor James B. Gregory, evidenced a further retreat from the original position of the agency and indicates their intention to withhold interpretations of the preemptive effect of the act until the issue has been decided by the courts. To the

advanced by Senator Magnuson to the effect that a uniform minimum standard was to be observed which would assure vehicles in compliance would be admitted to all states, on the other hand it further reasons that once admitted to the state under the Federal enforcement scheme it may thereafter be prohibited under the state's method of enforcement for the same Federal standard. Clearly this is an unreasonable interpretation, particularly in light of the alternative construction voiced by plaintiffs, and runs contrary to the previous discussion concerning concurrent state and Federal enforcement procedures and the improbable maintenance of a uniform set of Federal standards. Furthermore, the alternative explanation for Congress' decision to allow the states to retain "identical" standards, that is, that the "identical state standards were intended to be implemented and enforced on a post-sale basis, comports with the overall enforcement structure established by the Safety Act and undermines the main premise of Mr. Toms' opinion that separate methods of enforcement were intended.

Accordingly, it is the conclusion of this court that the Safety Act of 1966, within the meaning of § 103(d) of the Act, 15 U.S.C. § 1392(d), completely preempts both Pennsylvania standards to the extent that they cover the same aspect of performance and are non-identical, and any state method of enforcement of identical standards on vehicles or vehicle equipment prior to the first purchase. We reach this decision based on our conclusion as to the intent of Congress in enacting the Act, as gleaned from the specific provisions of the Act and from its legislative history. If Congress has in fact intended otherwise, then it is the responsibility and obligation of Congress to expressly and clearly state its intentions and conform the state of the law as it exists following these recent judicial decisions to such intentions.

n.6 contd:

court's knowledge, however, documents containing this opinion by Doctor Gregory have not been provided to this court.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TRUCK SAFETY EQUIPMENT INSTITUTE,
an Illinois Not-for-profit corporation;
ABEX CORPORATION, SIGNAL-STAT DIVISION,
a Delaware corporation; R. E. DIEHL
COMPANY, a New York corporation;
GROTE MANUFACTURING COMPANY, a
Kentucky corporation,

Plaintiffs

v.

ROBERT KANE, Attorney General,
Commonwealth of Pennsylvania;
JACOB G. KASLER, Secretary, Pennsyl-
vania Department of Transportation;
SEYMOUR G. WEISZON, Director, Bureau
of Traffic Safety, Pennsylvania
Department of Transportation;
WALD E. BLUMBERG, Chief, Inspection
Division, Bureau of Traffic Safety,
Pennsylvania Department of Transportation;
CAROLINE GARDNER, Supervisor, Automotive
Equipment Section, Bureau of Traffic
Safety, Pennsylvania Department of
Transportation; individually, and in their
official capacities,

Defendants

CIVIL No. 75-636

RECEIVED
SEP 14 1976
DORIS R. BROWN, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG, PA.

ORDER

AND NOW, this _____ day of September 1976, in
accordance with our memorandum filed in the above-captioned case
this date, IT IS ORDERED that defendants' motion for summary
judgment be and is hereby denied.

IT IS FURTHER ORDERED that plaintiffs' motion for
summary judgment be and is hereby granted and entered against
defendants.

R. Dixon Herman
United States District Judge

Having decided in favor of the affirmative on the
preemption claim forwarded by plaintiffs, our decision is
dispositive as to both Counts I and II of plaintiffs' complaint
without the necessity of convening a three-judge court to hear the
Commerce Clause claim contained in Count II. Plaintiffs' motion
for summary judgment will be granted.

An appropriate order will be entered.

R. Dixon Herman
United States District Judge

Dated: September _____, 1976.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 76-2519

TRUCK SAFETY EQUIPMENT INSTITUTE, an Illinois not-for-profit corp.; ABEX CORPORATION, SIGNAL-STAT DIVISION, a Delaware corporation; R. E. DIETZ COMPANY, a New York Corporation; GROTE MANUFACTURING COMPANY, a Kentucky corporation

v.

ROBERT P. KANE, Attorney General, Commonwealth of Pa.; JACOB G. KASSAB, Secretary, Penna. Dept. of Transportation; J. A. TROMBETTA, Director, Bureau of Traffic Safety, Penna. Dept. of Transportation; WARD B. BAUMBACH, Chief, Inspector Division, Bureau of Traffic Safety, Penna. Dept. of Transportation; CAROLINE GARDNER, Supervisor, Automotive Equipment Section, Bureau of Traffic Safety, Penna. Dept. of Transportation; individually and in their official capacities, SEYMORE G. HEYISON, Director, Bureau of Traffic Safety, Pa. Dept. of Transp.

Robert Kane, Jacob Kassab (now William H. Sherlock) Seymore Heyison, Ward B. Baumbach, and Caroline Gardner.

Appellants.

On Appeal from the United States District Court for the Middle District of Pennsylvania
Civil No. 75-536

Argued June 14, 1977

Before: VAN DUSEN, ADAMS and GIBBONS, Circuit Judges

MICHAEL R. DECKMAN
Asst. Attorney General
Deputy Chief Counsel
ROGER T. SHOOP
Asst. Attorney General
ROBERT W. CUNLIFFE
Deputy Attorney General
Chief Counsel
Harrisburg, Penna. 17120

Attorneys for Appellants

LAWRENCE F. HENNEBERGER
WILLIAM B. SULLIVAN
MICHAEL M. EATON
ROBERT W. GREEN
Arent, Fox, Kintner,
Plotkin & Kahn
Washington, D. C. 20006

Attorneys for Appellees

OPINION OF THE COURT

(Filed JUL 27 1977)

PER CURIAM.

PER CURIAM:

This appeal arises out of litigation which presents the question whether the National Traffic and Motor Vehicle Safety Act of 1966¹ preempts state enforcement of safety standards, identical to federal motor vehicle safety standards, against pre-consumer links in the chain of distribution. The district court concluded that there is such preemption. However, because the state statute considered by the district court has now been replaced by new legislation, we vacate the judgment of the district court and remand for development of a record pertaining to the new enactment and reconsideration of the legal issues in light of such record.

I.

The National Traffic and Motor Vehicle Safety Act, which is administered by the National Highway Traffic Safety Administration (NHTSA), is the mechanism by which Congress has sought to achieve the goal of greater highway safety. Under the Act, the NHTSA is charged with the responsibility for promulgating federal safety standards applicable to motor vehicle equipment.²

1. 15 U.S.C. §§ 1381 *et seq.*
2. *See id.* § 1392(a).

A system of self-certification is the method by which the federal safety standards are enforced; manufacturers, distributors and dealers, upon transferring a new vehicle or piece of equipment, must certify that the vehicle or equipment complies with relevant federal standards.³ The Act makes it unlawful to manufacture, sell or offer for sale a new vehicle or item of equipment which does not conform to federal safety standards.⁴ Violators are subject to civil penalties of up to \$800,000 for each transgression.⁵ In addition, the Act authorizes suits to enjoin the sale of non-conforming vehicles and equipment,⁶ and subjects manufacturers and distributors to repurchase and replacement obligations as to defective vehicles and equipment.

Finally, the Act contains an explicit pre-emption section which provides:⁸

(d) Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

3. See *id.* § 1397.

4. See *id.* § 1397(a).

5. See *id.* § 1398.

6. See *id.* § 1399.

7. See *id.* § 1400. Manufacturers are also subject to a number of additional obligations under the Act. See *id.* §§ 1411-14.

8. *Id.* § 1392(d).

At the time the district court decided this case, Pennsylvania law required state approval of motor vehicle equipment as a precondition to the sale and use of such equipment within the Commonwealth.⁹ Under this law, the Commonwealth regulated a wide range of items, many of which were the subject of federal safety standards. In order to obtain state approval, a manufacturer was required to submit a photograph of the item of equipment or a sample, a laboratory test report,¹⁰ and an approval fee¹¹ to the American Association of Motor Vehicle Administrators (AAMVA), Pennsylvania's approval agent.

Pennsylvania law made it a misdemeanor for a manufacturer or distributor to sell or offer to sell certain unapproved equipment within the Commonwealth. Other provisions were also designed to prevent the introduction of unapproved equipment into the state.¹²

9. The content of Pennsylvania law was somewhat tangled. See page 4 *infra*.

10. A federal self-certification form was not acceptable as a substitute for the laboratory report.

11. The fees ranged from \$50 to \$200.

12. For example, the Pennsylvania Vehicle Code forbade the operation of vehicles with unapproved equipment and prohibited the titling or registration of vehicles containing such equipment.

CONTINUED

2 OF 6

In 1972, the Attorney General of Pennsylvania issued an opinion stating that the Commonwealth's approval mechanism was preempted by federal law as to those items which were the subject of federal safety standards. The Director of the Bureau of Traffic Safety then handed down a directive which called for strict adherence to the opinion of the Attorney General. However, it appears that Pennsylvania's approval program continued in operation.

This suit was filed in 1975 by several manufacturers of automotive lighting equipment who had not obtained AMVA approval for their products.¹³ The manufacturers sought a declaratory judgment that the Pennsylvania approval mechanism was preempted by federal law or was contrary to the Commerce Clause. After extensive discovery was had, Judge Herman granted plaintiffs' motion for summary judgment and issued a supporting opinion.¹⁴

There were two aspects to Judge Herman's opinion. First, he had to deal with the Commonwealth's argument that there was no live case or controversy. At the outset of that argument, the Commonwealth conceded that state safety standards not identical to federal safety standards were void. But the Commonwealth went on to urge that it had no extant standards identical to federal standards, thus suggesting that the question of the validity of state

13. It appears from the record that, prior to the institution of this litigation, the Commonwealth undertook numerous activities designed to win these manufacturers' compliance with the approval program.

14. See 419 F. Supp. 608 (M.D. Pa. 1976).

enforcement of identical standards was not before the court.¹⁵ The district judge concluded, however, that there were in existence certain state standards identical to federal standards,¹⁶ and that a viable case or controversy thus existed. He then turned to the question of preemption and ruled that the National Traffic and Motor Vehicle Safety Act excluded the states from any role in enforcing safety standards at the pre-consumer level. This appeal then ensued.

II.

On June 17, 1976, the Governor of Pennsylvania approved Act Number 81, which repealed the existing vehicle code and enacted a new one to go into effect on July 1, 1977. Several sections of the new code bear on the problem that Judge Herman confronted.

The new vehicle code provides for the adoption by the Commonwealth of existing federal safety standards,¹⁷ thus obviating any future questions as to

15. The Commonwealth, recognizing that non-identical safety standards were void, had decided informally to treat such non-identical standards as if they were identical to federal safety standards. Before the district court, however, the Commonwealth urged that this informal action did not comply with state administration procedures and that the *de facto* identical standards must therefore be deemed ineffective.

16. Judge Herman's conclusion appears to have rested on two bases. First, he stated that given the fact that the federal government and the Commonwealth both regulated many of the same items of automotive equipment, it was inconceivable that there would not be some identical standards. See 419 F. Supp. at 691-2. Second, he noted that the federal standards and the Pennsylvania standards required the identical amount of lights on automobiles. See *id.* at 692.

17. See PA. STAT. ANN. tit. 75 §§ 4103(b)-(c) (Purdon Supp. 1977).

whether the state standards are identical to federal standards.

It also does not require the Pennsylvania Department of Transportation to adopt a program of

equipment approval.¹⁸ The new code states that if an

approval system is put into force by regulation, it

shall be illegal to sell or offer to sell any equip-

ment that does not conform with existing regulations.¹⁹

Finally, the new code provides the outlines for the approval

program, should one be adopted, including the pay-

ment of approval fees and the requirement of the sub-

mission of laboratory test reports.²⁰

Although Judge Herman rendered his decision subsequent to the passage of Act Number 81, his opinion

did not advert to the new legislation. Instead, it

focused on the provisions of the then-existing

vehicle code, which has now been repealed. In place

of the code that Judge Herman considered now stands

the new vehicle code which, instead of being self-

executing as to the existence and operation of an

approval system, leaves the adoption of such a program

to administrative regulations. And it appears that,

as of this time, no regulations have been promulgated

or proposed regarding the establishment of an

approval system pursuant to the new code.²¹

18. Id. § 4104.

19. Id. § 1407(a). As opposed to the state of affairs under the old Code, violators are now subject solely to civil penalties and not to criminal sanctions.

20. Id. §§ 1954, 4104-05.

21. On June 13, 1977, the Commonwealth temporarily re-adopted all regulations promulgated under the old Vehicle Code. These temporary regulations will remain in effect until replacement regulations are adopted. See Pa. Bulletin, Vol. 7, No. 25 at 1647. This re-adoption, however, affords no clues as to the content of any replacement regulations.

Under these circumstances, we believe that the appropriate course of action is to return this case to the district court for the taking of evidence regarding the new statute. The pivotal reason is the fact that Judge Herman has not had an opportunity to scrutinize the new statute, which might prove to be somewhat different in operation from the repealed code. A remand in order to avoid the necessity of our passing on the constitutionality of a state statute in the absence of any record would appear to be especially apt in view of the national significance of the legal issues posed by this case.

Our conclusion is fortified by several other considerations. First, the Commonwealth has not yet taken any steps to authorize an approval system under the new vehicle code. Although plaintiffs have urged that the adoption of such a program is inevitable, and that we should rely on the oral representations of counsel for the Commonwealth that such a system will ultimately go into force,²² we do not believe that speculation on our part as to the future regulatory intent of the Commonwealth is in order. A remand might go

22. Plaintiffs urge that such reliance is mandated by our en banc decision in United States v. Frumento, 552 F.2d 534 (3d Cir. 1977). We are unable to accept this proposition. In Frumento, this Court relied upon statements of counsel not to indicate that the government was definitely going to take certain actions, but only to establish that a certain occurrence — the calling of a recalcitrant witness before grand juries — was capable of repetition for purposes of the "capable of repetition yet evading review" exception to the mootness doctrine. Here, however, we would be required to accept an oral representation by counsel as a definitive statement of the future course of the Commonwealth's administrative rule-making process, a far more serious step, and one which we are unwilling to take.

far to remove the need for such guesswork, either through the evidence or possibly by means of a stipulation between the parties.

Additionally, the absence of a record as to the nature of the new vehicle code and any approval system which might be promulgated thereunder deprives us of the ability to assess the burdens a new approval system might impose upon manufacturers. For example, there is no evidence as to the level of approval fees that might be charged under the new code. Since we do not have before us information that might well be crucial to the disposition of this case, either in the district court or in this Court, it is advisable to remand the matter to the district court.

We are, of course, aware that a remand will necessarily cause some delay in the ultimate resolution of this litigation. However, we are confident that the district court will give prompt

23. It is true that Judge Herman's opinion did not advert to the burdens imposed by the approval system under the old vehicle code. Instead, he premised his preemption decision on the conclusion that the National Safety Act precluded any state enforcement at the pre-consumer level.

The fact that Judge Herman adopted this approach does not militate against a remand for development of a record as to the new code. If the new code produces more substantial burdens than the old, it is possible that Judge Herman might premise a decision that Pennsylvania's enforcement program, assuming that one is adopted, is preempted for such reasons instead of relying on a *per se* rule. And assuming that Judge Herman hews to his original position, if this Court would determine that a *per se* rule is not appropriate, we would need a record in order to decide whether the Pennsylvania program unconstitutionally burdens the plaintiffs and is thus preempted by federal law.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 76-2519

TRUCK SAFETY EQUIPMENT INSTITUTE, an Illinois not-for-profit corp.; ABEX CORPORATION, SIGNAL-STAT DIVISION, a Delaware corporation; R. E. DIETZ COMPANY, a New York Corporation; GROTE MANUFACTURING COMPANY, a Kentucky corporation

v.
ROBERT P. KANE, Attorney General, Commonwealth of Pa.; JACOB G. KASSAB, Secretary, Penna. Dept. of Transportation; J. A. TROMBETTA, Director, Bureau of Traffic Safety, Penna. Dept. of Transportation; WARD B. BAUMBACH, Chief, Inspector Division, Bureau of Traffic Safety, Penna. Dept. of Transportation; CAROLINE GARDNER, Supervisor, Automotive Equipment Section, Bureau of Traffic Safety, Penna. Dept. of Transportation; individually and in their official capacities, SEYMORE G. HEYISON, Director, Bureau of Traffic Safety, Pa. Dept. of Transp.

Robert Kane, Jacob Kassab (now William H. Sherlock) Seymore Heyison, Ward B. Baumbach, and Caroline Gardner.

Appellants.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
Civil No. 75-536

Present: VAN DUSEN, ADAMS and GIBBONS, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel on June 14, 1977.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered September 16, 1976, be, and the same is hereby vacated and the cause remanded for proceedings in accordance with the opinion of this Court.

ATTEST:

Clerk

July 27, 1977

attention to this matter, thus minimizing the possibility of undue hardship.²⁴

The judgment of the district court will be vacated and the cause remanded for proceedings consistent with this opinion.

TO THE CLERK:

Kindly file the foregoing per curiam opinion.

Circuit Judge

DATED:

24. In addition, counsel for the Commonwealth stated at oral argument that no enforcement actions would be initiated against the plaintiffs during the pendency of proceedings on remand.

Commonwealth of Pennsylvania
Department of Transportation
RECEIVED
FEB 23 1979
OFFICE OF CHIEF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TRUCK SAFETY EQUIPMENT INSTITUTE,
an Illinois not-for-profit corporation;
ABEX CORPORATION, SIGNAL-STAT DIVISION,
a Delaware corporation; R. E. DIETZ COMPANY,
a New York corporation; GROTE MANUFACTURING
COMPANY, a Kentucky corporation.

Plaintiffs

vs.

CIVIL ACTION
NO. 75-636

ROBERT KANE, Attorney General, Commonwealth
of Pennsylvania; JAMES B. WILSON, Secretary,
Pennsylvania Department of Transportation;
SEYMORE G. HEYISON, Director, Bureau of
Traffic Safety, Pennsylvania Department of
Transportation; WARD B. BAUMBACH, Chief,
Inspection Division, Bureau of Traffic Safety,
Pennsylvania Department of Transportation;
CAROLINE GARDNER, Supervisor, Automotive
Equipment Section, Bureau of Traffic Safety,
Pennsylvania Department of Transportation;
individually and in their official capacities,

Defendants

OPINION

FILED
HARRISBURG, PA.
DOUGLAS
FEL
DEPUTY CLERK

FILED
DOUGLAS
DEPUTY CLERK

In 1975 Truck Safety Equipment Institute, a trade association for manufacturers of lighting equipment and three manufacturers of such lighting equipment instituted this action challenging the enforcement of Pennsylvania's program for approval of certain types of lighting equipment regulated by the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §1381 et seq.

At that time, on summary judgment motions, we entered a declaratory judgment in favor of the Plaintiffs, holding that the enforcement by Pennsylvania of the identical standards regulated by the National Traffic and Motor Vehicle Safety Act (hereinafter the "National Safety Act") was preempted by the said Act pursuant to the Supremacy Clause of the United States Constitution (Article VI, Sec. 2).¹

¹Opinion of this Court reported in 419 F. Supp. at 688.

The Pennsylvania Law with which this Court was concerned at that time² was repealed, the new law to become effective July 1, 1977. On appeal from this Court's decision the United States Court of Appeals for this Circuit vacated and remanded the case for further consideration in the light of the New Vehicle Code which had not been in effect when our judgment was entered.

After a supplemental complaint and answer were filed the parties agreed upon a detailed statement of facts and thereafter both Plaintiffs and Defendants again sought summary judgment on the preemption claim set forth in Count I of the complaint.³

The agreed statement of facts sets forth in some detail the new provisions of the law that are attacked and the regulations that were promulgated pursuant to the new state law as well as the regulations covering the same lighting equipment in effect under the National Safety Act.

Plaintiffs again seek a declaratory judgment that under the New Vehicle Code and regulations, Pennsylvania's program for approval of federally regulated items of the subject motor vehicle lighting equipment is preempted by the National Safety Act and is therefore invalid and unenforceable. Plaintiffs further seek to enjoin the Defendants from taking any actions to implement the State's equipment approval program. Defendants ask that we declare the Pennsylvania Law not preempted.

²Pennsylvania Vehicle Code, Title 75, (Pa. Stat. Ann. Purdon 1971) (hereinafter called "1959 Vehicle Code"). Repealed by P.L. 162, Act No. 81, June 17, 1976 (hereinafter the "New Vehicle Code" (75 Pa. Stat. Ann. §§1954, 4103 through 4108).

³Count II of the complaint avers that the sections of the New Vehicle Code (§§1954, 4103 through 4108) objected to, insofar as they relate to items of federally regulated motor vehicle equipment, create an undue restraint on commerce, in conflict with the Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution. We do not reach the Commerce Clause contention at this time.

The stipulated facts reveal that the National Safety Act, 15 U.S.C. 1381 et seq., became law on September 9, 1966 because among other reasons of the need to establish and insure compliance with uniform national safety standards for motor vehicles and motor vehicle equipment in interstate commerce.⁴ With the passage of this Act Congress created a comprehensive federal motor vehicle safety program which involves promulgation of detailed performance standards for certain items of motor vehicle equipment and self-certification by manufacturers that their equipment conforms to these standards.

The National Safety Act makes it unlawful to sell or offer to sell in interstate commerce any new item of motor vehicle equipment which is covered by a federal motor vehicle safety standard (FMVSS) unless it conforms to the applicable standard and the manufacturer or distributor so certifies. The Act provides penalties up to \$800,000 for violations of the Act and injunctive relief. Both manufacturers and distributors are subject to the statutory repurchase and replacement of items of equipment which are found to contain safety defects or are otherwise not in conformity with the applicable FMVSS. Manufacturers are also required to give detailed notice, repair, replace and refund of money for non-conforming equipment. The federal enforcement of motor vehicle safety standards is directed only to manufacturers and distributors and not to the purchaser. 15 U.S.C. 1397(b)(1).

The National Safety Act is administered by the National Highway Traffic Safety Administration ("NHTSA") of the United States Department of Transportation. The Secretary of the Department is given broad investigative powers under the Act to aid in the enforcement of its provisions as well as the power to establish appropriate Federal standards. Detailed record keeping and data submission requirements are imposed upon manufacturers. The

⁴The basic purpose of the Act as later herein quoted was to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents. 15 U.S.C. 1381

operation of NHTSA in the enforcement of safety standards is a multi-million dollar operation. FMVSS compliance tests are made by many laboratories approved by and operating for NHTSA.

Lighting equipment has been tested for compliance with FMVSS 108 every year since 1968. From 1968 until October 1977, 2,681 separate lighting devices were compliance-tested by NHTSA, 714 of which were tested during the first 10 months of 1977. All of the Plaintiff manufacturers have had their lighting equipment purchased and tested by NHTSA. Additionally, each year NHTSA makes hundreds of formal requests that manufacturers furnish performance and other data to establish the basis for their self-certification of compliance with the appropriate FMVSS. When non-compliance is discovered, corrective action is sought and if not resolved by the manufacturer the matter is reported to the Attorney General for appropriate action.

Statutory penalties in over a million dollars have been collected from manufacturers.

NHTSA also conducts recall campaigns covering both non-conformance with FMVSS and safety-related defects. Over 12 million vehicles were recalled in 1977 and some two and one-half million equipment items have been recalled over the years.

Standards Nos. 108 and 125 apply to lighting equipment sold by the Plaintiff manufacturers. Standard No. 108 specifies among other things the requirements for original and replacement lamps for automobiles, and Standard No. 125 pertains to reflective triangles or warning devices without self-contained energy sources.

The federal standards are periodically reviewed and amended, No. 108 for example has been amended many times.

These facts have been set down in some detail to indicate the comprehensive nature and the pervasiveness of the federal scheme.

Under this federal regulatory scheme, NHTSA does not approve⁵ vehicles or equipment as compliant with safety standards; instead, manufacturers certify that their products comply. The manufacturer is not required to pay government fees, submit samples or laboratory test reports or obtain product approval from states or their agents.

The National Safety Act provides that where a federal motor vehicle safety standard is in effect every state standard is preempted unless it is identical to the federal one; and while the extent to which states may enforce identical standards is not expressly covered by the Act it appears to us to be evident from the language Congress used, the pervasiveness of the Act and the legislative history that the type of enforcement attempted by Pennsylvania here cannot stand.

With this explanation of the federal regulatory scheme, we turn now to the stipulated facts concerning the New Vehicle Code and the regulations promulgated thereunder.

The Pennsylvania law and regulations establishing identical standards, 75 Pa. C.S.A. 4101 et seq. and 67 Pa. Code Ch. 410 now require that items of vehicle safety equipment be "submitted for approval" as a condition precedent to the lawful sale of such equipment in the Commonwealth.⁶ Many of these items of equipment which are subject to Pennsylvania approval are also regulated by the FMVSS and are manufactured by the Plaintiff manufacturers.

⁵Emphasis ours unless otherwise noted.

⁶The Pennsylvania enforcement scheme under the 1959 Vehicle Code (now repealed as far as this matter is concerned), see 75 P.S. 807, 808, 812 and 819, required "approval" and not merely the "submission for approval" before the equipment could be legally sold in Pennsylvania. The Defendants' position is that this change cures the preemption problem we found in our earlier consideration of this case. We cannot agree.

If such items of equipment are not submitted for approval or submitted and subsequently disapproved by the Commonwealth the sale of such items (or of the vehicle to which the item is attached) in the Commonwealth even though they comply with the applicable federal standards and are so certified by the manufacturer cannot be lawfully sold or offered for sale here, and it is unlawful to operate a vehicle equipped with such equipment.

If state approval is denied for any reason, even though the item of equipment has been certified as meeting all federal standards, the manufacturer must "assure" that such item of equipment is not offered for sale in the Commonwealth and must obtain from the wholesalers and dealers all unsold inventory of the item which had been distributed after approval was sought and before it was denied. After state approval is granted, it may be revoked and an injunction against its sale in Pennsylvania may be sought.

Approval may be sought from the American Association of Motor Vehicle Administrators ("AAMVA") a voluntary association of state officials, of which Pennsylvania is a member and which is Pennsylvania's approval agent, or from the Department of Transportation directly. In either event fees must be paid by the manufacturer for testing and approval of the equipment. AAMVA also requires reapproval of lighting equipment every five years with the submission of a new laboratory test report and the payment of another fee.

Although both AAMVA and the Commonwealth through the Secretary of Transportation require the testing of equipment for compliance with safety standards neither entity has ever had any testing facilities.

A test report to satisfy AAMVA must come from a laboratory approved by AAMVA or from a manufacturer's laboratory providing it meets certain qualifications, all at additional expense to the manufacturer.

Apart from the testing and retesting, AAMVA conducts on a random basis a check on the market of safety equipment for approval status. Unapproved means only that AAMVA has not been paid a fee or been furnished photographs or a test report from an approved laboratory and not that it is unsafe or not certified under the National Safety Act. AAMVA maintains a list of unapproved items which is not always current.

When a manufacturer elects to seek approval from the Pennsylvania Department of Transportation ("PennDot") he must submit an application, a copy of a laboratory test report prepared by a laboratory approved either by AAMVA or PennDot, a sample of the item or a photograph of it and pay a fee ranging from \$25 to \$100.

If in the course of its required market surveillance program it is revealed that an item of equipment which is certified as being in compliance with applicable FMVSS, but which has not been submitted for approval or which has been disapproved by PennDot, the New Vehicle Code (75 P.S. 4106(c)) directs that written notice of such unapproved status be given to the dealer, distributor, wholesaler or manufacturer and the dealer thereafter shall not sell the equipment and the distributor, wholesaler or manufacturer shall recall all of the equipment from all dealers. This is so even though the item is in compliance with all requirements of federal law.

A good portion of the Plaintiff manufacturers' sales of automobile headlamps, stoplamps, turn signals, etc., all regulated by the National Safety Act, are for use in Pennsylvania and must satisfy Pennsylvania's approval requirements.⁷

⁷The Commonwealth of Pennsylvania has agreed not to enforce its law and regulations against these Plaintiffs pending the outcome of these proceedings.

The New Vehicle Code contains a number of sections to force the compliance with the Commonwealth's approval requirements, including the prohibition against registration or reregistration of vehicles on which equipment has not been submitted for approval and the prohibition against the driving of such vehicle.

The stipulated facts disclose that to comply with the Pennsylvania approval program would cost the Plaintiffs substantial amounts of money for example Dietz paid to AAMVA from 1970 through 1974 \$19,000 approval and reapproval fees and Grote paid \$22,900 fees during the same period. These two Plaintiffs together during this period were obliged to spend more than \$120,000 for the required laboratory test reports to be filed with AAMVA before approval could be granted. Additionally, there are administrative expenses the manufacturers are obliged to incur in preparing and filing forms and in some cases great expense to supply samples to the laboratories.

Manufacturers are delayed sometimes for months in placing their already federally certified items of safety equipment on the market in Pennsylvania because of the Pennsylvania approval program. In some instances approval is held up because of a dispute over the proper filing fee; whether approval is required for a previously approved item that has been changed in an apparently insignificant way or over a question of what parts of lighting equipment require approval.

With that recital of the pertinent facts we turn now to the legal issues.

It is appropriate to consider this preemptive matter on motions for summary judgment since the material facts have all been stipulated. See RAY v. ATLANTIC RICHFIELD CO., U.S. 55 L. Ed. 2d 179 (1978).

As we can determine none of the cases dealing with the question of preemption under the National Safety Act dealt with the problem of the enforcement by the states of standards identical with those promulgated under the National Act. See CHRYSLER v. RHODES, 416 F.2d 319 (1st Cir. 1969); CHRYSLER CORP. v. MALLOY, 294 F. Supp. 524 (D. Vt. 1968) rev'd sub nom CHRYSLER CORP. v. TOFFANY, 419 F.2d 499 (2d Cir. 1969) which generally deal with regulations by the states of state standards not clearly governed by the Federal standards.

The Commonwealth's regulations concerning safety on the highway pursuant to the Motor Vehicle Code have their basis in the police power and it is well-settled that where a state's police power is involved, preemption will not be presumed, CHRYSLER CORP. v. RHODES, supra n.8; CHRYSLER CORP. v. TOFFANY at 511; LOCOMOTIVE ENGINEERS v. CHICAGO R.I. & P.R. CO., 382 U.S. 423; 15 L. Ed. 2d 501 (1966).

The Commonwealth maintains that where, as here, the state standards are identical to those of the federal government the state may "complement" the federal enforcement of such standards and that such enforcement would not in any way interfere with the federal regulations. We are constrained to conclude otherwise.

It is not contended that the federal government cannot regulate in this area. It must be conceded that the field of highway safety in interstate commerce is particularly susceptible to Congressional control. The declaration of purpose of the Act discloses that:

"...the purpose of this chapter is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents. Therefore, Congress determines that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development;..."
15 U.S.C. 1381

The question is whether or not Congress has, by this Act, excluded the states from the type of enforcement the Commonwealth here is attempting to exert.

There are certain tests established by case law to determine when Congress has in fact preempted a field.

Basically it was held in *FLORIDA LIME AND AVOCADO GROWERS INC. v. PAUL*, 373 U.S. 132, 10 L. Ed. 2d 248 at 257 (1963) that preemption must be found where it is impossible for both federal and state regulations to exist, a situation not present in the instant case. But the Supreme Court said in passing that it is not important whether the state and federal regulations were aimed at similar or different objectives, the test "is whether both regulations can be enforced without impairing the federal superintendence of the field".

We next consider the statute. Congress has said (15 U.S.C. 1392d) in part:

"(d) Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard."

but has said nothing further on preemption, so if we are to find preemption where the standards are identical we must look elsewhere.

While it is true that Congress may manifest its intent to displace the states from a field by specifically saying so in the Act, it is equally true that such intent may be manifested by Congress in ways other than by specific language.

As Judge Mathes, Chief Judge of the United States Court of Appeals for the Eighth Circuit has so cogently said in *NORTHERN*

STATES POWER COMPANY v. STATE OF MINNESOTA, 447 F.2d 1143 (1971) at 1146, 1147:

"...even where Congress has not expressly prohibited dual regulation nor unequivocally declared its exclusionary exercise of authority over a particular subject matter, federal pre-emption may be implied. (authorities omitted) Key factors in the determination of whether Congress has, by implication, pre-empted a particular area so as to preclude state attempts at dual regulation include, inter alia: (1) the aim and intent of Congress as revealed by the statute itself and its legislative history, *FLORIDA LIME & AVOCADO GROWERS, INC. v. PAUL*, supra, 373 U.S. at 147-150, 83 S.Ct. 1210; *CAMPBELL v. HUSSEY*, supra, 368 U.S. at 301-302, 82 S.Ct. 327; (2) the pervasiveness of the federal regulatory scheme as authorized and directed by the legislation and as carried into effect by the federal administrative agency, *PENNSYLVANIA v. NELSON*, 350 U.S. 497, 502-504, 76 S.Ct. 477, 100 L.Ed. 640 (1956); *RICE v. SANTA FE ELEVATOR CORP.*, supra, 331 U.S. at 230, 67 S.Ct. 1146; *BETHEHEM STEEL CO. v. NEW YORK STATE LABOR RELATIONS Bd.*, supra, 330 U.S. at 774, 67 S.Ct. 1026; (3) the nature of the subject matter regulated and whether it is one which demands 'exclusive federal regulation in order to achieve uniformity vital to national interests.' *FLORIDA LIME & AVOCADO GROWERS, INC. v. PAUL*, supra, 373 U.S. at 143-144, 83 S.Ct. at 1218; *SAN DIEGO BUILDING TRADES COUNCIL v. GARMON*, 359 U.S. 236, 241-244, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959); *GUSS v. UTAH LABOR RELATIONS BOARD*, 353 U.S. 1, 10-11, 77 S.Ct. 598, 1 L.Ed.2d 601 (1957); *MORGAN v. VIRGINIA*, 328 U.S. 373, 377, 66 S.Ct. 1050, 90 L.Ed. 1317 (1946); and ultimately (4) 'whether, under the circumstances of [a] particular case [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *HINES v. DAVIDOWITZ*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). See also *PEREZ v. CAMPBELL*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971); *BROTHERHOOD OF R.R. TRAINMEN v. JACKSONVILLE TERMINAL CO.*, 394 U.S. 369, 344 (1969); *NASH v. FLORIDA INDUSTRIAL COMM'N.*, 389 U.S. 235, 240, 88 S.Ct. 362, 19 L.Ed.2d 438 (1967); *HILL v. FLORIDA ex rel. WATSON*, 325 U.S. 538, 542, 65 S.Ct. 1373 89 L.Ed. 1782 (1945); *SAVAGE v. JONES*, 225 U.S. 501, 533, 32 S.Ct. 715, 56 L.Ed. 1182 (1912)."

While it must be conceded that there is no physical impossibility of dual compliance with the manner in which both state and federal government enforce the same standard there can be no doubt that the enforcement planned by the state under the New Vehicle Code and regulation is much more stringent and expensive to the manufacture than is the federal enforcement and while we do not reach the Commerce question (See footnote 2) it seems apparent to me that such enforcement may very well be burdensome on interstate commerce given the nationwide sale of motor vehicles on which the lighting equipment with which we are here concerned is attached.

The National Traffic and Motor Vehicle Safety Act of 1966 as was shown by the stipulated facts is a most detailed and pervasive regulatory scheme designed to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents throughout the United States by the requirement of uniform national standards.

Detailed performance standards have been promulgated; specific self-certification was established. A National Highway Traffic Safety Administration was set up within the Department of Transportation to administer the Act. The Secretary of the Department was given broad powers in adopting the standards, investigating violations and enforcing the provisions of the Act. This multi-million dollar operation conducts compliance tests throughout the country imposing statutory penalties in the millions of dollars. Thus the very nature of the Act, applying as it does in the 50 states uniformly, and in such detail, plus the specific language of §1397(b)(1) limiting the Federal regulations to the first sale, is some indication to me that Congressional intent was to preempt the field at the manufacturing levels leaving to the states the regulation of the identical standards at the consumer level by the regular periodic inspections.

In PEREZ v. CAMPBELL, 402 U.S. 637 29 L. Ed. 2d 233 (1971) the Court was dealing with a state highway safety statute

under which the state was attempting to prohibit a bankrupt driver from retaining his license until an outstanding automobile accident judgment was satisfied, even though the driver had been declared a bankrupt under the federal bankruptcy statutes. There, in spite of the fact that the state was proceeding under its police power in the field of highway safety and that the Bankruptcy Act did not specifically preempt the field the Court found preemption on the ground that to fail to do so would frustrate Congressional intent. In BURBANK v. LOCKEED AIR TERMINAL INC., 411 U.S. 633, 36 L. Ed. 2d 553 an express preemption provision in the Senate-passed version of a federal noise control statute had on final passage been deleted by Congress but the Court found preemption in the pervasive nature of the federal regulatory scheme in spite of the fact that the control of noise was a well recognized part of the police power of the states and in spite of the fact that the express preemption provision had been deleted on final passage.

In this circuit in a case originating in this District the Court of Appeals in 1976 in NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS v. COLEMAN, 542 F.2d 11, had before it a question of accident reporting by railroads. The federal regulations set out the requirements for reporting to the federal government and the states sought to require additional reporting and argued that there should be concurrent reporting in the interest of safety to the traveling public. Congress had declared that "standards relating to railroad safety shall be nationally uniform to the extent practicable" 542 F.2d at 13. The declared purpose of the Act, however, was "to promote safety in all areas of railroad operations". The Court of Appeals found that the states were preempted totally in this field relying in part on the fact that if this were not so the railroads could be subject to different enforcement requirements in 50 different states. This same thing could be said of the Plaintiffs in the instant case.

In RAY v. ATLANTIC RICHFIELD CO. ___ U.S. ___, 55 L. Ed. 2d 179 (1978) one of the most recent cases in this field, the

Ports and Waterways Safety Act of 1972 (hereinafter P.W.S.A.) (33 U.S.C. §§1221 et seq. and 46 U.S.C. 391(a) et seq.) controlled in major respects navigation on Puget Sound in the State of Washington. It also subjected to federal rule the design and operating characteristics of oil tankers.

The State of Washington then in 1975 adopted the Tanker Law which would regulate in particular respects the design, size and movement of oil tankers in Puget Sound.

The question arose as to whether or not the federal law preempted the Washington law. The Court held as far as pertinent here that it did so preempt under the supremacy clause of the Constitution, Article VI, Clause 2, even though there was no explicit preemption provision in the Act.

In finding preemption the Court pointed out the pervasiveness of the P.W.S.A.; that the state law stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress; that the statutory pattern shows that Congress "has entrusted to the Secretary the duty of determining which oil tankers are sufficiently safe to be allowed to proceed in the navigable waters of the United States. This indicates to us that Congress intended uniform national standards for design and construction of tankers that would foreclose the imposition of different or more stringent state requirements." 55 L. Ed. 2d 192.

The Court further pointed out that Congress surely did not anticipate that when a vessel was found to be in compliance with the federal law that it could nevertheless be barred by state law from operating in the navigable waters of the United States and at page 193 found that "Enforcement of the state requirements would at least frustrate what seems to us to be the evident congressional intention to establish a uniform federal regime controlling the design of oil tankers."

The ATLANTIC RICHFIELD case having many facts similar to those in the instant case is persuasive to us here.

Our conclusion is supported, we believe, by the legislative history of the National Safety Act.

The hearings of the Committee on Interstate and Foreign Commerce of the House of Representatives in 1966 on the House Bill in the "Findings and Statement of Purpose" states in part that the purpose to improve traffic safety shall be achieved "through a national program for traffic safety..."

The report of the Senate Committee on Commerce at page 1 states that this bill is to provide "a coordinated national safety program and the establishment of safety standards for motor vehicles in interstate commerce..." and at page 12 under the heading, "Effect on State Law" it is said that the safety standards should be uniform throughout the country and that the "States should be free to adopt standards identical to the Federal standards, which apply only to the first sale of a new vehicle, so that the States may play a significant role in the vehicle safety field by applying and enforcing standards over the life of the car."

The report of the Committee on Interstate and Foreign Commerce of the House of Representatives also at page 1 states that the House Bill's purpose is "to provide for a coordinated national safety program and the establishment of safety standards..."

In the Conference Report on the National Safety Act, Senator Magnuson, the Manager of the Bill in the Senate had this to say, page 14230 of the Congressional Record-Senate, June 24, 1966: "Some States have more stringent laws than others but concerning the car itself⁸ we must have uniformity. That is why the bill suggests to States that if we set minimum standards, a car complying with such standards should be admitted to all states."

⁸I assume this to be equally true of lighting equipment for use on the car.

Throughout the legislative history the emphasis on the first sales of the equipment under Federal standards, reserving to the states the enforcement of identical standards after the first sale.

It seems to me that the only logical conclusion we can reach is that the Pennsylvania Law and Regulations as far as they apply to this case are preempted from enforcement at the manufacturer distributor, dealer level.

Defendants argue that the state may complement Federal enforcement of the standards without in any way interfering with the Federal detailed scheme and further that the plaintiff manufacturers, their distributors and dealers are not handicapped by being obliged to comply with both the Federal and State enforcement of the same standard because the equipment no longer needs to be "approved" before sale in Pennsylvania but merely "submitted for approval". We have found that the National Safety Act preempts at the first sale level the action contemplated here by the Commonwealth and while "submitted for approval" would seem at first blush to be so innocuous as to be barely noticeable, that is not really the case. Even an innocent or inadvertent failure to submit for approval as well as disapproval or revocation of approval can subject the manufacturer, distributor or dealer to civil penalties, including penalties up to \$10,000 and injunction against continued sale of the equipment.

In remanding the case to this Court, the Court of Appeals suggested that a new record might reveal more substantial burdens on the Plaintiffs than did the earlier law and that we then would want to determine whether or not the Pennsylvania program unconstitutionally burdened the Plaintiffs and was thereby preempted. The stipulated facts and the agreement of the parties when filing the motion for summary judgment presented us with the question of whether on Count I of the complaint Pennsylvania's motor vehicle

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TRUCK SAFETY EQUIPMENT INSTITUTE,
an Illinois not-for-profit corporation;
ABEX CORPORATION, SIGNAL-STAT DIVISION,
a Delaware corporation; R. E. DIETZ COMPANY,
a New York corporation; GROTE MANUFACTURING
COMPANY, a Kentucky corporation,

Plaintiffs

vs.

ROBERT KANE, Attorney General, Commonwealth
of Pennsylvania; JAMES B. WILSON, Secretary,
Pennsylvania Department of Transportation;
SEYMORE G. HEYISON, Director, Bureau of
Traffic Safety, Pennsylvania Department of
Transportation; WARD B. BAUMBACH, Chief,
Inspection Division, Bureau of Traffic Safety,
Pennsylvania Department of Transportation;
CAROLINE GARDNER, Supervisor, Automotive
Equipment Section, Bureau of Traffic Safety,
Pennsylvania Department of Transportation;
individually and in their official capacities,

Defendants

CIVIL ACTION
NO. 75-636

FILED
HARRISBURG, PA.
FEB 25 1979
DONALD R. BERRY, CLERK
PER DEPUTY CLERK

ORDER

AND NOW, this 26th day of February, 1979, Defendants' Motion for Summary Judgment is denied.

Plaintiffs' Motion for Summary Judgment is granted against the Defendants and it is declared that Pennsylvania's motor vehicle equipment approval program is preempted by the National Traffic and Motor Vehicle Safety Act to the extent that it reaches federally-regulated equipment.

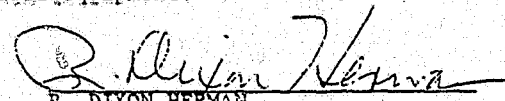
R. Dixon Herman
R. DIXON HERMAN
UNITED STATES DISTRICT JUDGE

equipment approval program is preempted by the National Traffic and Motor Vehicle Safety Act to the extent that it reaches federally-regulated equipment, leaving Court II, the averment that the Pennsylvania program created an undue restraint on interstate commerce in conflict with the Commerce Clause Article I Section 8 Clause 3 of the United States Constitution for later determination if necessary.

As we earlier indicated in this Opinion, the Pennsylvania program as it relates to these Plaintiffs is such a burden that it well may inordinately delay the production and distribution of improved safety equipment which would tend to stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, (HINES v. DAVIDOWITZ, supra) still further reason why in this case the Pennsylvania plan should be preempted by federal law.

We conclude that in the light of what we have here said the National Safety Act of 1966, particularly section 103 (15 U.S.C. 1392(d)) completely preempts the Pennsylvania standards to the extent that they cover the same aspect of performance and are not identical to the federal standards; and also preempts any state method of enforcement of identical standards prior to the first purchase.

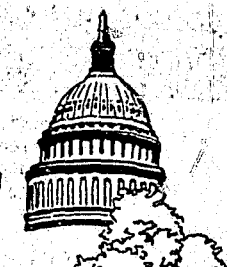
Accordingly, we will deny the Defendant's motion for summary judgment and grant the motion of the Plaintiffs entering a summary judgment against the Defendants declaring that Pennsylvania's motor vehicle equipment approval program is preempted by the National Traffic and Motor Vehicle Safety Act to the extent that it reaches federally-regulated equipment.


R. DIXON HERMAN
UNITED STATES DISTRICT JUDGE

Dated: February 26, 1979



CAPITAL REPORT



AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS
1201 CONNECTICUT AVE., N.W., SUITE 910, WASHINGTON, D.C. 20036, TELEPHONE 202 - 296-1955

SPECIAL EDITION

March 14, 1979

TO: Chief Motor Vehicle Administrators
& Chief Traffic Enforcement Officials

FROM: Donald J. Bardell, Executive Director

SUBJECT: Recent Pennsylvania District Court Decision

DISTRICT COURT RULES PENNSYLVANIA MOTOR
VEHICLE EQUIPMENT APPROVAL PROGRAM
PREEMPTED BY VEHICLE SAFETY ACT OF '66
AS REGARDS FEDERALLY REGULATED ITEMS:

In the latest development in a lengthy legal battle, a District Court decision has declared that Pennsylvania's motor vehicle equipment approval program is preempted by the National Traffic and Motor Vehicle Safety Act of 1966, to the extent that it reaches federally regulated equipment.

The impact of the decision is limited to the Commonwealth of Pennsylvania. The decision was handed down on February 26 by Judge R. Dixon Herman, of the U. S. District Court for the Middle District of Pennsylvania, in Harrisburg. Principal plaintiff in the action was the Truck Safety Equipment Institute (TSEI), a trade association for manufacturers of lighting equipment, and three of its member-firms: Abex Corporation, Signal Stat Division; R. E. Dietz Company, and Grote Manufacturing. The defendants named include the Pennsylvania Attorney General and several officials in the Pennsylvania Department of Transportation (PennDOT), the agency responsible for regulating vehicle safety equipment in that state.

The AAMVA has carefully examined the February TSEI vs PennDOT decision-- a case that was remanded to the District Court by the Appeals Court--and firmly believes that it reached an incorrect conclusion. When this case is appealed, there is a good possibility that the points at issue ultimately will be decided by the U. S. Supreme Court.

The February decision by Judge Herman in the TSEI vs PennDOT case is but the most recent development in a lengthy litigation proceeding between the plaintiffs and defendants. Litigation commenced when:

DISTRICT COURT RULES PENNSYLVANIA MOTOR
VEHICLE EQUIPMENT APPROVAL PROGRAM
PREEMPTED BY VEHICLE SAFETY ACT OF '66
AS REGARDS FEDERALLY REGULATED ITEMS: (Continued)

--A complaint was filed May 30, 1975 by TSEI, et al, which challenged the enforcement of Pennsylvania's program for approval of certain types of lighting equipment regulated by the National Traffic and Motor Vehicle Safety Act.

--Following summary judgment motions by both the plaintiffs and defendants, on September 16, 1976, the District Court, with Judge Herman presiding, entered a declaratory judgment in favor of the plaintiffs, holding that enforcement by Pennsylvania of the identical standards regulated by the federal safety act was preempted, pursuant to the Supremacy Clause of the U. S. Constitution.

--The Pennsylvania statute under which the original complaint was filed was repealed, and replaced by a new law on July 1, 1977. Subsequently, on July 27, 1977, the U. S. Circuit Court of Appeals for the Third Circuit vacated Judge Herman's District Court decision and remanded the case for further consideration, in light of the new Pennsylvania Vehicle Code.

The TSEI vs PennDOT case is based on two Counts. In Count I the plaintiffs attempt to invoke the preemption doctrine, maintaining that Pennsylvania's motor vehicle safety equipment approval program is preempted by the National Traffic and Motor Vehicle Safety Act, to the extent that it reaches federally regulated equipment. Count II alleges undue burden on interstate commerce created by the Pennsylvania approval requirements.

After the case was remanded to the District Court level, a supplemental complaint and answer were filed. The plaintiffs again sought a declaratory judgment that under the new Pennsylvania Vehicle Code and regulations the state's program for approval of federally regulated items was preempted. The plaintiffs further sought to enjoin PennDOT from taking any action to implement the state's approval program. The defendants, meanwhile, urged the District Court to hold that the Pennsylvania law was not preempted. Both parties filed petitions for Summary Judgment.

The February decision by Judge Herman declared that the 1966 federal Act completely preempts the Pennsylvania standards to the extent that they cover the same aspect of performance and are not identical to the federal standards. He further ruled preemption of any state method of enforcement of identical standards prior to the first purchase. Judge Herman's most recent decision did not specifically address Count II of the complaint, but in my opinion did so circuitously.

There are some salient points that should be taken into consideration when evaluating the soundness of Judge Herman's most recent decision.

more...

DISTRICT COURT RULES PENNSYLVANIA MOTOR
VEHICLE EQUIPMENT APPROVAL PROGRAM
PREEMPTED BY VEHICLE SAFETY ACT OF '66
AS REGARDS FEDERALLY REGULATED ITEMS: (Continued)

First, and foremost, the AAMVA firmly believes that the reasoning of Judge Herman was stretched in order to reach the conclusion that Pennsylvania is preempted with regard to any state method of enforcement of state standards that are identical to Federal Motor Vehicle Safety Standards (FMVSS) prior to the first purchase.

In his decision, Judge Herman wavers on the preemption issue as it relates to enforcement when he states that "it appears...to be evident" (emphasis added) that the type of enforcement attempted by Pennsylvania cannot stand. Appearances, alone, are not legally sufficient to prohibit Pennsylvania, or any other state, from enforcing vehicle safety standards, as case law has well established.

Preemption can only be ordered by a court when there is clear and convincing evidence that either (1) Congress deliberately intended that the federal statute preempts states' activities in that area or (2) that violence would be done to the federal regulatory scheme if the states were allowed to participate in regulating the same activities. Neither of these situations is present here. In fact, the Act specifically allows the states to promulgate motor vehicle safety standards which are identical to corresponding federal standards. This fact, in and of itself, indicates Congressional support of concurrent federal/state enforcement of identical safety standards. Legislative history requires the foregoing conclusion.

The preemption section of the Act states:

"(d) Whenever a Federal Motor Vehicle Safety Standard established under this subchapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the federal standard." (AAMVA's emphasis supplied)

Judge Herman acknowledged "the extent to which states may enforce identical standards is not expressly covered by the Act..." and, therefore, he noted that he was constrained to look elsewhere to substantiate his conclusion of preemption.

In reaching his decision, Judge Herman was forced to cross over into the economic arguments of Count II, alleging undue burden on interstate commerce. Even while admitting that the economic burden issue was not before the court for consideration, Judge Herman proceeded to expound on the Commerce Clause issue, in order to find a basis for his decision when none exists. The Raymond decision of the U. S. Supreme Court (see Raymond Motor Transportation, Inc. vs Rice, U. S. Supreme Court, 93 S. Ct. 787, 54 L. Ed. 2d 664 (1978)), emasculates any allegations of undue burden the plaintiffs could possibly make.

more...

DISTRICT COURT RULES PENNSYLVANIA MOTOR
VEHICLE EQUIPMENT APPROVAL PROGRAM
PREEMPTED BY VEHICLE SAFETY ACT OF '66
AS REGARDS FEDERALLY REGULATED ITEMS: (Continued)

Furthermore, in reading Judge Herman's decision, one could conclude that even if Pennsylvania found that an item of safety equipment, brake fluid for example, did not meet the prescribed federal Motor Vehicle Safety Standards, it still could be sold--with impunity--in the state, so long as the manufacturer had certified that the item was in compliance with applicable federal standards.

Congress could not have intended that Pennsylvania, or any other state, should stand idly by and permit the sale of such a defective item, and merely wait for a federal initiative to preclude the sale of such.

The State of Pennsylvania, under its police powers, is obviously in the best position to move quickly and responsively to protect the safety and welfare of its citizens. Moreover, such a state regulatory scheme serves to complement the federal regulatory scheme which the Congress intended when it enacted the National Traffic and Motor Vehicle Safety Act of 1966.

TEXAS DPS WARNS OF 2 BRAKE FLUIDS
PURCHASED ON RETAIL MARKET, TESTED
DANGEROUS FOR USE IN MOTOR VEHICLES:

The Texas Department of Public Safety has warned that samples of two different brands of motor vehicle brake fluid, purchased over the retail counter by state troopers, have been tested by a laboratory and found to be dangerous for use in the brake systems of motor vehicles. The warning came in a March 7 news release, issued in Austin, by Col. Wilson E. (Pat) Speir, Director of the Texas DPS.

Col. Speir said the Texas DPS action was prompted by the state's participation in the AAMVA's Safety Equipment Approval Program. The AAMVA acts as the Texas approvals agent for items of motor vehicle safety equipment, including brake fluid.

The matter originally came to light because of a complaint to the AAMVA, lodged by a manufacturer of brake fluid, alleging that some of its competitors were attempting to market brake fluids that did not comply with all applicable standards. Samples of the brake fluids in question were purchased by AAMVA from the retail market and tested by an independent laboratory. After ascertaining that the brake fluids did not meet applicable standards, the matter was referred to Texas officials for appropriate action, since the manufacturer was located in that state.

Both the tests by AAMVA, and subsequent confirming tests by the Texas DPS, were conducted by the Southwest Research Institute, in San Antonio--an AAMVA-accredited laboratory. All of the brake fluids in question were tested for compliance with the new Texas standard for brake fluid, which became effective December 22, 1978. It is identical to the Federal Motor Vehicle Safety Standard for brake fluid, FMVSS No. 116. Col. Speir said that results of the tests from the Southwest Research Institute are being turned over to respective district attorneys for further consideration. Violators of the Texas brake fluid law could be subject to a county court fine of up to \$1,000, or be confined in jail up to six months, or both.

more...

TEXAS DPS WARNS OF 2 BRAKE FLUIDS
PURCHASED ON RETAIL MARKET, TESTED
DANGEROUS FOR USE IN MOTOR VEHICLES: (Continued)

The testing on the motor vehicle hydraulic brake fluid was conducted on samples from batches of brake fluid packaged by Eppon Corporation, under the trade name of Puma Heavy Duty Drum and Disc Brake Fluid and Technical Chemical Company, under the trade name of Certified Hydraulic Heavy Duty Brake Fluid.

Col. Speir warned the public that the defective fluid could be identified by the trade name and batch number on the bottom of the containers. The test failures were on batch number 833 on Certified Hydraulic Heavy Duty Brake Fluid, and on batch number 35 on the Puma Heavy Duty Drum and Disc Brake Fluid.

"These failures are critical and could lead to possible failure of the brake system on an automobile," Col. Speir stressed.

The Texas DPS announced late last year the revised rules and regulations which established minimum standards and specifications for brake fluid that could be sold in the state. State officers commenced enforcing those standards on December 22, with troopers conducting spot checks and purchases from retail outlets to verify that all brake fluid being sold in Texas complied with the rule adopted.

A 1968 opinion, from the Assistant Chief Counsel of the U. S. Department of Transportation's National Highway Safety Bureau (now National Highway Traffic Safety Administration) to a Deputy Attorney General for the State of California, points out that a state "is not preempted by the federal statute from engaging in both presale and post sale enforcement of its regulations which are identical to the federal regulations and applicable to the same item of equipment or vehicle." The Texas program for enforcement of brake fluid standards serves as an excellent example of how a state regulatory scheme can serve to complement the federal regulatory scheme which the Congress intended when it enacted the National Traffic and Motor Vehicle Safety Act of 1966.

djb

At first glance, the general legal principles which govern this area appear to be rather straight-forward, yet, when one attempts to analyze the case law on preemption, one finds that judicial decisions are not as predictable as one might have expected. For example, the preemption cases decided by the United States Supreme Court during the 1930's seemed to consistently support State interests at the expense of sacrificing federal legislative objectives in the process. This trend of reasoning gradually began to shift in the 1940's so that federal legislative interests became dominant over comparable State interests and corresponding legislation and enforcement activities. This trend towards finding preemption in favor of the federal government characterized the Court's thinking throughout the 1950's and early 1960's when the Court then began to reverse this direction by recognizing that State interests were not automatically preempted even if the federal government had acted in that same area. A study of the Supreme Court decisions of the early 1970's revealed an apparent predisposition on the part of the Court to rule in favor of the States on the issue of preemption whenever possible. For those of you who may be interested in reviewing the historical aspects of the preemption cases, I call your attention to the Note on "The Preemption Doctrine: Shifting Perspectives on Federalism and The Burger Court" contained in Vol. 75 of the Columbia Law Review, pages 623 thru 654.

WHERE WE ARE AT

At this point in time, it appears that we are somewhere in between a "States' rights" Supreme Court and one that is inclined to rule in favor of the federal government whenever possible. In one of the most recent preemption cases, Jones v. Rath Packing Co., 97 S.Ct. 1305 (1977), the Supreme Court abruptly departed from the line of cases it had been following since the mid-1970's and ruled in favor of federal preemption under circumstances which led many of us to predict the opposite result as to one of the statutes in question. In Jones, Justice Thurgood Marshall, speaking for the Court, held that the federal Fair Packaging and Labeling Act did NOT preempt the California statute in question YET the State statute was required to "yield" to the Fair Packaging and Labeling Act because enforcement of the State statute and the State regulation promulgated thereunder would prevent "the accomplishment and execution of the full purposes and objectives of Congress" in passing the FPLA (97 S.Ct. at 1318). In reaching this conclusion, the Court applied the time-honored preemption tests which are set out at page 1309 of its Opinion, as follows:

"Our prior decisions have clearly laid out the path we must follow to answer this question. The first inquiry is whether Congress, pursuant to its power to regulate commerce, U.S. Const., Art. 1, S. 8, has prohibited state regulation of the particular aspects of commerce involved in this case. Where, as here,

the field which Congress is said to have pre-empted has been traditionally occupied by the States, see e.g. U.S. Const., Art I, § 10; *Patapsco Guano Co. v. North Carolina*, 171 U.S. 345, 358, 18 S.Ct. 862, 867, 43 L.Ed. 191 (1898), "[w]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). This assumption provides assurance that "the federal-state balance," *United States v. Bass*, 404 U.S. 336, 349, 92 S.Ct. 515, 523, 30 L.Ed.2d 488 (1971), will not be disturbed unintentionally by Congress or unnecessarily by the courts. But when Congress has "unmistakably . . . ordained," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963), that its enactments alone are to regulate a part of commerce, state laws regulating that aspect of commerce must fall. This result is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose. *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 633, 93 S.Ct. 1854,

1859, 36 L.Ed.2d 547 (1973); *Rice v. Santa Fe Elevator Corp.*, supra, 331 U.S. at 230, 67 S.Ct. at 1152. Congressional enactments that do not exclude all state legislation in the same field nevertheless override state laws with which they conflict. U.S. Const., Art. VI. The criterion for determining whether state and federal laws are so inconsistent that the state law must give way is firmly established in our decisions. Our task is "to determine whether under the circumstances of this particular case, [the state's] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1940). *Accord*, *De Canas v. Bica*, 424 U.S. 351, 363, 96 S.Ct. 933, 940, 47 L.Ed.2d 43 (1976); *Perez v. Campbell*, 402 U.S. 637, 649, 91 S.Ct. 1704, 1711, 29 L.Ed.2d 233 (1971); *Florida Lime & Avocado Growers, Inc. v. Paul*, supra, 373 U.S. at 141, 83 S.Ct. at 1217; *id.*, at 165, 83 S.Ct. at 1229; (White, J., dissenting). This inquiry requires us to consider the relationship between state and federal laws as they are interpreted and applied, not merely as they are written. See *De Canas v. Bica*, supra, 424 U.S. at 363-365, 96 S.Ct. at 940-941; *Swift & Co. v. Wickham*, 230 F.Supp. 398, 408 (S.D.N.Y.1964), appeal dismissed,

382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965),
 aff'd, 364 F.2d 241 (C.A.2 1966), cert. denied,
 385 U.S. 1036, 87 S.Ct. 776, 17 L.Ed.2d 683 (1967)."

The Court in Jones, when stating that there was no "preemption" of the relevant State statute by the FPLA was referring to EXPLICIT preemption. All Justices agreed on this point. What troubled two of the Justices and surprised many lawyers was the Court's finding of IMPLICIT preemption under the facts as stated. Implicit preemption of the California statute was ordered on the basis that there COULD possibly be a conflict between its operation and the provisions of the FPLA.

What I find interesting about the Jones decision is the Supreme Court's apparent re-interpretation of the manner in which the last mentioned preemption test should be applied, i.e. consideration by the Court of the relationship between State and federal laws as they are INTERPRETED and APPLIED - not merely as they are written. Prior to the Jones decision of March 29, 1977, the Supreme Court had generally been following the interpretation rendered in the case of Goldstein v. California, 93 S.Ct. 2303 (1973). This interpretation carefully DELIMITED the doctrine of preemption by requiring that in situations where there was a possible conflict between the operation of a State statute and the "purposes" underlying a federal act, the Court had to find that implementation of the State law would INEVITABLY frustrate the purpose of the federal statute. According to Goldstein, the

Court had an obligation to distinguish between those situations in which the concurrent exercise of a power by the Federal Government and the States or by the States alone MAY POSSIBLY lead to conflicts and those situations where conflicts WILL NECESSARILY arise. Preemption of the State statute could only occur where the purpose of the federal act would be inevitably frustrated by operation of the State statute. The dissenting opinion in Jones recognized that the Court had departed from the Goldstein philosophy in reaching its conclusion with respect to the IMPLICIT preemption of the California statute in question by the FPLA.

Justice Rehnquist, joined by Justice Stewart in his dissenting opinion, stated that the Court in Jones had "seriously misapprehended" the carefully delimited nature of the doctrine of preemption of Goldstein (97 S.Ct. at 1321).

Before I conclude my remarks on the Jones case, I would like to point out that Justice Marshall, who wrote the majority opinion in Jones, did not cite the Goldstein case in his list of authorities set out at page 1309 of 97 S.Ct. and quoted herein. Also, Justice Marshall, in the Goldstein case, filed a dissenting opinion. Personal philosophy seems to greatly influence the application of preemption principles. "Where we go from here" might best be answered by analyzing the political preferences of the individual Justices, for it is they who are going to apply the law and decide what is to be the "proper" balance between State and federal relations when they are required to do so.

HOW WE GOT THERE

How we got to the Jones case is a long, long story which I will let you read "unabridged" for yourselves. I will only cover some of the more recent cases, and then, only in a general way, so that you can have a better understanding of the direction in which the Supreme Court is heading today.

As I mentioned previously, in the early 1970's, the decisions of the Supreme Court in the area of preemption revealed a predisposition on the part of the Court to rule in favor of the States whenever possible, as exemplified by the Goldstein decision in 1973. During this period, the Court sought to BALANCE federal-State relations in such a way that States' rights would be preserved without having to sacrifice federal objectives in the process. The Court bent over backwards to render decisions which would permit the States to work with the federal government in an atmosphere of cooperation by RECONCILING the operations of both statutory schemes with one another.

In determining whether a State statute was void under the Supremacy Clause of the United States Constitution the Court first made a basic determination as to whether that law stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the federal law with which the State law was alleged to be in conflict. Kewanee Oil Company v. Bicron Corporation, 94 S.Ct. 1879, 1885 (1974); Goldstein v. California, 93 S.Ct. 2303, 2312 (1973); Hines v. Davidowitz, 61 S.Ct. 399, 404 (1941).

In making this determination, the Court examined the objectives of both the federal statute and the State statute which were alleged to be in conflict with one another. See Kewanee Oil Company v. Bicron Corporation, 94 S.Ct. 1879, 1885 (1974).

Even if a State statute and a federal statute were identical in purpose, that did not necessarily mean that the State statute had to be invalidated under the Supremacy Clause. Colorado Anti-Discrim. Com'n v. Continental Air L., 83 S.Ct. 1022, 1026 (1963).

As the subjects of modern social and economic relationships became more and more complex, the responses proposed by Congress, although they were very detailed and extensive in and of themselves, were not, necessarily, the exclusive means of meeting the problem, as had been recognized by the Court. See, for example, New York State Dept. of Social Services v. Dublino, 93 S.Ct. 2507, 2514 (1973); Askew v. American Waterways Operators, Inc., 93 S.Ct. 1590 (1973).

In determining whether a federal law preempted a State statute, the better approach was to reconcile the operations of both statutory schemes with one another rather than hold that the State statute was completely ousted. See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware, 94 S.Ct. 383, 389-390, (1973) and cases cited.

If the interest of a State in a particular area was strong enough to warrant the exercise of the State's regulatory authority, the State could act although its action had repercussions beyond State lines. Stevens v. American Service Mutual Insurance Co., 234 A.2d 305 (D.C. Court of Appeals - 1967); Osborn v. Ozlin, 60 S.Ct. 758, 761 (1940);

Alaska Packers Ass'n v. Industrial Acc. Com'n, 55 S.Ct. 518, 521 (1935)..

During the early 1970's the Supreme Court repeatedly refused to void a State statute absent a clear Congressional intent to preempt the field. The Court refused to presume that a federal statute was intended to supersede the exercise of the power of a State in that same area unless there was a clear manifestation on the part of Congress of its intent to do so. See New York State Dept. of Social Services v. Dublino, 93 S.Ct. 2507, 2513 (1973) and cases cited.

This apparent receptiveness of the Burger Court towards States' rights lasted until the Jones decision of early 1977. This does not necessarily mean that the "trend" is beginning to reverse itself once again. What it does mean, at least in my opinion, is that all of us must carefully watch the decisions of the late 1970's in order to ascertain where, in fact, "we are going". Hopefully, it will be along the path of federal-State cooperation because this is what our system of Government is all about. If we don't cooperate, we, as a Nation, are the ones who are going to suffer in the long run. I personally believe that today's Court is very sensitive to this principle and will, in fact, seek to preserve it by maintaining what it perceives to be a "proper" BALANCE between State and federal relations.

WHERE DO WE GO?

Anyone who is able to answer this question with any degree of certainty is probably endowed with powers of clairvoyance that could make him a fortune. The best that I can do is make an educated guess

that over the next couple of years, we will most likely see a resurgence of Court decisions which dictate preemption in favor of the federal government in those areas where the federal interest is DEMONSTRABLY greater than the interest of a State or States in that particular area. According to Justice Blackmun, one such area would be that of ENVIRONMENTAL PROTECTION. See his concurring opinion in National League of Cities v. Usery, 426 U.S. 833, 856 (1976). The majority opinion in National League of Cities, as well as its dissenting opinions, make interesting reading for those of you who are inclined to compare the differing political philosophies of the Justices in this area.

But even in the area of environmental protection, the Court is not going to run roughshod over States' rights, as evidenced by the series of cases recently brought by Maryland, Pennsylvania, the District of Columbia, Virginia, California, and Arizona against the EPA wherein these States challenged EPA authority under the Clean Air Act. See State of Md. v. Environmental Protection Ag., 530 F.2d 215 (4 Cir. 1975), cert. granted 96 S.Ct. 2224 (1976); Commonwealth of Pa. v. Environmental Protection Agcy., 500 F.2d 246 (3 Cir. 1974); District of Columbia v. Train, 521 F.2d 971 (D.C. Cir. 1975), cert. granted 96 S.Ct. 2224 (1976); Brown v. Environmental Protection Agency, 521 F.2d 827 (9 Cir. 1975), cert. granted 96 S.Ct. 2224 (1976); and State of Arizona v. Environmental Protection Agcy., 521 F.2d 825 (9 Cir. 1975), cert. granted 96 S.Ct. 2224 (1976).

The Supreme Court rendered its decision in these cases on May 2, 1977. It vacated the judgments of the respective Courts of Appeals and remanded the cases for consideration of mootness on the ground that the Government had renounced an intent to pursue certain regulations which were challenged and had admitted that the remaining regulations in question were invalid unless modified in certain respects. With certain exceptions, the Courts of Appeals had invalidated the challenged regulations.

At this point in time, I will turn the floor over to Mr. Hertz and to Dr. Shutler who will give you their views on federal-State relations in their respective areas of expertise. When both gentlemen have completed their presentations, we will entertain questions from the floor.

APPENDIX D

"Motor Vehicle Theft Prevention Act of 1979"
(Herein referred to as the Act)

INTRODUCTION

In reviewing the Act, it appears to me that, from a purely technical, drafting perspective, Title II of the Act does not synchronize with the remainder of the National Traffic and Motor Vehicle Safety Act of 1966 which it purportedly amends. Titles III and IV of the Act appear to be technically correct, in that they appropriately amend acts to which those titles make reference, but this does not seem to be the case with respect to Title II.

I am personally no legislative draftsman, and what I present here are matters that should be considered by those who have greater expertise than I. However, I feel that the matters outlined here will make for tighter legislation and will ameliorate the concerns of AAMVA.

1. The purpose clause in the National Traffic and Motor Vehicle Safety Act of 1966 should be amended as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress hereby declares that the purpose of this Act is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents, and to improve the physical security features of the motor vehicle and its parts. Therefore, Congress determines that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to expand the national driver register; and establish physical security standards for the motor vehicle and its parts.

2. Title I of the National Traffic and Motor Vehicle Safety Act of 1966 should be amended as follows:

TITLE I--MOTOR VEHICLE SAFETY, AND SECURITY STANDARDS

3. Sec. 102 of PART A--GENERAL PROVISIONS, Subsection (2), should be divided into two subparagraphs, as follows:

(2) (a) "Motor vehicle safety standards" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria.

(b) "Motor vehicle security standards" means a minimum performance standard relating to a motor vehicle starting system, the locking systems for the engine, passenger and trunk compartments, and component part identification.

4. Sec. 103 (a) should be amended, as follows:

The Secretary shall establish by order appropriate Federal motor vehicle safety and security standards. Each such Federal motor vehicle safety and security standard shall be practicable, shall meet the need for motor vehicle safety and security and shall be stated in objective terms.

5. Sec. 103 (b) should be amended, as follows:

The Administrative Procedure Act shall apply to all orders establishing, amending, or revoking a Federal motor vehicle safety and security standards under this title.

6. Sec. 103 (c) should be amended by dividing that section into two subparagraphs, as follows:

(c) (1) Each order establishing a Federal motor vehicle safety standard shall specify the date such standard is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(2) (A) Within twelve months after the date of enactment of the Motor Vehicle Theft Prevention Act of 1979 the Secretary of Transportation shall issue proposed notices of rulemaking covering the areas of unauthorized starting of the motor vehicle and major component identification.

(B) The proposed rule covering the prevention of the unauthorized starting of the motor vehicle shall take into consideration ongoing technological developments relating to the utilization of the microelectronics in the motor vehicle, automatic activation of the security system, and possible elimination of the existing metallic mechanical key system presently used to activate the motor vehicle.

(C) The proposed rule relating to the theft of motor vehicle parts shall take into consideration ongoing technological developments, including laser marking machines, to place identification numbers on those major components which are the primary target of the "chop shops".

(D) After an appropriate comment period and the analysis thereof, the Secretary of Transportation shall issue final rules as soon as possible, but not later than twenty-four months after the date of enactment of the Motor Vehicle Theft Prevention Act of 1979. The initial effective date of such final rules shall be as soon as practicable but before the introduction of two model years or two calendar years, whichever is shorter, following the issuance of any final rule. Any final rule shall encourage and permit the manufacturer to conform to its requirements before the rule's mandatory effective date.

7. Sec. 103 (d) should be amended as follows:

Whenever a Federal motor vehicle safety or security standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety or security standard applicable to the same aspect of performance of such vehicle or item of equipment or security systems or component part identification, which is not identical to the Federal standard. Provided, however, that a state may adopt identical Federal Motor Vehicle Safety, and/or Security Standards promulgated by the Secretary, and enforce those standards to the extent allowed under state law, so long as, such enforcement does not frustrate the objectives and purposes of this Act. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal Standard.

8. Sec. 103 (e) should be amended as follows:

The Secretary may by order amend or revoke any Federal motor vehicle safety or security standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

9. Sec. 103 (f) should be amended by dividing that paragraph into two subparagraphs, as follows:

(f) (1) In prescribing safety standards under this section, the Secretary shall--

(A) consider relevant available motor vehicle safety data, including the results of research, development, testing, and evaluation activities conducted pursuant to this Act;

(B) consult with the Vehicle Equipment Safety Commission, and with other State or interstate agencies (including legislative committees) as he deems appropriate;

(C) consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed; and

(D) consider the extent to which such standards will contribute to carrying out the purposes of this Act.

(2) In prescribing security standards under this section, the Secretary shall--

(A) take into account the cost of implementing the standard and the benefits attainable as a result of the implementation of the standard;

(B) take into account the effect of implementation of the standard on the cost of automobile insurance;

(C) take into account savings in terms of consumer time and inconvenience;

(D) take into account considerations of safety; and

(E) consult closely and develop consensus with the Attorney General, the International Association of Chiefs of Police, the International Association of Auto Theft

Investigators, the National Automobile Theft Bureau, the American Association of Motor Vehicle Administrators, and other groups and individuals interested in or affected by the motor vehicle theft problem.

10. In view of the foregoing amendments, Section 203 of the Vehicle Theft Prevention Act of 1979 can be deleted in its entirety. In addition, from the foregoing, it can be seen that various revisions have been made which have, in effect, deleted portions of Sections 201 and 202 of the Theft Prevention Act, but the sum and substance of these sections are contained in the amendments herein developed with appropriate considerations, as they concern AAMVA, inserted where applicable.
11. There may be other sections of the National Traffic and Motor Vehicle Safety Act of 1966 where technical revisions may have to be made in order that it not be out of synchronization with the intent and purpose of the Act. However, as I stated earlier, those having more expertise than I should make this evaluation.

Comment by . . .

The Executive Director

By Donald J. Bardell

Vehicle theft has long been one of the most perplexing problems related to motor vehicle administration. It presents a vast array of problems for state and provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws, and their counterparts at the local levels.



Vehicle theft also poses a similarly vexing set of problems for prosecutors, jurists, and many in the private sector, as well as to the individual victims among the general public, who suffer substantial economic losses and the loss of their prime source of mobility.

The economic impact of vehicle theft in the United States is staggering. One major auto casualty insurance association has estimated that the industry-wide losses from vehicle theft in this country approach \$4.1-billion annually!

Furthermore, the problems appear to be rapidly escalating—particularly in the area of professional thievery, where the stakes are high and the possibilities for immensely profitable theft ring operations actually exist.

Heretofore, a vast majority of the emphasis in anti-theft efforts has been addressed to apprehension and prosecution. There have been a few programs targeted toward preventive remedies, but most have stressed catching and prosecuting thieves—*after a vehicle has actually been stolen*. Even today, there are many calling for more laws and more stringent penalties as potential deterrents to those who might be inclined to steal a vehicle.

However, there are a growing number in our profession who believe that we currently have laws that are adequate for achieving our enforcement and prosecution objectives, with respect to vehicle theft problems. These individuals are firmly convinced that there are real limits to which after-the-fact remedies can usefully be pursued in preventing vehicle theft.

Many among the AAMVA's membership believe that substantially greater inroads can be made in ameliorating the growing number of vehicle theft problems—especially as they relate to "professional" theft operations—by tightening the administrative controls that pertain to proof of ownership of a motor vehicle. These administrative controls stress *prevention of the theft before it occurs*, in contrast to apprehension and prosecution after-the-fact.

By tightening these administrative controls, motor vehicle administrators can make it significantly more difficult for the professional auto thief to operate. These controls can make it tougher for representatives of theft rings to successfully obtain false documents that make them appear to be the legitimate owners of vehicles that have been stolen.

These tighter controls over proof of vehicle ownership—from the time that a vehicle rolls off the assembly line until it is either salvaged, dismantled or consigned to the shredder—also can be helpful in reducing other avenues of fraud, on which the professional theft rings have relied heavily.

The AAMVA already has taken several significant steps toward formulating more effective administrative controls for motor vehicles. Pursuant to a pair of 1978 Annual International Conference resolutions, our Association is well along the way to developing security features for the Manufacturers Certificate of Origin—a vehicle's "birth certificate." We also have several years of AAMVA staff time and resources invested in the development of a unique Vehicle Identification Number—one that will provide a competent identifier for a vehicle throughout its useful life.

Development of security features for the MCO and our effort toward formulating a competent VIN are but two items on a lengthy agenda of possible administrative controls that might be successfully applied toward the prevention of vehicle theft. Other potential alternatives include: security features for titles, including return of titles involving inter-jurisdictional transfers; precise controls for transfer of ownership between such entities as the manufacturer, transporter, dealer, purchaser, body shop operator and dismantler; specific salvage title procedures; and audit procedures for shredders to follow once the vehicle has lost its identity. This list is, by no means, all inclusive, but it touches on some of the major areas that logically should be considered.

State and provincial motor vehicle administrators are presented with a unique opportunity to make a substantial contribution toward vehicle theft prevention, via tightening of the administrative controls pertaining to proof of vehicle ownership. Let us unite, through our Association, to successfully meet the challenge that is before us.

AAMVA SEPTEMBER 1977 ANNUAL CONFERENCE

Resolution 3

SALVAGE VEHICLE TITLE PROCEDURES

WHEREAS, by reason of various procedures in effect in some states, auto thieves are provided with an opportunity to obtain official title documentation to cover illegally obtained motor vehicles; and

WHEREAS, each state has the responsibility to eliminate all possibilities for effecting illegal possession of motor vehicles, by effecting procedural safeguards which are necessary; and

WHEREAS, those states without adequate salvage title laws contribute to the auto theft problem in that sales and transfers of motor vehicles in these states fail to provide safeguards; now, therefore be it

RESOLVED, that the AAMVA membership urge the Governors and Legislators of all states to enact such legislation as they deem necessary to implement a Salvage Title Document.

RESOLUTION'S ORIGIN: AAMVA Registration and Title Workshop; REGIONAL ACTION: Region IV, passed; Region II, passed as a recommendation; Region III, passed; Region I, passed. ANNUAL INTERNATIONAL CONFERENCE ACTION: Registration and Title Committee, do pass; Resolutions Committee, do pass; Board of Directors, do pass. General Business Session, adopted by voice vote with Vermont wishing to be recorded as voting no.

APPENDIX G

AAMVA SEPTEMBER 1979 ANNUAL CONFERENCE

Resolution 3A

CONCERNING UNIVERSAL CERTIFICATE OF TITLE

WHEREAS, the multitude of certificate of title forms in use creates significant document recognition problems resulting in acceptance of fraudulent and counterfeit certificates; and,

WHEREAS, a uniform certificate as to size and format has been designed by the American National Standard Institute (ANSI) D-19.4 Subcommittee; and,

WHEREAS, the title document should be not only uniform but also universal in design and use and contain appropriate security features; now, therefore be it

RESOLVED, that all jurisdictions, in their concern to eliminate counterfeiting and fraudulent use of title documents, support efforts by the American Association of Motor Vehicle Administrators and the ANSI D-19 Committee to expand the uniform certificate of title in terms of design, security features and universality for use by all jurisdictions; now, therefore be it further

RESOLVED, that all jurisdictions take all necessary steps to obtain legislation, if necessary and promulgate regulations to support the uniform procedures required for a universal certificate of title.

RESOLUTION'S ORIGIN: International Workshop on Registration, Title, Vehicle Dealers and Manufacturers. Regional Action: Region III, passed; Region II, passed; Region I, passed; Region IV, passed. ANNUAL INTERNATIONAL CONFERENCE ACTION: International Committee on Registration, Title, Vehicle Dealers and Manufacturers, recommend do pass as amended; Resolutions Committee, do pass; Board of Directors, pass; General Business Session, adopted with Maryland voting "no."

APPENDIX H

RECOMMENDATION #1

UTILIZATION BY ALL JURISDICTIONS OF A TITLE DOCUMENT CONTAINING SECURITY FEATURES

WHEREAS, Motor Vehicle Administrators recognize the need to use a Certificate of Title to support ownership of a vehicle; and

WHEREAS, the American Association of Motor Vehicle Administrators (AAMVA) in 1979, approved specifications for security features on the Manufacturers Certificate of Origin (MCO), and more than fifteen jurisdictions are presently requiring those security features on the MCO for all new vehicles titled in 1980; and

WHEREAS, more than twenty-five jurisdictions presently issue a title document containing a security feature or a combination of security features; and

WHEREAS, the use of security features on the ownership document is intended to prevent fraud upon the motoring public and to provide administrative control of the titling process; now, therefore be it

RECOMMENDED, that Motor Vehicle Administrators in all non-title jurisdictions and all jurisdictions using a title without security features should take immediate steps to require the use of title documents containing security features; and, be it further

RECOMMENDED, that AAMVA forward a copy of this recommendation to the Chief Executive, the Motor Vehicle Administrator, to the Director of the Title or Registration Agency of each jurisdiction which does not use a title or security features on their Title Certificate, and to the Canadian Conference of Motor Transport Administrators.

ORIGIN: Registration, Title, Vehicle Dealers and Manufacturers Workshop, 1980

Region IV: _____
 Region II: _____
 Region III: _____
 Region I: _____

Annual Conference: _____

RESOLUTION OF INTERNATIONAL ASSOCIATION OF CHIEFS
OF POLICE--1979 ANNUAL CONFERENCE

ENDORSEMENT OF THE "MOTOR VEHICLE
THEFT PREVENTION ACT OF 1979"
1979

WHEREAS, Motor vehicle thefts approached 1,000,000 vehicles in 1978 and cost the consumer and taxpayer more than \$4 billion; and

WHEREAS, The preliminary statistics for the first three months of 1979 show a 15% increase in motor vehicle thefts; and

WHEREAS, This increase is reflected in all geographical areas of the nation; and

WHEREAS, The seriousness of motor vehicle theft has for too long been neglected by the legislators and policy makers of our nation; and

WHEREAS, A concerted effort by all levels of government, the private sector, and the motor vehicle owner is crucial to the curbing of this growing epidemic; and

WHEREAS, While motor vehicle theft remains within the primary responsibilities of state and local government, the Federal Government as the national government has an obligation to act in those areas where it has the constitutional authority and responsibility; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" (S. 1214 and H.R. 4178) will help prevent the theft of motor vehicles by requiring their manufacturers to improve its locking systems and number its major components; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" will create strong penalties for persons who remove the identification numbers of motor vehicles and motor vehicle parts and who illicitly traffic in such vehicles and parts; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" will give the United States Customs Service a clear mandate to help its sister law enforcement agencies in the fight against motor vehicle theft by giving it authority in the area of the importation and exportation of the stolen motor vehicle; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police supports the passage by the Congress of S. 1214 and H.R. 4178 as amended by the members in meeting at the 1979 Annual Conference and attached hereto; and be it

FURTHER RESOLVED, That the International Association of Chiefs of Police calls upon its members to actively encourage their perspective Congressional delegations to give this important crime prevention measure their full support; and be it

FURTHER RESOLVED, That a copy of this resolution be sent to all the members of the Senate and House Committees having jurisdiction over these bills.

1 TITLE II--IMPROVED SECURITY FOR MOTOR
2 VEHICLES AND MOTOR VEHICLE PARTS

3 SEC. 201. Section 103 of the National Traffic and
4 Motor Vehicle Safety Act of 1966 (15 U.S.C. 1892) is
5 amended by adding at the end the following new subsection:

6 "(j) Standards established by the Secretary under this
7 section shall include standards ^{limited to those} ~~to~~ reduce the theft of the

8 motor vehicle and its parts, taking into account--

9 "(1) the cost of implementing the standard and
10 the benefits attainable as a result of the implementa-
11 tion of the standard;

12 "(2) the effect of implementation of the standard
13 on the cost of automobile insurance;

14 "(3) savings in terms of consumer time and incon-
15 venience; and

16 "(4) considerations of safety."

17 SEC. 202. (a) In exercising the authority given to the

18 Secretary of Transportation under section 103(j) of the Na-
19 tional Traffic and Motor Vehicle Safety Act of 1966 (15

20 U.S.C. 1892), as added by section 201 of this Act, the Secre-
21 tary shall consult closely ^{and develop consensus} with the Attorney General, the In-

22 ternational Association of Chiefs of Police, the International
23 Association of Auto Theft Investigators, the National Auto-

24 mobile Theft Bureau, ^{the American Association of Motor Vehicle Administrat-} and other groups and individuals inter-
25 ested in or affected by the motor vehicle theft problem.

*and Motor
Vehicle
Manufacturers
Associat*

through improved vehicle security
devices installed by manufar rers and
through improved techniques of applying
vehicle identification numbers by
manufacturers

1 (b)(1) Within twelve months after the date of enactment
2 of this Act, the Secretary of Transportation shall issue pro-
3 posed notices of rulemaking covering the areas of unauthor-
4 ized starting of the motor vehicle and major component iden-
5 tification.

6 (2) The proposed rule covering the prevention of the
7 unauthorized starting of the motor vehicle shall take into
8 consideration ongoing technological developments relating to
9 the utilization of the microelectronics in the motor vehicle,
10 automatic activation of the security system, and possible
11 elimination of the existing metallic mechanical key system
12 presently used to activate the motor vehicle.

13 (3) The proposed rule relating to the theft of motor vehi-
14 cle parts shall take into consideration ongoing technological
15 developments, including laser marking machines, to place
16 identification numbers on those major components which are
17 the primary target of the "chop shops".

18 (4) After an appropriate comment period and the analy-
19 sis thereof, the Secretary of Transportation shall issue final
20 rules as soon as possible, but not later than twenty-four
21 months after the date of enactment of this Act. The initial
22 effective date of such final rules shall be as soon as practica-
23 ble but before the introduction of two model years or two
24 calendar years, whichever is shorter, following the issuance.
25 of any final rule. Any final rule shall encourage and permit

1 the manufacturer to conform to its requirements before the
2 rule's mandatory effective date.

3 SEC. 203. Whenever there is in effect a Federal motor
4 vehicle security standard relating to a motor vehicle's start-
5 ing system, the locking systems for the engine, passenger,
6 and trunk compartments, and component part identification
7 established under this title, no State or political subdivision of
8 a State shall have any authority to establish or to continue in
9 effect, with respect to any motor vehicle or motor vehicle
10 part, any security standard relating to those same systems
11 which is not identical to such Federal standard.

12 TITLE III—ANTIFENCING MEASURES

13 SEC. 301. (a) Chapter 25 of title 18, United States
14 Code, is amended by adding after section 509 the following
15 new sections:

16 "§ 510. Altering or removing motor vehicle identification
17 numbers

18 "Whoever knowingly removes, obliterates, tampers
19 with, or alters any identification number for any motor vehi-
20 cle or part thereof required under regulations issued by the
21 Secretary of Transportation shall be fined not more than
22 \$5,000, imprisoned not more than five years, or both.

Provided, however, that a state may adopt identical Federal Motor
Vehicle Security Standards promulgated by the Secretary, and enforce
those standards to the extent allowed under state law, so long as such
enforcement does not frustrate the objectives and purposes of this Act.

1 "§511. Forfeiture of motor vehicles and their parts which
2 have had identification numbers altered or
3 removed

4 "(a) PROPERTY SUBJECT TO FORFEITURE.—Any
5 motor vehicle or motor vehicle part required to have an iden-
6 tification number pursuant to regulations issued by the Secre-
7 tary of Transportation which has had such number removed,
8 obliterated, tampered with, or altered shall be subject to seiz-
9 ure and forfeiture to the United States unless—

10 "(1) such motor vehicle part has been attached to
11 a motor vehicle owned by an innocent purchaser of
12 such part; or

13 "(2) such motor vehicle or motor vehicle part has
14 a replacement identification number which is author-
15 ized by the Secretary of Transportation or is in con-
16 formity with the applicable law of the State where
17 such motor vehicle or motor vehicle part was seized.

18 "(b) FORFEITURE PROCEDURES.—All provisions of law
19 relating to the seizures, summary and judicial forfeiture pro-
20 cedures, and condemnation of vessels, vehicles, merchandise,
21 and baggage for violation of customs laws; the disposition of
22 such vessels, vehicles, merchandise, and baggage or the pro-
23 ceeds from such sale; the remission or mitigation of such for-
24 feitures; and the compromise of claims and the award of com-
25 pensation to informers in respect of such forfeitures shall

1 apply to seizures and forfeitures incurred or alleged to have
2 incurred under the provisions of this section, insofar as appli-
3 cable and not inconsistent with such provisions. Such duties
4 as are imposed upon the collector of customs or any other
5 person in respect to the seizure and forfeiture of vessels, ve-
6 hicles, merchandise and baggage under the customs laws
7 shall be performed with respect to seizures and forfeitures of
8 property under this section by such officers, agents, or other
9 persons as may be designated for that purpose by the Attor-
10 ney General."

11 (b) The table of sections for chapter 25 of title 18,
12 United States Code, is amended by adding at the end thereof
13 the following new items:

"510. Altering or removing motor vehicle identification numbers.
"511. Forfeiture of motor vehicles and their parts which have had identification
numbers altered or removed."

14 SEC. 302. Section 2311 of title 18, United States Code,
15 is amended in the definition of "Securities" by inserting im-
16 mediately after "voting trust certificate;" the following:
17 "motor vehicle title until it is cancelled by the State indicated
18 thereon or blank motor vehicle title;"

19 SEC. 303. Section 2313 of title 18, United States Code,
20 is amended—

21 (1) by striking out "moving as, or which is a part
22 of, or which constitutes interstate or foreign com-
23 merce," and inserting in lieu thereof "which has

1 crossed a State or United States boundary after being
2 stolen,"; and

3 (2) by inserting "possesses," immediately after
4 "receives,".

5 SEC. 304. (a) Chapter 113 of title 18, United States
6 Code, is amended by adding at the end the following new
7 section:

8 "§2319. Trafficking in motor vehicles or their parts which
9 have had identification numbers altered or
10 removed

11 "Whoever buys, receives, possesses, or obtains control
12 of, with intent to sell, transfer, distribute, dispense, or other-
13 wise dispose of, any motor vehicle or motor vehicle part,
14 knowing that an identification number required pursuant to
15 regulations issued by the Secretary of Transportation has
16 been removed, obliterated, tampered with, or altered, shall be
17 fined not more than \$25,000, imprisoned not more than ten
18 years, or both."

19 (b) The table of sections for chapter 113 of title 18,
20 United States Code, is amended by adding at the end thereof
21 the following:

"2319. Trafficking in motor vehicles or their parts which have had identification
numbers altered or removed."

22 SEC. 305. Section 1961(1) of title 18, United States
23 Code, is amended—

1 (1) by inserting "sections 2312 and 2318 (relating
2 to interstate transportation of stolen motor vehicles),"
3 immediately after "section 1955 (relating to the prohi-
4 bition of illegal gambling business);" and

5 (2) by inserting "section 2319 (relating to the
6 trafficking in motor vehicles or their parts with altered
7 or removed identification numbers)," immediately after
8 "sections 2314 and 2315 (relating to the interstate
9 transportation of stolen property)."

10 SEC. 306. (a) Section 3002 of title 39, United States
11 Code, is amended—

12 (1) in the section heading, by inserting "and manipulative devices" after "keys";

13 (2) in subsection (a), by striking out "subsection
14 (b)" and inserting in lieu thereof "subsection (c)";

15 (3) by redesignating subsections (b) and (c) as sub-
16 sections (c) and (d), respectively;

17 (4) in subsection (c), as redesignated by paragraph
18 (3) of this section, by inserting "and subsection (b)"
19 immediately after "subsection (a)";

20 (5) by inserting after subsection (a) a new subsec-
21 tion (b) to read as follows:

22 "(b) Except as provided in subsection (c) of this section,
23 any manipulative type device which is designed or adapted to
24 operate, circumvent, remove, or render inoperable the igni-
25

tion switch, ignition lock, door lock, or trunk lock of two or more motor vehicles, or any advertisement for the sale of any such manipulative type device is nonmailable matter and shall not be carried or delivered by mail"; and

(6) by adding at the end a new subsection (e) to read as follows:

"(e) Upon evidence satisfactory to the Postal Service that any person is engaged in a scheme or device for obtaining money or property through the mail by advertising or offering for sale any motor vehicle master key or manipulative device made nonmailable by this section, the Postal Service may issue an order of the same kind and with the same incidents as that authorized by section 3005 of this title."

(b) The table of sections for chapter 30 of title 39, United States Code, is amended in the item relating to section 3002 by inserting "and manipulative devices" after "keys".

SEC. 307. (a) Section 1716A of title 18, United States Code, is amended in the section heading by inserting "and manipulative devices" after "keys".

(b) The table of sections for chapter 33 of title 18, United States Code, is amended in the item relating to section 1716A by inserting "and manipulative devices" after "keys".

TITLE IV—IMPORTATION AND EXPORTATION
MEASURES

SEC. 401. (a) Chapter 27 of title 18, United States Code, is amended by adding after section 552 the following new section:

"§ 553. Unlawful importation or exportation of stolen self-propelled vehicles, vessels, or aircraft

"(a) Whoever imports, exports, or attempts to import or export (1) any self-propelled vehicle, or part of a self-propelled vehicle, vessel, or aircraft, knowing the same to have been stolen, or (2) any self-propelled vehicle or part of a self-propelled vehicle, knowing that its identification number has been removed, obliterated, tampered with, or altered, shall be fined not more than \$10,000, imprisoned not more than five years, or both.

"(b) For purposes of this section, the term—

"(1) 'self-propelled vehicle' includes any automobile, truck, tractor, bus, motorcycle, motor home, and any other self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail;

"(2) 'vessel' has the meaning given to it in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401); and

1 “(3) ‘aircraft’ has the meaning given to it in sec-
2 tion 101(5) of the Federal Aviation Act of 1958 (49
3 U.S.C. 1301(5)).”

4 (b) The table of sections for chapter 27 of title 18,
5 United States Code, is amended by adding at the end thereof
6 the following:

“553. Unlawful importation or exportation of stolen self-propelled vehicles, vessels,
or aircraft.”

7 SEC. 402. The Tariff Act of 1930 is amended by adding
8 after section 624 (19 U.S.C. 1624) the following new sec-
9 tions:

10 “SEC. 625. UNLAWFUL IMPORTATION OR EXPORTATION OF
11 STOLEN SELF-PROPELLED VEHICLES, VESSELS,
12 OR AIRCRAFT; CIVIL PENALTY.

13 “(a) Whoever knowingly imports, exports, or attempts
14 to import or export (1) any stolen self-propelled vehicle,
15 vessel, aircraft, or part of a self-propelled vehicle, vessel, or
16 aircraft, or (2) any self-propelled vehicle or part of self-pro-
17 pelled vehicle from which the identification number has been
18 removed, obliterated, tampered with, or altered, shall be sub-
19 ject to a civil penalty in an amount determined by the Secre-
20 tary, not to exceed \$10,000 for each violation.

21 “(b) Any violation of this section shall make such self-
22 propelled vehicle, vessel, aircraft, or part thereof subject to
23 seizure and forfeiture under this Act.

1 “SEC. 626. INSPECTION OF USED SELF-PROPELLED VEHICLES
2 TO BE EXPORTED; DEFINITIONS.

3 “(a) A person attempting to export a used self-propelled
4 vehicle shall present, pursuant to regulations prescribed by
5 the Secretary, to the appropriate customs officer both the
6 vehicle and a document describing that vehicle, which in-
7 cludes the vehicle identification number, before lading if the
8 vehicle is to be transported by vessel or aircraft, or prior to
9 export if the vehicle is to be transported by rail, highway, or
10 under its own power. Failure to comply with the regulations
11 of the Secretary shall subject the exporter to a penalty of not
12 more than \$500 for each violation.

13 “(b) For purposes of this section and section 625, the
14 term—

15 “(1) ‘self-propelled vehicle’ includes any auto-
16 mobile, truck, tractor, bus, motorcycle, motor home,
17 self-propelled agricultural machinery, self-propelled
18 construction equipment, self-propelled special use
19 equipment, and any other self-propelled vehicle used or
20 designed for running on land but not on rail;

21 “(2) ‘aircraft’ has the meaning given to it in sec-
22 tion 101(5) of the Federal Aviation Act of 1958 (49
23 U.S.C. 1301(5)); and

24 “(3) ‘used’ refers to any self-propelled vehicle
25 other than a new self-propelled vehicle which is ex-

1 ported by the original manufacturer or by such manu-
2 facturer's authorized agent."

3 SEC. 403. The Tariff Act of 1930 is further amended by
4 adding after section 588 (19 U.S.C. 1588) the following new
5 section:

6 "SEC. 589. ADDITIONAL AUTHORITY FOR UNITED STATES CUS-
7 TOMS SERVICE.

8 "A customs officer, as defined in section 401(i) of this
9 Act, may (1) carry firearms, execute and serve search war-
10 rants and arrest warrants, and serve subpoenas and summons-
11 es issued under the authority of the United States, and (2)
12 make arrests without warrant for any offense against the
13 United States committed in his presence or for any felony
14 cognizable under the laws of the United States if he has rea-
15 sonable grounds to believe that the person to be arrested has
16 committed, or is committing, such a felony."

17 SEC. 404. (a)(1) Section 7607 of the Internal Revenue
18 Code of 1954 (26 U.S.C. 7607) is repealed.

19 (2) The table of sections for subchapter A of chapter 78
20 is amended in the item relating to section 7607 by striking
21 out "Additional authority for Bureau of Customs" and insert-
22 ing in lieu thereof "Repealed".

23 (b) A prosecution under section 7607 of the Internal
24 Revenue Code of 1954 (26 U.S.C. 7607) for any violation of
25 law occurring before the effective date of subsection (a) of

1 this section shall not be affected by the repeal made by such
2 subsection or abated by reason thereof.

3 (c) Civil seizure, forfeiture, and injunctive proceedings
4 commenced under section 7607 of the Internal Revenue
5 Code of 1954 (26 U.S.C. 7607) before the effective date of
6 subsection (a) of this section shall not be affected by the
7 repeal made by such subsection or abated by reason thereof.

8 TITLE V—REPORTING REQUIREMENTS

9 SEC. 501. (a) Within eighteen months after the date of
10 the enactment of this Act the Attorney General, after consul-
11 tation with the Secretaries of Agriculture, Commerce, Trans-
12 portation, and the Treasury, shall submit to the Congress a
13 report on the developments in the area of the theft of off-
14 highway vehicles and the steps being taken to help prevent
15 their theft as well as hinder their subsequent disposition, and
16 facilitate their recovery. Included in the report shall be—

17 (1) the progress being made by the various manu-
18 facturers of off-highway vehicles to develop identifica-
19 tion numbering systems effective in identifying such ve-
20 hicles;

21 (2) the effectiveness of the location and manner by
22 which such identification numbers are affixed to the
23 off-highway vehicle by the manufacturer, including the
24 affixing of such number in a confidential location;

*Placed
at end
of 1966
or
amended
in Muller's*

1 (8) the degree to which the various manufacturers
2 are reporting the characteristics of their numbering
3 identification systems for off-highway vehicles to the
4 National Crime Information Center (NCIC) so that ap-
5 propriate edit controls over entries and inquiries can be
6 established by NCIC;

7 (4) the progress being made toward the establish-
8 ment within the off-highway vehicle industry of an in-
9 dustrywide unique identification numbering system;

10 (5) the degree to which manufacturers of off-high-
11 way vehicles have affixed unique identification numbers
12 to the major components of the vehicle;

13 (6) the degree to which manufacturers of off-high-
14 way vehicles have established record systems which
15 permit a cross-referencing between the identification
16 numbers of the vehicle and those of the major compo-
17 nents;

18 (7) changes being made to the format and proce-
19 dures of the NCIC to better deal with the theft of off-
20 highway vehicles and their major components;

21 (8) the degree of cooperation of the various manu-
22 facturers of such off-highway vehicles with the Na-
23 tion's law enforcement community to reduce the theft
24 problem in this area;

1 (9) the efforts being made by the owners of exist-
2 ing off-highway vehicles to affix an owner applied
3 number (OAN) to such vehicles and the major compo-
4 nents thereof;

5 (10) the passage of any State laws relating to the
6 titling or deeding of off-highway vehicles;

7 (11) the passage of any State laws which make it
8 a State crime to remove, obliterate, tamper with, or
9 alter the identification number affixed by the manufac-
10 turers to any off-highway vehicle or major component
11 of such vehicle;

12 (12) the passage of any State laws permitting the
13 seizure by law enforcement for investigative purposes
14 and possible forfeiture of any off-highway vehicle or
15 major component thereof which has had its manufac-
16 turer's affixed identification number removed, obliterated,
17 tampered with, or altered;

18 (13) the degree to which manufacturers of off-
19 highway vehicles have developed a manufacturer's cer-
20 tificate of origin which contains adequate internal secu-
21 rity features to guard against forgery, alteration, and
22 counterfeiting, lists the serial number of the vehicle
23 itself as well as the serial numbers of any major com-
24 ponents, and can serve as a de facto title for such vehi-
25 cle by assignment to subsequent purchasers;

21

1 (14) the steps being taken by those elements of
 2 the private sector which auction off, make loans on,
 3 and insure off-highway vehicles to help deter stolen
 4 off-highway vehicles from being reintroduced into the
 5 channels of legitimate commerce; and

6 (15) any assessments of the scope of the problem
 7 as well as any recommendations the Attorney General
 8 may deem appropriate.

9 (b) For purposes of this section, the term "off-highway
 10 vehicle" means a vehicle or work machine that is self-pro-
 11 pelled or pushed or towed by a self-propelled vehicle and the
 12 primary function of which is off-highway in application. Any
 13 on-highway operation is incidental to the vehicle's primary
 14 function. This includes self-propelled agricultural, forestry,
 15 industrial, construction, and any other non-transportation
 16 special use equipment.

17 SEC. 502. On or before the first June 30 which occurs
 18 at least fifteen months after the date of enactment of this
 19 Act, and on or before each June 30 thereafter for the follow-
 20 ing nine successive years, the Attorney General, in consulta-
 21 tion with the Secretary of Transportation, the Secretary of
 22 the Treasury, and the Postmaster General, shall submit to
 23 the Congress a report on the implementation and develop-
 24 ment of the provisions of titles II, III, and IV of this Act and

22

1 the effectiveness of such provisions in helping to prevent and
 2 reduce motor vehicle-related theft.

[The following letter was subsequently received for the record:]



AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS
1201 CONNECTICUT AVE., N.W., SUITE 910, WASHINGTON, D.C. 20036, TELEPHONE 202/296-1955

OFFICERS

President
JAMES C. PETERSON
Wisconsin

1st Vice President
EMORY P. AUSTIN, Jr.
South Carolina

2nd Vice President
FRANK A. MANSHEIM, Jr.
Colorado

Secretary
EUGENE P. PETIT, Jr.
Rhode Island

Executive Director
& Treasurer
DONALD J. BARDELL
Washington, D.C.

BOARD OF DIRECTORS

DORIS ALEXIS
California

HARRY H. D. COCHRANE
New Brunswick

GLEN B. CRAIG
California

RICHARD M. FLYNN
New Hampshire

LEO E. GOSSETT
Texas

C. W. KEITH
Florida

ELMER J. KOHMETSCHER
Nebraska

JAMES P. MELTON
New York

J. M. PENNY
North Carolina

FRANK SHAW
Illinois

GEORGE O. STEVENS
Michigan

PHILIP THORNEYCROFT
Arizona

ROBERT W. TOWNSLEY
Texas

DAVID URIOSTE
New Mexico

ROBERT I. VOSHILL
Delaware

B. G. WELCH
South Dakota

* Executive Committee

June 6, 1980

Hon. James H. Scheuer, Chairman
Interstate and Foreign Commerce Committee
Subcommittee on Consumer Protection
and Finance
3275 House Office Building Annex No. 2
Washington, D. C. 20515

and

Hon. Gus Yatron, Chairman
Foreign Affairs Committee
Subcommittee on Inter-American Affairs
709 House Office Building Annex No. 1
Washington, D. C. 20515

Dear Rep. Scheuer and Rep. Yatron:

I would like to thank you, once more, for the opportunity to present, on behalf of the American Association of Motor Vehicle Administrators (AAMVA), comments on the pending Motor Vehicle Theft Prevention Act (HR 4178), at the joint hearing of the Commerce Subcommittee on Consumer Protection and Finance and the Foreign Affairs Subcommittee on Inter-American Affairs, June 2nd in New York City. As you indicated when chairing the hearing, Congressman Scheuer, AAMVA's time for its oral presentation was limited, due to time constraints. However, you were understanding enough to permit us to discuss with the Subcommittees a number of points, and for this we are deeply appreciated.

You asked if there was anything further that our Association wished to present, in addition to the three major concerns of the AAMVA; our request to introduce, on behalf of the International Association of Chiefs of Police, the resolution adopted by its 1979 International Conference, which--in substance--supports the major concerns of the AAMVA; the feasibility of adding a Vehicle Identification Number (VIN) confirmation to state motor vehicle inspection programs; and, finally, questions related to the consultative process.

There are, Chairman Scheuer, several other issues I would like to address. I respectfully request that this letter be placed in the record, as an addendum to and a part of AAMVA's testimony, presented to the Subcommittees on June 2, 1980, at 26 Federal Plaza, Room 305, in New York City.

Prior to addressing the supplementary issues, I have one other observation that I would like to add with respect to the issue of preemption, raised in our testimony. That is that each state must look at the implementation, including enforcement of motor vehicle security standards, from its own frame of reference. Each state must concern itself with its resources, fiscal as well as administrative, operational as well as political and otherwise. Thus, the foregoing is the predicate on which a state will make a determination as to "how" it will enforce a federal standard.

Chairman Scheuer, you and several of the witnesses at the hearing, raised the question of a "National Title" on several occasions. As was indicated by other speakers at the hearing, state motor vehicle administrators are the officials involved in administering the issuance of original titles, re-titling, and issuance of salvage titles for motor vehicles, as well as the implementary procedures that are so important for the effective operation of the vehicle/ownership control system.

The AAMVA assumes that when the term "National Title" was used, you were inferring the development of a national performance standard, related to motor vehicle titles, to be promulgated by the Secretary of Transportation, pursuant to Sec. 201 of the proposed Motor Vehicle Theft Prevention Act. This assumption, I believe, is made in view of the fact that Title II of the Vehicle Theft Prevention Act relates itself to theft standards, promulgated by the Secretary, and the Congressional findings which make reference to national and international uniformity on certain standards--such as titling.

Mr. Chairman, we recognize the concern that you and the members of the Subcommittees have for a uniform and secure title. We would respectfully suggest, however, that such a performance standard should be developed by the Secretary of Transportation, under his authority in the Highway Safety Act of 1966, as amended.

I want to make it clear at this juncture, that our members would welcome title uniformity provided, however, and this is an important aspect, that there is a "meaningful consultative process" utilized by the Secretary. The consultative process should encompass a consensus by those parties directly affected by the standard.

I respectfully submit that a consensus process does not necessarily mean that we have a situation where "separate vetoes" are involved. The consensus process works extremely well in the voluntary sector with respect to development of standards. The American National Standards Institute has a definition of consensus. Let me quote the ANSI's definition and see if I can apply it to the situation here in question:

Substantial agreement reached by concerned interests according to the judgement of a duly appointed authority, after a concerted attempt at resolving objections. Consensus implies much more than the concept of a simple majority but not necessarily unanimity.

Therefore, the Secretary, sitting as the "duly appointed authority," would determine when "substantial agreement" was reached by all concerned interests, using as his guide that something more than a simple majority of those participating, but "not necessarily unanimity" of those participating is needed to reach consensus.

It is extremely important, from our perspective, that the Subcommittees note that AAMVA has been extremely active in developing a uniform title certificate, having what we feel are the necessary characteristics to insure the uniformity of design, format, and data content, as well as the criteria of security features. Our complete statement submitted for the record fully details the foregoing.

I do hope that what we have presented here is helpful to the Subcommittees, especially as it relates to the question of title standards and consensus.

Our Association is looking forward to cooperating with the Subcommittees, and the sponsors of HR 4178, in processing this proposed legislation. We stand ready to assist in any way possible, and will be pleased to answer any questions which you may have.

Very truly yours,

Donald J. Baydell
Donald J. Baydell
Executive Director

DJB/19

cc: Hon. Benjamin A. Gilman
Hon. S. William Green
Hon. Thomas A. Luken
Mr. Norman Darwick, Executive Director
International Association of Chiefs of Police
Mr. Ronald J. Sostkowski, Director
Division of State and Provincial Police
International Association of Chiefs of Police

Mr. SCHEUER. We will now hear from Mr. Noel Chandonnet, assistant vice president of GEICO, the Government Employees Insurance Company. Mr. Chandonnet is representing the New York/New Jersey Anti-Car Theft Committee. We are very happy to have him.

We know that we are running a little bit behind schedule, Mr. Chandonnet. We thank you for your tolerance and patience.

Your testimony, as I said before, will be printed in full in the record [see p. 286]. So if you can simply chat with us informally, hitting the high spots, I am sure we will have some questions for you.

STATEMENT OF NOEL CHANDONNET, ASSISTANT VICE PRESIDENT, GOVERNMENT EMPLOYEES INSURANCE CO. (GEICO), REPRESENTING THE NEW YORK/NEW JERSEY ANTI-CAR THEFT COMMITTEE

Mr. CHANDONNET. I would like to start, Mr. Chairman, saying that I appreciate the opportunity to appear before you this morning. To reiterate what Superintendent Lewis said earlier, he really does not know what else can be done to help halt auto theft in New York and I think he is correct in saying that.

The problem is, however, that when you look at salvage title laws, for example, only 25 States out of 50 have enacted any meaningful salvage title legislation.

Mr. SCHEUER. Only 25 out of 50?

Mr. CHANDONNET. Only 25 States and therein lies the problem. Without a cooperate effort between the States and the Federal Government, we are not going to lick the problem and make substantial inroads in curtailing chop shop operations or whatever.

The individual States, I think, have been doing a good job for the most part but it is a slow, deliberate process.

The problem now is that we have to get together and use the resources of the Federal Government in order to bring some pressure to bear on individual States.

Mr. Gilliland I think covered in his testimony, or at least the written portion of his testimony, that theft is up all over the United States. It is up in the Northeast. It is up even more on the West the Southwest and the Southeast. So the problem is getting larger in magnitude, it is not getting any smaller.

We need the assistance of the Federal Government to bring a sort of sense of cohesion to our fight against the problem.

Now, in my testimony I have mentioned all that we have done in New York. The industry in cooperation with the State insurance department, which has been extremely cooperative, law enforcement, has done a great deal in terms of new legislation, the salvage title law that we have, making insurance fraud now a felony, granting immunity to the insurance industry for making available to law enforcement information on fraudulent cases.

The New York City tow program has probably done more than anything else in the year that it has been in operation to return more whole cars back to their owners than we could possibly imagine. That law has undergone revision recently in an effort to make it work a little bit more effectively. I am not prepared here this morning to talk

about what the cost is to the average consumer in this State and every other State that has a high theft frequency, but the dollars are immense.

I would be happy to answer any questions that you may have.
[Mr. Chandonnet's prepared statement follows:]

STATEMENT NOEL A. CHANDONNET, VICE PRESIDENT, NEW YORK-NEW JERSEY ANTI-CAR THEFT COMMITTEE

Mr. Chairman, I am Noel A. Chandonnet, vice-chairman of the New York-New Jersey Anti-Car Theft Committee (ACT), member of the executive committee of the Coalition to Halt Auto Theft (CHAT) and assistant vice-president of Government Employees Insurance Company (GEICO). I thank you for the opportunity to appear before you this morning to address a very important issue.

With the New York/New Jersey metropolitan area quickly becoming the auto theft capital of the world, with over 100,000 cars stolen a year, at a cost of 225 million dollars, something had to be done. The auto insurance industry, along with the National Automobile Theft Bureau, organized in early 1978 and formed the New York-New Jersey Anti-Car Theft Committee. Committees were organized and action plans were formulated for a carefully planned, continuing campaign to educate the public on automobile thefts. A thorough study of New York State's existing legislation and required legislation on the city and State levels was accomplished within the committee's first year of operation.

ACT has since been joined by representatives of the New York Department of Vehicles, the New York City Police Department, Nassau County Police Department, Suffolk County Police Department, the New York State Insurance Department, and the staffs of several State legislators. All agreed that the public had to be made aware of how to give an auto thief a hard time, how to put the car thief out of business; but more importantly, how to avoid becoming one of our automobile theft statistics.

Our legislative subcommittee provided an open forum for regulatory agencies, law enforcement and insurance carriers to discuss their mutual problems. It has worked closely with superintendent Lewis of the New York State Insurance Department and the staffs of New York State Senators John Caemmerer and Joseph Pisani to help develop the Governors' bill and many other anti-car theft bills which have been signed into law in New York State.

One of these measures set up a central computer and investigative organization which can be used as a clearing house for all total loss cars, cases of insurance fraud and total theft of motor vehicles, and vehicle identification numbers for rebuilt vehicles. Other laws clarified the regulations governing repair shops, dismantlers and scrap processors. Still others require VIN numbers on all major component parts of an automobile, while granting civil immunity to carriers when reporting and pursuing investigation of incidents of insurance fraud. The penalty for insurance fraud has been raised to a class E felony.

The most urgent piece of legislation provided for the cities in New York State with a population of one million and over to establish a franchise system for towing, impounding and safeguarding located stolen vehicles. This bill, now law, has helped reduce the stripping of abandoned stolen vehicles which are found on New York City streets.

Armed with a knowledge of the legislative process and anticipated delays, our committee went a step further by offering New York City an interim plan for protecting located stolen vehicles. Under this plan, approved by the New York City Council, insurance companies and the National Automobile Theft Bureau would bear the cost of protecting "located" stolen vehicles. Our proposal was that New York City notify the National Automobile Theft Bureau immediately upon locating a stolen vehicle, to allow insurance companies to pick up cars with a minimum of paper work.

Both of these tow programs received enthusiastic support in Albany and New York City. The New York City rotation tow program went into effect in July 1979.

Our committee did not stop its work when the rotational tow program went into effect. Together with the New York Police Department, the National Automobile Theft Bureau and the insurance industry, we assisted in the implementation and monitoring of the results of this program. Most of the problems are being ironed out and as recently as April 1980, the New York Police Department was preparing streamlined departmental orders to improve the operation of the rotational tow program.

During the first 9 months of its operation, over 16,000 stolen vehicles have been picked up on New York City streets. Prior to this, the majority of these vehicles would have been stripped and sold for parts, or crushed in the derelict car program.

Our finance committee has been hard at work raising funds to support our efforts. These funds are coming from insurance companies and related industries. We have developed a pamphlet entitled "Your Car Can Be Stolen This Year".

This pamphlet, as well as key chains displaying the campaign logo, have been distributed as part of our "public awareness" campaign.

Many articles prepared by the ACT committee on the auto theft problem have been printed in trade journals, and we've released to the media many statements in support of individual legislative proposals. We have also prepared public service announcements, which will be used in our overall "public awareness" program.

Periodically, we publish a newsletter entitled "Action", which covers all "ACT" activities and keeps all participating organizations up to date. Auto theft news is circulated regularly.

Our speakers bureau has prepared an excellent slide presentation outlining the auto theft problem and what can be done by the public to assist in taking the profit out of auto theft. This slide presentation has and will be shown to fraternal and civic organizations, as well as schools and businesses.

Our job is far from over. We plan on continuing this fight against auto theft in New York. Late in 1979, we commenced our attack on the New Jersey problem, under the very able direction of our other vice-chairman, Mr. James Tindall, who is regional vice president of State Farm Mutual Insurance Company.

Our New Jersey legislative sub-committee has also been preparing legislative proposals to contain auto theft in New Jersey. These call for:

- Licensing of dismantlers, recyclers and auto body repair shops;
- Tightening of procedures governing the issuance of certificates of title;
- Amendment to the New Jersey Unfair Claims Practices Act which would allow insurers sufficient time to investigate auto theft cases;
- Immunity from civil action for insurance companies for supplying information to law enforcement in fraud cases; and
- Registration of all scrap metal processors.

We have made a good start in New York and New Jersey, but if we are to further control auto theft, we must have the cooperation of other States and the Federal Government.

The New York-New Jersey Anti-Car Theft Committee is actively supporting the work of the Coalition To Halt Auto Theft and committed to the passage of the Motor Vehicle Theft Prevention Act now pending before Congress.

Without this legislation, we will only chase the car thief from one jurisdiction to another. With this legislation, uniform VIN numbers will establish a clear, understandable chain of title, and major component parts of autos will be uniformly numbered. A cooperative partnership will be developed between the States and Federal Government, so an appropriate interrelated system can be developed for uniform titling and registration. But most importantly, this bill can greatly assist in stemming the flow of motor vehicles outside of the United States.

In his address to the membership of the National Automobile Theft Bureau at its annual meeting in Atlanta on March 26, 1980, President Paul Gilliland, in commenting on the anti-vehicle theft effort, said: "The cooperative effort should include representatives from insurance, the courts, law enforcement, the manufacturers and other facets of society. No one organization, no one industry, no one agency can stabilize and control vehicle theft and fraud. If we are to be successful, there must be a massive, aggressive coordinated effort by many organizations working together. In this way, we can meet, stabilize and control the crime."

We are making good progress in a growing number of State legislatures. With the added cooperation of the Federal Government, we can and will win the battle against professional car theft.

Thank you.

Mr. GREEN. In some of the testimony this morning, it has been indicated that putting the VIN on more parts is not really going to be effective unless the insurance industry is prepared to take the posture that it will not pay for repairs unless it is verified that the parts that are being used for repairs are not stolen parts.

Is the industry prepared to do that, or do you think that is necessary to make this effective?

Mr. CHANDONNET. I do not think it is necessary to make it effective. The point you have to remember is whether you can alter the VIN's, erase them or whatever. If there are component parts that are found where the VIN has been altered or some effort has been made to alter it, those parts can be seized and the operation brought to a halt. That is the key.

It is not whether or not we are inspecting these parts before they are put on the cars to determine whether you can trace the chain of ownership of those parts.

Mr. GREEN. I guess the problem is this. You are not going to have a policeman in each of the auto repair shops and if this is going to be effective, who is going to be doing the screening to see that the VIN appears to have been tampered with?

Mr. CHANDONNET. Well, let me put it this way, we have been asking for example in New York State, for a right of reinspection of cars in the course of repair. Although I appreciate the remarks made by the superintendent, as yet we have not been granted that right.

I would think that this is as good an argument as one could make for a right of reinspection in the course of repairs.

It is easy to look at a car after it has been fixed, but you cannot detect everything that was or was not done as well as you could if you looked at the car while it was being repaired.

Mr. SCHEUER. What is your problem in inspecting the car during the course of repair?

Mr. CHANDONNET. We do not have one. We would like to have that right but we do not now have that right under New York law.

Mr. SCHEUER. Can you not say, as a matter of contract, that you reserve the right to inspect that car during the repair process?

Mr. CHANDONNET. Well, the department of motor vehicles in New York regulates the body shop industry. If the body shop owners tell us to get the hell out of there, what can you do? That is his business.

Mr. SCHEUER. You can refuse to pay a claim, for one thing.

Mr. CHANDONNET. Well, can you really?

Mr. SCHEUER. Why could you not put that in your contract?

Mr. CHANDONNET. I do not think the department would approve such restrictive language because the problem is you have your policyholder squeezed in the middle. If that is going to occur, you are not going to get away with introducing that language into the policy contract.

So you have to service the customer. You cannot squeeze the customer.

Mr. SCHEUER. It seems to me the carowner, the policyholder, would be protected by your having the right to inspect that car during repair because anything that makes it more dangerous and more risky and more costly to use stolen parts, or parts from a stolen car in repairing cars, would tend to deter the trade, the whole commerce in stolen cars.

Mr. CHANDONNET. I would not disagree with you on that point.

Mr. SCHEUER. Why would not carowners and policyholders be benefited by an act, or any system, that tends to deter car theft?

Mr. CHANDONNET. They would.

Mr. SCHEUER. Why would the DMV raise problems for you in terms of inspecting cars?

Mr. CHANDONNET. I do not know.

Mr. SCHEUER. But you think they would?

Mr. CHANDONNET. I think so.

Mr. SCHEUER. Do you have any evidence of it?

Mr. CHANDONNET. We have been kicked out of shops every day of the week.

Mr. SCHEUER. But the DMV is not kicking you out of shops.

Mr. CHANDONNET. No; but the shops are. I do not know whether the legislation enabling DMV to govern the body shop industry has the power to tell them, "You will let this individual in. You will not let that individual in."

I am not aware of that.

Mr. SCHEUER. They would not have to say anything like that. All they would have to say is if an insurance company did not have access during the repair of the car during the repair process they would not have to pay the claim. Then the carowner would make sure when he took the car to the shop to have it repaired that they would assure him that you would have access to that car for inspection purposes during repair.

Mr. CHANDONNET. I would agree with that. But again, the onus always comes back to the insurance industry, which was an allusion that Superintendent Lewis made earlier that we are responsible just because we use used or new parts to repair automobiles, that we are creating this after market.

You can argue that from now until doomsday. We are not in the habit of repairing 5-year-old cars with brandnew parts when sufficient, adequate, safe used parts are available to keep the cost of repairs down and ultimately the cost of the premium to the consumer.

It has been said more than once that the industry seems to be creating its own problems, just like we are creating the problems with automobile theft. That simply is not true. We are very concerned about the ease that you have heard about this morning with which cars stolen in this country can be exported to Canada, to Mexico and as one of my associates called me several months ago, "How do you get this \$150,000 Mercedes back from Costa Rica?"

Well, if you can walk it down to the docks and put it on board a ship this afternoon and ship it out of the country, and likewise cars stolen in Italy and France and Germany can come off ships here and be purchased at low prices by American citizens, we have a tremendous problem.

So I am back to my original premise that the States really do not have the power to go beyond their own borders. If we do a lot in New York and the ACT Committee does a lot in New Jersey—

Mr. SCHEUER. What was that?

Mr. CHANDONNET. The New York/New Jersey ACT Committee. All we simply do is force the problem over to our sister jurisdictions and if they are less concerned or less aggressive in responding to the problems than some of the eastern seaboard jurisdictions are then the problem will just continue.

One has asked the question, well, if we have some Federal legislation, why do people out in Idaho need this kind of problem? It might

be that a lot of people would go to Idaho and Nebraska and Montana and so forth to get some of their cars registered assuming that States do take an aggressive attitude in passing some of this legislation. But the problem continues.

We have been dealing with it for years and it seems to be magnifying in proportion.

Mr. SCHEUER. Now, you talked about a proposal here in New York State which would require VIN numbers on all major component parts of the vehicle. How do you anticipate that this is going to move this suggested legislation?

Mr. CHANDONNET. I do not think you can do anything with it?

Mr. SCHEUER. Why is that?

Mr. CHANDONNET. Simply, because you cannot mandate that General Motors and Ford imprint cars that are sold in New York to meet New York requirements.

Mr. SCHEUER. A couple of States, I think Georgia and one other State, Tennessee, required that VIN's be put on the transmission and the motors. Because of the fact that they had to put them on in those two States, the automobile manufacturers decided to put them on for cars in the other 48 States also.

Might that not happen here?

Mr. CHANDONNET. No; I do not think so. All you have to do is look at the tremendous decline in new car sales, the tremendous increase in crash parts prices, the ballyhoo we have read about for months and months over the 5-mile-per-hour bumper standards.

Mr. SCHEUER. Would you elaborate on that?

Mr. CHANDONNET. Pardon?

Mr. SCHEUER. Would you elaborate on your remark of the bumper standards, because that is under the jurisdiction of this committee and we will be meeting in conference with the Senate pretty soon and that is going to be an item of controversy and we would like to have your views on it.

Mr. CHANDONNET. We cannot seem to get our heads together and determine whether or not 5-mile-per-hour bumper standards are going to save on losses or not save on losses.

Mr. SCHEUER. It is not a question of lives, because the whole question of 5- or 2½-mile bumpers is strictly a question of money.

Mr. CHANDONNET. And also, there is the air bag question.

Mr. SCHEUER. How do you feel about air bags?

Mr. CHANDONNET. I feel very good about air bags being an absolute requirement in new model automobiles. They are a proven lifesaver, there is no question about that.

You see, the bottom line of what we are talking about is not whether we like this, that or the other thing, but whether we can keep the cost of insurance for the consumer public down to reasonable levels.

Car theft has escalated dramatically in the last few years and, as a result, you have heard Superintendent Lewis talk about the theft premiums have just gone through the roof, the cost of repairing automobiles, the Consumer Price Index versus the Crash Price Index.

How long can the average consumer stand this? This is what we are really talking about, the bottom line, and what we are going to do about it.

Mr. GREEN. I did not have any further questions of Mr. Chandonnet but he did mention in his testimony the efforts of the State legislature in working on the auto theft problem and I wanted to join with him in complimenting the legislature for its efforts.

I am familiar with the work that Senators Caemmerer and Pisani have done in particular.

It so happens that former Senator McNeil Mitchell, who is one of the country's foremost experts on the problem, has assisted them in those efforts and I would like to note that Senator Mitchell was invited by the subcommittee to appear today, but unfortunately, was unable to be with us.

Mac is an old personal friend of mine and I have very much appreciated his guidance on this legislation.

That is all I have.

Mr. SCHEUER. Mr. Chandonnet, what do you suggest that motor vehicle owners do to protect their vehicles from theft and take the profit out of automobile theft?

Mr. CHANDONNET. We have a number of pamphlets that the ACT Committee has published.

Mr. SCHEUER. The ACT Committee is?

Mr. CHANDONNET. The New York/New Jersey Anti-Car Theft Committee. We have conducted a consumer public awareness campaign and in the pamphlet we explain various ways that the consumer can avoid becoming another auto theft statistic.

Mr. SCHEUER. Do you have copies of that with you?

Mr. CHANDONNET. I do not have them with me, but I can certainly send them to Mary Fran.

No. 1, you can lock the car and put the key in your pocket. You start with that and go on from there.

Mr. SCHEUER. That used to be enough.

Mr. CHANDONNET. That slogan was great about 10 or 15 years ago.

Mr. SCHEUER. Now you have far more sophisticated people in the business of stealing cars. It is not the freckled face kid down the block anymore who had a beer too many and was out for a joyride. These were professionals.

We saw a demonstration this morning where this chap, Mr. John Doe, he got into that car in about 20 seconds with just a flat piece of metal that he inserted down there with some degree of manual dexterity, I suppose.

So just locking your car, it may be a beginning but it is a very inadequate beginning. What do you suggest after that for the carowner? What can he do?

Mr. CHANDONNET. Certainly we have to have much better locking devices.

Mr. SCHEUER. That is nothing the carowner can do. Can he go out and buy a special sophisticated car-locking device?

Mr. CHANDONNET. We have no nationwide testing results that tell us, for example, what anticar theft devices—and there are hundreds, literally, on the market are proven effective. I have understood from talking to law enforcement people and criminals that we have, at various meetings that I have attended, and the word seems to be that they can overcome any device, hands down.

You just let them study it for a little bit and they can overcome anything.

The problem is, of course, even if we should get favorable results on this proposed legislation, with new car sales being down, what can we do with the automobile manufacturers? They have tremendous problems.

Chrysler is our latest example. What do you do to have federally mandated standards to improve locking devices?

We have talked about bumper standards, we have talked about air bags. That, as I see it, is your chief challenge, assuming this legislation passes sometime in the near future.

As far as the average consumer is concerned, you just have to play heads-up ball, I guess. You have to protect your car. You have to garage it if you possibly can.

All the consumer can do is use what is at his disposal if the car is easy to get into, he can lock it up in his garage, but a thief can go through that very easily.

If he leaves it in a bright, lighted portion of a shopping center, fine, but a thief can get into a car regardless of where it is in a matter of seconds. What protection is that to the consumer,

So we are really leaving the consumer totally exposed. We are not giving him tools to help protect the big investment that he has made in his automobile.

So that is the best answer I can give you to that question.

Mr. SCHEUER. You are saying there is not a hell of a lot an individual consumer can do, and we really have to look to the automobile industry and to the Federal and State governments to come up with systems that are going to deter car theft and make it more of a high-risk operation?

Mr. CHANDONNET. I think no one agency, no one group, can solve the problem. I think it is a cooperative effort and it is the best example of one that I can possibly think of.

Mr. SCHEUER. Would a uniform national title certificate help frustrate the counterfeiters and make this more of a high-risk proposition?

Mr. CHANDONNET. I think so.

Mr. SCHEUER. You do not put much stock in it?

Mr. CHANDONNET. I am not saying that, but that is just one piece of a whole, entire program that we have to look at. I think the provisions of this legislation in question here today are a darned good start.

Mr. SCHEUER. Do you have any other pieces that would fit in that we have not thought of?

Mr. CHANDONNET. Not today. I really do not, but I would be happy to correspond with you.

Mr. SCHEUER. We will keep the record open for another 2 weeks. If you have any ideas of further components that we can crank into this machinery, we would very much appreciate hearing from you.

Let me ask, as a last question, is there any estimate of the savings that were realized as a result of the 16,000 vehicles that have been picked up under the rotational tow program?

Mr. CHANDONNET. Any time you can get a whole car, I think we work on an estimate of about \$3,000 a car, \$3,500 on average. That gives you some idea as to what we are talking about.

It seems as though the recovery rate nationwide seems to be dropping year in and year out with only 60 percent, roughly, of the cars being recovered. You get some idea of what that might go to, what the savings might go to, if you can get these whole cars back.

The tow program in New York is particularly good because if it is spotted by a patrol car or a foot patrolman, we can identify it through the insurance ID number in Albany on the teletype—who the carrier is. The tow truck operator can pick this car up, put it in an impound lot. We have amended the policy contract in New York which would then enable the insurance company to claim that automobile.

If we have already made a settlement, then we can dispose of that whole car by selling it and recoup on our loss and, pass on that savings to the customer so the whole program has tremendous potential.

To the extent that other cities of comparable size to New York, Buffalo or whatever can use this type of a program, I think we should encourage them to do so.

That might be, perhaps, a suitable amendment to the bill that we are talking about here this morning, making that some type of mandatory requirement in major jurisdictions that have a high theft frequency, because when you get a whole car back, there is no substitute in comparison with one that has the doors and the tires and the front and rear end gone.

It is big money. You are talking very, very big money and I think the statistics are amply known to you.

Mr. SCHEUER. Mr. Chandonnet, we appreciate very much your thoughtful and highly useful testimony and we also appreciate your patience. We thank you very much.

Mr. CHANDONNET. It has been my pleasure.

Thank you.

Mr. SCHEUER. The hearing will be adjourned today. The next hearing will be next week, Tuesday, June 10, at 9:30 a.m., in the Rayburn Building in Washington.

The meeting is adjourned.

[Whereupon, at 1:10 p.m., the meeting of the subcommittees was adjourned until 9:30 a.m., Tuesday, June 10, 1980.]

MOTOR VEHICLE THEFT PREVENTION ACT

TUESDAY, JUNE 10, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, AND THE SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS, COMMITTEE ON FOREIGN AFFAIRS,

Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2322, Rayburn House Office Building, Hon. James H. Scheuer, chairman, Subcommittee on Consumer Protection and Finance, and Hon. Gus Yatron, chairman, Subcommittee on Inter-American Affairs, presiding jointly.

Mr. SCHEUER. This joint hearing on auto theft by the Subcommittee on Consumer Protection and Finance of the Interstate and Foreign Commerce Committee and the Subcommittee on Inter-American Affairs of the Foreign Affairs Committee, chaired by my distinguished colleague, Gus Yatron, of Pennsylvania, will now come to order.

Last week, we had a hearing in New York City and we watched a professional car thief break into a car in about 10 seconds. He then went on to testify—this John Doe witness did—that he not only had been very heavily involved in car thefts but also he was heavily into the theft of heavy construction equipment.

Many, many witnesses testified that the crime of auto theft which used to be a crime of impulse, a crime of opportunity, mostly participated in by teenagers who had one beer too many, was increasingly the operation of organized criminal syndicates that steal cars on a systematic, very well organized basis, which cars are then destined either to be shipped abroad to Latin America or Asia in very short order, or to be chopped up into their component parts and sold here in America.

Sgt. Frank Martin of the New York City Police Department stated the national crime statistics for car theft indicate that the legal profits for auto theft are second only to those from narcotics traffic, and are in excess of \$2 billion.

Several witnesses testified that the high profit and the low risk of car theft makes a lucrative business in every region in the country. Because of the fact that we socialize the cost of car theft in our insurance policies, New Yorkers pay up to nine times higher premiums for auto theft insurance than the rest of the country.

In addition to that, we have increased cost of law enforcement and terrible financial as well as psychic loss to the victim of car theft. We have a car theft industry that is costing us \$4 billion a year, \$3 billion in insurable losses and \$1 billion in law enforcement expense.

(295)

Preceding page blank

The bill we are considering, the Motor Vehicle Theft Prevention Act, would significantly reduce incentives to steal vehicles by providing for the marking of major component parts and increased criminal penalties for theft and tampering with vehicle identification numbers, so-called VIN's.

We will hear from the Department of Justice, the Department of Transportation, from Ford, from General Motors, from automotive distributor/dismantlers, the insurance industry and the Coalition to Halt Automotive Theft.

I would like now to call on my distinguished cochairman of these hearings, Mr. Gus Yatron, chairman of the Subcommittee on Inter-American Affairs of the Foreign Affairs Committee, for such remarks as you would like to make.

Mr. YATRON. Thank you, Mr. Chairman.

I am pleased to have the opportunity to hold these hearings with my colleague from New York and Chairman of the Subcommittee on Consumer Protection and Finance, Mr. Scheuer.

The Subcommittees on Inter-American Affairs and Consumer Protection and Finance have initiated this series of hearings in consideration of H.R. 4178, the Motor Vehicle Theft Prevention Act.

Domestically, professional auto thieves and chop-shop operators have been linked to organized crime which results in tremendous property losses and higher insurance rates for the American public.

Internationally, exported stolen vehicles and parts offer high resale profits for the criminal, and little or no chance for recovery for the victim.

It is the intention of the subcommittees to provide the public with a comprehensive examination of this problem and solicit the opinions of experts who can evaluate the impact of the Motor Vehicle Theft Prevention Act.

I would like to join with my cochairman, Mr. Scheuer, in welcoming our witnesses. Gentlemen, we look forward to your insights on this problem.

Mr. SCHEUER. Congressman Rosenthal, a very distinguished member.

Mr. ROSENTHAL. I pass.

Mr. SCHEUER. Congressman William Green, who is the major sponsor of this bill, who did the work in putting it together, we are happy to have you here.

Mr. GREEN. Thank you, Mr. Chairman.

I do have a very short opening statement, just to thank the subcommittees for the attention they are giving the Motor Vehicle Theft Prevention Act, which I have introduced and which now have over 50 cosponsors.

I appreciate the subcommittees' consideration in inviting me to participate in this second round of hearings, and I wish to note publicly at this time the leadership which the two chairmen of these subcommittees have shown in moving this legislation along in the House. For that, I am very grateful.

As you noted, Mr. Chairman, it was clearly established in a hearing on this bill last week in New York the problem of auto theft is no longer primarily one of the nonprofessional, juvenile offender. Rather, it has grown into a very lucrative and increasingly violent enter-

prise of organized crime, and it is a problem which is growing at an alarming rate.

For almost a decade auto theft rates held almost even, fluctuating only about 1 percent, but in 1978 the rate leaped 21 percent and in 1979 10 percent, an increase greater than any other type of theft.

The legislation before us today is designed to stem that dramatic auto theft increase and to strike at the proliferation of illegal chop shops, where stolen cars are cut for their parts, and to stem the export of stolen automobiles.

I am eager to hear the views of the administration, the auto manufacturers, and the other witnesses who are scheduled to appear today, and I am sure that their testimony will help us to understand better how to solve this expensive problem.

Thank you.

Mr. SCHEUER. Thank you very much, Congressman Green.

Now we will turn to our first witness, Ms. Joan B. Claybrook, Administrator of the National Highway Traffic Safety Administration of the Department of Transportation.

We are happy to have you here with us, Ms. Claybrook. You have come on many occasions to the Hill with programs and supporting bills that I find very congenial, but which other Members of the Congress find troublesome—the air bags, bumper standards, and so forth.

I think today we very much appreciate your testimony on something that all of us are very much united behind. So we are glad to find you coming up here with something that all of us find salubrious. So please proceed with your testimony.

Would you first start off by introducing your colleagues to us?

STATEMENT OF HON. JOAN B. CLAYBROOK, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY GEORGE L. PARKER, CHIEF, CRASH AVOIDANCE DIVISION, OFFICE OF RULEMAKING; AND JOHN WOMACK, ASSISTANT CHIEF COUNSEL

Ms. CLAYBROOK. Thank you, Mr. Chairman.

With me today is Mr. George L. Parker, on my right, who is head of the Crash Avoidance Division in our Office of Rulemaking and Mr. John Womack, Assistant Chief Counsel. We are pleased to be here to testify today on the Motor Vehicle Theft Prevention Act of 1979.

As you noted, motor vehicle theft is on the rise in the United States and significant increases are being reported by law enforcement officials in all regions of the country.

I am pleased to state that Mr. Philip Heymann from the Department of Justice will be testifying on behalf of the administration as well. Mr. Heymann has played a crucial role in organizing the administration's support behind this legislation.

Our role is primarily that of setting standards for motor vehicles, including work on identification numbers and steering wheel locks. His role is a law enforcement, encouraging improvement in the Criminal Code, so that proper enforcement is carried out. It is a crucial role indeed.

We have been working with the Interagency Committee on Auto Theft Protection since 1975 in an effort to coordinate the activities of

the Government and the private sector in combating automobile theft through contacts with the various agencies, State law enforcement officials, insurance firms and auto salvage operations.

This committee, behind which the Justice Department has been the major force, has attempted to reduce the incidence of auto theft through a variety of means.

In keeping with the committee's approach, the agency has taken several steps to address the problem using existing authority. Among these has been our work with the States in development of effective vehicle titling procedures to combat fencing of stolen vehicles.

In this regard, a manual of guidelines for State motor vehicle licensing programs was published by our agency in January. In New York, we assisted the State Department of Motor Vehicles in establishing a program for detection of vehicles that have been rebuilt with stolen parts. Under the program, vehicle identification numbers on rebuilt vehicles are being examined by State investigators prior to the issuance of title certificates.

In the area of vehicle safety standards, we have recently amended Federal Motor Vehicle Safety Standard No. 115, Vehicle Identification Number, to standardize identification numbering systems and improve the visibility of identification numbers.

These changes will facilitate field identification of stolen vehicles by law enforcement officials, and apply to all highway vehicles. I might note, however, that this standard does not apply to the component parts of the vehicle, only to the vehicle as a whole.

Safety Standard No. 114, Theft Protection, which has been in effect since 1970, requires all passenger cars to have a key-locking system to lock the steering wheel or otherwise restrict mobility when the key is removed. A warning buzzer or light indicating the key has been left in the car is also required.

We have issued and received comments on a notice of proposed rule-making to extend and upgrade Standard No. 114. In this rulemaking, we have proposed a number of antitheft modifications to passenger cars and have also proposed that the standard be extended to trucks and vans with a gross vehicle weight rating of 10,000 pounds or less. These are essentially the light truck and vans which are used for delivery and recreational purposes.

Between 1974 and 1978 the percentage of stolen trucks and buses increased from 6.4 percent to 11.3 percent of the total of all stolen motor vehicles. We are presently evaluating the costs and benefits of these proposals and plan to issue a final rule in the near future.

Our existing safety standards, which have been in effect since 1970, are aimed primarily at preventing auto theft by joyriders, usually young people who steal cars on the spur of the moment for pleasure and have a disproportionately high accident rate.

These standards appear to have been effective, judging from the steady decline in the number of auto thefts per registered vehicle during the period 1970 through 1978. However, the recent increase in the activities of professional auto thieves, capable of defeating existing antitheft technologies, has reversed this trend and led to a search for new methods of theft prevention.

Indications are that professional theft has increased substantially. The solution rate for motor vehicle thefts declined by 32.9 percent in

the period 1967 to 1978. At the same time the percentage of stolen cars recovered by authorities dropped significantly, suggesting increased involvement by theft rings and chop shop operators.

Recent involvement of organized crime figures in the sale of stolen auto parts has given an ominous signal that the teenage joyrider, while still important, may no longer be the principal danger in the auto theft area.

In order to counter this trend, we believe that new approaches must be considered. We support the antifencing measures of title III of the "Theft Prevention Act" outlawing alteration or removal of vehicle identification numbers and trafficking in vehicles and parts with identification numbers altered or removed.

Similarly, we consider the provisions of title IV restricting importation and exportation of stolen vehicles to be valuable in combating the operations of international theft rings. We believe that title II of the act, regarding theft protection standards, also contains useful authority, although it must be recognized that it represents only one contributing part of an overall effort.

Our agency, together with the National Bureau of Standards, is studying the prospects for improvements in steering wheel and ignition locking mechanisms as a means of countering auto theft. Our goal is to increase the time factor necessary for the thief to mobilize the motor vehicle. Experienced auto thieves have advised that if a vehicle takes more than 5 to 10 minutes to activate, their fear of detection will lead them to seek more favorable targets.

A major long-term goal of the Interagency Committee on Auto Theft Prevention has been to strengthen locking systems to meet this 10-minute standard. While a determined professional thief would still be able, through the use of a tow truck, to steal a vehicle protected with such a locking system, his risk would be higher. More importantly, the 10-minute time factor would seriously impair the ability of the juvenile and the novice to steal the motor vehicles of the mid-1980's.

If the number of motor vehicle thefts were decreased, law enforcement officials would be in a better position to concentrate their limited resources on the professional thieves. Thus, the goal of any additional legislative authority should be to virtually eliminate juvenile theft and seriously hinder the ability of the professional thief to steal a vehicle.

Innovative approaches must now be developed for meeting the 10-minute objective in a cost effective manner.

I might mention some of the recent test results we have received from the National Bureau of Standards. They are interesting. We found that the number of impacts needed to pull the locking mechanism from the steering column was very high for all of the General Motors cars except Cadillac. One would think Cadillac would be the one in which they would install the better system, but it is not. It has the old system in it and therefore it was much easier to remove the Cadillac system than that of any other General Motors car.

However, even the Cadillac system was far superior to those used by the other American manufacturers. The locking mechanisms of most Ford, Chrysler, and AMC vehicles were very simple to remove by comparison. We think that even with existing technology, there are some additional steps that the manufacturers, including Cadillac, can take.

A promising approach in dealing with professional motor vehicle theft is the use of identification numbers on parts as an adjunct to efforts against trafficking in stolen parts.

Chop shop operations, in which cars are stolen and disassembled for resale as crash parts, have become highly lucrative with the rapid increase in the price of auto parts. Front-end assemblies from large, late-model cars can be sold for as much as \$1,500, while doors can bring over \$200 each. One operation in the Midwest reportedly stole and disassembled 4,000 cars in a 12-month period.

Identification numbers on auto parts, coupled with a vigorous national enforcement effort against traffickers in stolen parts, could put many chop shops out of business. These operations now discard any part, such as the engine or transmission, which bears an identification number.

If major body components were also labeled, the illegal disassemblers would be left with little reason for dealing in stolen cars.

Mr. SCHEUER. Would sale of the tires and the radio, other incidentals, be enough of an incentive for organized crime rings to continue in the theft business?

Ms. CLAYBROOK. Not at their present prices. A used tire doesn't bring much and radios are not that valuable unless they are unique systems.

We think identification numbers on major components would substantially eliminate the incentive to steal cars for disassembly. In terms of immediate impact, we feel that we now have technology available. It is very simple under the authority provided by this bill to require the identification numbers. The manufacturers could do it on their own today.

A good question for the manufacturers would be, why don't you just go ahead and do this? We don't feel under our present statutory authority we have the ability to put those numbers on all the parts. But certainly the manufacturers could do that on their own.

Ford Motor Co., in conjunction with the Department of Justice, is now engaged in an experimental program testing the feasibility of marking major components of its luxury cars. It seems to me that depending on their view and so on, this is something that should be pursued.

With regard to specific provisions of the proposed legislation, we feel that the listing in section 202(a) of the act of specific groups with which the agency must consult in establishing standards is unnecessary and potentially troublesome. In all agency rulemaking activities establishing vehicle standards, interested parties are provided an opportunity to present views and information. Listing particular groups may encourage undue emphasis on the views of those groups to the exclusion of valuable comments from other sources.

We recommend that this provision be deleted or modified to list only general categories of groups to be consulted.

The 12-month deadline, imposed by section 202(b)(1), for issuance of a notice of proposed rulemaking on unauthorized starting may not be realistic in view of additional research needed in this area.

Also, we suggest deletion of the references in section 202(b)(2) and (3) to specific technologies for the prevention of unauthorized starting and the labeling of vehicle components. We think it may not

be realistic in view of the additional research that is needed in this area. We feel that for the identification number, which we think will be a major asset, we could do that easily within 12 months.

We are concerned with the starting mechanism. We think that deadline may be unrealistic. Our concern is that while there may be technology available for preventing starting of the vehicle, it also may make repair virtually impossible. We are particularly concerned that those tradeoffs be considered so that the technology that is used would be one that is not impossible to repair.

So, we think that kind of tradeoff must be considered.

We also suggest deletion of reference in 202(b)(2) and (3) to specific technologies for prevention of unauthorized starting and the labeling of vehicle components.

Identifying particular technologies may focus interest on these areas and restrict the agency's ability to obtain information on a full range of possible alternatives.

If the subcommittees believe particular technologies merit agency consideration, these could be noted in the section-by-section analysis of the bill.

Finally, given the difficulty in projecting with precision factors such as the effectiveness of various antitheft measures, we believe that it would be inadvisable to require an affirmative determination regarding the costs and benefits of antitheft standards.

In the bill you note we should consider the benefits and costs. Costs are easy to calculate. The benefits are much harder to project with any great level of assurance. A broader description of what you mean by the benefits in that provision might be worthwhile, because whatever standard the agency issued could be challenged in court, and if we were not able to quantify benefits, perhaps the standard could be invalidated.

The bill does not include any particular allocation of reserve resources or staff resources for development of the system. I think for the vehicle identification numbers, that is a relatively minor responsibility.

In terms of new activity and work on development of improved locking systems for steering columns, it is a more difficult task.

That completes our statement and we thank you for the opportunity to testify.

Mr. SCHEUER. Thank you, Madam Chairman.

I am going to turn the questioning over to Congressman Yatron because we are sharing the chairing of these hearings; but before I do I want to ask you this question on costs and benefits.

As you know, there is quite a movement in Congress where we give regulatory agencies the right to issue regulations to require them to justify their arguments on the basis that the benefits exceed the costs. It seems to me that you have got the basic data base here to make a clear case that the benefits would exceed the cost.

For example, in the business of marking the parts, you have the current experience that transmissions and motors are discarded and not sold in this illegal commerce because of the fact they already are marked.

It seems to me clear indicia there would be significant benefits coming from marking the other parts far in excess of the cost. I myself

would be very hesitant to give additional regulatory authority to any regulatory agency without requiring that they make a good case on adequate grounds, because this has become the accepted norm. I have not discussed this with any of my colleagues, but I have the feeling that that would be a widespread agreement, that if an agency could not make a good case on costs and benefits, maybe they should not have the authority.

Ms. CLAYBROOK. I don't disagree with you in principle at all. I think the benefits must be evaluated for most of the regulatory activities that are undertaken, whether lifesaving passive restraint systems, or bumpers, or theft protection devices. The only point of my comment was that what we are talking about is a prediction and there really is not any data which show for an absolute fact that these particular systems are going to have the intended effect.

So, your benefits are predictive benefits. You can make some estimate of benefits, but that is all it is, because these kinds of systems have not been available before.

I do agree with you that you could make that kind of a case by analogy. We would certainly make that kind of an argument, because I personally believe that antitheft standards would have very great benefits. In the steering column area, I think the deterrent that the existing steering wheel locking requirement has provided for the joyrider type of thief have been just tremendous, and I think the statistics show that is the case. Whether or not we could assure the Congress and the courts that improving those steering wheel lock systems in some way would deter the professional thief I am not sure. We would make the argument.

I want to point out to the committee the fact that it would be a predictive estimating job, as opposed to having an absolute basis on which to make a decision. I just want to be sure to bring that to your attention.

Mr. YATRON. Ms. Claybrook, early in your statement you mention the National Highway Traffic Safety Administration's efforts to develop more effective titling procedures with the States. What is the proposed outlook for standard 119 which deals directly with the issue of titling?

Ms. CLAYBROOK. It is very bleak. In early 1970 the Public Works Committee put a prohibition on the issuance by the agency of any more highway safety standards. So that standard has never been issued. However, in the absence of that authority, we have nevertheless been advocates in trying to persuade the States to improve their titling procedures.

One of the difficulties in traffic enforcement, whether a 55-mile-an-hour speed limit or issuance of lists of titles of cars, is that we have a Federal system that is very diverse. Each State has the responsibility and the authority to issue its own requirements and to pass its own laws. We have a lot of diversity; a lot of good social experimentation programs going on, but a lot of diversity.

Mr. YATRON. What is your timetable for issuing the upgraded standard 114 which deals with antitheft devices?

Ms. CLAYBROOK. We hope to do that shortly. In our notice of proposed rulemaking we made a number of suggestions. A lot of objections were raised by the public because of concern for those folks who

routinely lock their keys in the car. If, in order to deter the joyrider, we made it impossible for the novice—which is most folks who drive cars—to get into their cars, we would have lots of honest people locked out of their cars.

When we looked at the facts and saw that joyriding was not really the main issue here, but what we are really concerned about is the professional thief, we felt the approach outlined in this legislation was preferable to making it impossible for people to get back in their cars. We could hear the public hue and cry when people can't get in their cars after having locked themselves out.

We are trying to take a balanced approach so we don't have vehicle owners unable to use their cars.

Mr. YATRON. Has your agency had any input into the proposed treaty on motor vehicles with Mexico?

Ms. CLAYBROOK. No, I don't think so.

Mr. YATRON. Do you have any dollar value of the parts that are crossing the border to Canada?

Ms. CLAYBROOK. No, I don't think we have such information.

Mr. YATRON. I note that you emphasize the importance of developing security systems which will take up to 10 minutes to detect. Will this significantly contribute to the theft reduction, considering that in time the thieves will learn how to gain entry more rapidly and find another way to get to the targets, since most automobile dealers and people who service the systems will have this information available to them?

Ms. CLAYBROOK. No. That is why we think the most cost beneficial thing to do now is the labeling of parts with identification numbers. Clearly, that is by far the most important thing.

We can try some of these new technologies and experiment with them. We feel that is why the 12-month time limit is too short.

For example, we have looked at different ways of defeating the steering lock—by pulling them out or drilling the pin, or whatever—to try to figure ways of avoiding that happening in less than 10 minutes.

While we may hit upon something that works and does not prevent repair of the vehicle, I am sure you are right that the thieves will shortly take a bunch of cars, practice like mad and figure out how to defeat the system.

Mr. YATRON. Thank you.

Mr. SCHEUER. Getting back to the question you raised of tradeoff between people getting into their own cars and keeping the joyrider out, a couple of weeks ago I went to the Metropolitan Opera in New York and I found out as I was in their shoving through my pocket, that I had left my keys in the car and I locked the car, so during the intermission I went down to the coat check place and I said, "Do you by any chance have a wire coathanger?"

The chap reaches under the desk and comes up with a wire coathanger, already twisted and bent into exactly the form you needed for getting in the door. He obviously thought he was performing an outstanding public service, helping people get back in their cars.

Ms. CLAYBROOK. I am sure he didn't want you there all night.

Mr. SCHEUER. Getting back to this question of cost and benefits, on the business of marking the component parts, do you have any esti-

mate of what the cost would be, No. 1, to the manufacturing process to make that part with some kind of a serial number and, two, the recordkeeping, whatever costs would come from computer input, computer storage of that, and the retrieval when it was necessary? What would the cost of that system be?

Ms. CLAYBROOK. I don't think we have an estimate. Normally, in this kind of project, if the agency has authority to issue a standard, it will do some cost estimating before issuing a notice of proposed rulemaking. But since we don't have any authority in this area, I don't think we have developed any particular cost figures.

The manufacturers might have some idea of what they think it would cost. We don't have any specifics.

Mr. SCHEUER. You haven't discussed the matter with the manufacturers?

Ms. CLAYBROOK. No. There is already a vehicle identification number on the car itself, so they do have computer systems set up for that, and a manufacturing process set up for the vehicle identification number.

Mr. YATRON. I understand it has been a charge of \$15 for each automobile.

Ms. CLAYBROOK. Marking all the major parts. Is that a price to the consumer?

Mr. YATRON. Yes.

Mr. SCHEUER. When Chevettes cost \$5,000 to purchase, their parts were selling on the market for \$28,000, so I suppose if you have a cost of marking those parts as reasonable as what you just indicated, that with their second-hand value being really up to perhaps five times the cost of the original car, you would have an enormous favorable cost/benefit ratio because it seems to me you would provide the savings that would be provided by even a semieffective deterrent that would be astronomically in excess of the cost of providing that deterrent.

Mr. YATRON. I have no further questions.

Mr. SCHEUER. Congressman Green, the prime sponsor of the measure.

Mr. GREEN. During the course of our hearings in New York I had the impression that the whole State titling process left a great deal to be desired, and that we could be doing a lot better there.

Do you have any ideas along that line as to what we ought to be doing, or what we should be urging the States to do?

Ms. CLAYBROOK. We put out a manual which we should submit for the record [see p. 306], Mr. Green, because I think it might be useful for the committee to take a look at.

We recommended a number of different types of things that should happen, and I don't believe there is any State that now adopts most of these—perhaps we could submit something for the record. The manual included inspection of title, uniform certificates of title, verification of foreign titles, confirmation of valid titles, physical examination of the vehicle in relationship to the title, the assignment of vehicle identification numbers, control of salvage vehicles in some way vis-a-vis the titling system; some kinds of work with automobile records control, and salvage vehicle ownership.

So there are a number of different areas and a number of different things States can do. Some are more costly than others, such as the odometer rollback, which is another area of fraud.

The title is also quite important for notification of the odometer reading at the time of the exchange of title. So the title is a very important part in this whole system, but one that many States have not pursued.

Mr. GREEN. Would you have any idea what led the Public Works Committee to be so upset at your getting into that area?

Ms. CLAYBROOK. It was not aimed at this particular proposal. They were concerned about agency standards that were not covered by legislation, so they just put a prohibition on issuance of any highway safety program standards.

We have a grant-in-aid program and we provide funds to the States for the carrying out of these safety standards. The prohibition had nothing to do with titling standards per se, but we had a proposed standard 119 pending.

There is also some question as to the authority of the agency, which is limited to safety requirements, and whether or not it could go broadly into the whole area of titling, which addresses the theft protection problem.

So one thing you may want to look at in terms of your own legislation is whether any kind of titling section would be worthwhile.

We would be glad to work with you if you are interested in that proposition.

Mr. SCHEUER. Ms. Durbin.

Ms. DURBIN. Later this morning we will be hearing from the Coalition of Automotive Thefts. They will recommend the inclusion of a number of amendments to H.R. 4178.

Have you had an opportunity to review any of those amendments?

Ms. CLAYBROOK. No, we have not.

Ms. DURBIN. Could you at some point?

Ms. CLAYBROOK. We would be delighted to, and submit our comments for the record.

Mr. SCHEUER. We will hold the record open for 10 days for any comments you may have.

[Testimony resumes on p. 332.]

[The following letter and titling manual were received for the record:]



U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
WASHINGTON, D.C. 20590

THE ADMINISTRATOR

JUN 23 1980

Honorable James H. Scheuer
Chairman, Subcommittee on
Consumer Protection and Finance
House of Representatives
Washington, D.C. 20515

Dear Mr. Scheuer:

In the course of my testimony concerning the Motor Vehicle Theft Prevention Act, H.R. 4178, at the June 10, 1980, joint hearing of the Subcommittees on Consumer Protection and Finance and Inter-American Affairs, I promised to submit for the record a copy of the Department of Transportation's manual of anti-theft guidelines for State motor vehicle titling programs, and our views on amendments to the Motor Vehicle Theft Prevention Act proposed by the Coalition to Halt Automotive Theft (CHAT). A copy of the titling manual is enclosed.

I would like to comment on several of the amendments to the Motor Vehicle Theft Prevention Act suggested by CHAT. First, we believe that the proposed new section 202(b)(4), requiring consideration of any available pilot project results prior to issuance of a final rule on component identification, is unnecessary, and potentially confusing. In accordance with section 103(b) of the National Traffic and Motor Vehicle Safety Act and section 553 of the Administrative Procedure Act, we already seek and consider the views and information of all interested parties prior to issuance of motor vehicle standards. Addition of this seemingly redundant provision could be construed as suggesting that a rule would be subject to challenge if the agency fails to consider available results of a pilot project, even if the manufacturer conducting the project does not bring the project to the attention of the agency.

We consider the sunset provision proposed for inclusion in section 204 of the bill to be reasonable in that it provides for a ten year period in which the effectiveness of new anti-theft measures can be evaluated. However, we

REC'D CP&F SUB.

JUN 23 1980

cannot support the addition of groups to the list of those with which the agency must consult pursuant to section 202(a). A listing of all groups capable of making a significant contribution to the consideration of theft protection standards would be very lengthy. As I stated in my prepared testimony, in order to avoid undue emphasis on the views of particular commenters, we recommend that section 202(a) list only general categories of groups to be consulted.

CHAT recommends that the legislative history of the bill reflect an intention that no more than ten components of a vehicle be labeled with identification numbers. However, even the automotive components listed in the Department of Justice paper cited by CHAT add up to thirteen, i.e., engine (1), transmission (1), each door (4), hood and trunk lid (2), radiator core support (1), each front fender (2), frame (1), and one confidential location (1). Other components such as the two rear fenders also appear to be likely candidates for labeling. Thus, we believe it would be inadvisable to place a limit on the number of components which could be required to be labeled, at least pending further study of the effectiveness and costs of labeling.

In general, we defer to the Department of Justice as to whether the proposed exceptions to the prohibitions on altering or removing identification numbers and trafficking in parts with altered numbers may interfere with enforcement efforts. We do wish to suggest, however, that the proposed exceptions for collision and fire damaged parts in sections S511(a)(3) and S2319(b)(2) be modified to make clear that only parts damaged by accidental collision or fire are excluded.

Also, proposed sections S511(a)(5) and S2319(b)(4) providing exceptions from the forfeiture and trafficking provisions for scrap dealers in possession of altered parts, in the absence of proof of knowledge, may be unnecessary and overly broad. Exemption is provided elsewhere in the amendments for parts crushed in legitimate salvage operations. Since

it is unlikely that anyone would purchase stolen cars or parts, remove the identification numbers, and then sell the vehicles or parts as scrap, the only altered parts which would come into the possession of the legitimate scrap recycler would be those which had been used to rebuild or repair vehicles which are later junked. Such parts would be so randomly distributed that the possibility of an enforcement action involving them would be remote. Furthermore, knowledge that identification numbers have been altered is already a necessary element of a trafficking offense under section S2319.

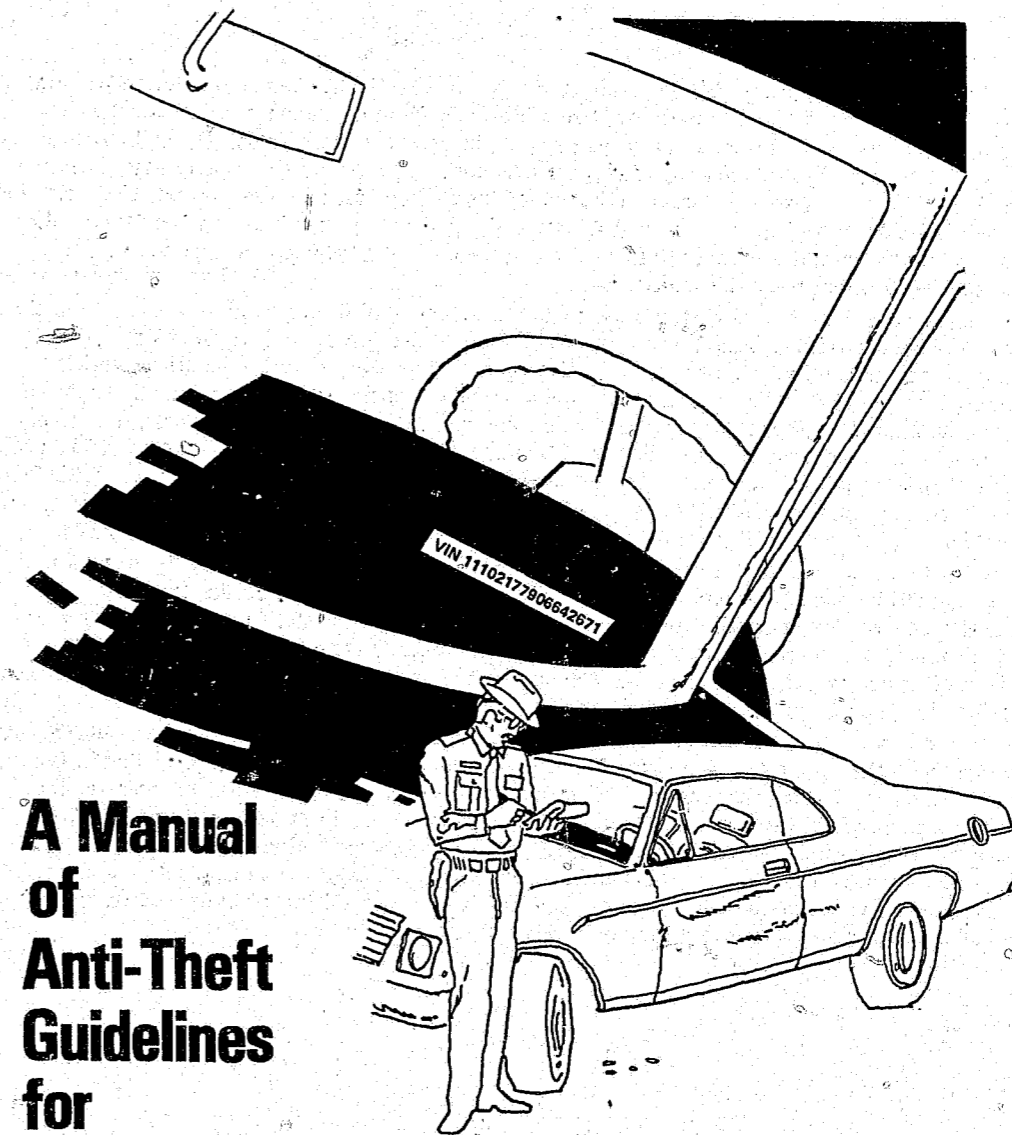
I would be pleased to provide any additional views or information which may be of value to your consideration of this legislation.

Sincerely,

Joan Claybrook
Joan Claybrook

Enclosure

dup of
77405



A Manual of Anti-Theft Guidelines for State Motor Vehicle Titling Programs

January 1980



U.S. DEPARTMENT OF TRANSPORTATION □ National Highway Traffic Safety Administration
400 Seventh St. S.W., Washington, D.C.

CONTINUED

3 OF 6

FOREWORD

The National Highway Traffic Safety Administration (NHTSA) has been involved with anti-theft activities since its origin. Early on, two motor vehicle safety standards were issued which impacted on vehicle anti-theft security systems design. Federal Motor Vehicle Safety Standard (FMVSS) Number 114 requires that each passenger car have a key-locking system that, whenever the key is removed, prevents normal activation of the car's engine and also prevents either steering or self-mobility of the car or both. Federal Motor Vehicle Safety Standard Number 115 specifies content and format of a number to facilitate identification of a vehicle, and specifies permanent affixing of the number on the vehicle.

Highway Safety Program Standard Number 2, Motor Vehicle Registration, provides guidelines for State Motor Vehicle Administrators concerning identification of vehicles and owners, and assistance in prevention and recovery of stolen vehicles. However, these guidelines and other materials issued to date have not attacked the problem of fencing of stolen vehicles through the State titling process. Appendix B is NHTSA's recommendations for a motor vehicle, titling, and anti-theft guideline program. It is supported by this manual of procedures and should aid States in starting or expanding a State program to prevent or reduce the incidence of motor vehicle theft for profit. Implementation of the procedures suggested in the manual is directed toward the detection of stolen vehicles before they are fenced under the cloak of legitimate ownership documents.

NHTSA's concern about the stolen vehicle problem has been reinforced by the formation of the Federal Interagency Committee on Auto Theft Prevention, which is cochaired by the Departments of Transportation and Justice. The Departments of State, Commerce and Treasury are also members. The purpose of the Committee is to coordinate national measures to help reduce the number and rate of stolen vehicles. The development and publication of this manual has been carried out in coordination with this Committee.

To provide a broader forum for consideration of auto-theft prevention measures, NHTSA has worked with the registration subcommittee of the National Committee on Uniform Traffic Laws and Ordinances. During the August 1979 meeting of the National Committee, the membership adopted many of the proposed anti-theft amendments to the Uniform Vehicle Code. NHTSA believes broad national agreement exists which supports increased Federal-State activity in this important area. NHTSA recommends and encourages the States to use all available sources of information and available highway safety grant funds to attack this problem in accordance with the guidelines and procedures recommended in this manual.

ACKNOWLEDGEMENT

This manual is based on published Report No. DOT-HS-803-236, developed under Contract No. DOT-HS-6-01425, and entitled *Guidelines Manual: Vehicle Theft Countermeasures In the Issuance of Certificates of Vehicle Title*. This report is available from the National Technical Information Service, Springfield, Virginia 22161. The order number is PB277925.

TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION	
A. Summary of the Vehicle Theft Problem	1
B. Relationship of the Title Process to Vehicle Theft	1
II. THE PROBLEM	
A. Techniques to Re-Title Stolen Vehicles	3
B. Weaknesses in the Titling/Registration Process	6
C. Other Weaknesses	8
III. ANTI-THEFT GUIDELINE POLICIES AND PROCEDURES	
A. Title Document Inspection	11
B. Uniform Certificate of Title and Manufacturer Certificate of Origin	11
C. Training for Document Intake	12
D. Verification of Foreign Title	12
E. Confirmation of Valid Title	13
F. Physical Examination of Vehicles	13
G. Vehicle Identification Number Assignment	15
H. Salvage Vehicle and Document Control	16
I. Automobile Wreckers, Dismantlers and Related Businesses	17
J. Salvage Vehicle Ownership	18
APPENDICES	
A. Selected Bibliography	19
B. NHTSA Guidelines for State Motor Vehicle Titling and Anti-Theft Programs	20

Chapter I INTRODUCTION

A. Summary of the Vehicle Theft Problem

The problem of motor vehicle thefts has increased significantly during the past decade. Vehicle thefts currently total about one million annually, with reported vehicle thefts for the first half of 1979 showing an increase of 13 percent over the same period of 1978. The percentage of stolen motor vehicles that are never located or recovered is about 30 percent overall, although the figures for selected vehicle types and individual jurisdictions may vary. Typically, the percentage of unrecovered motorcycles is approximately 40-50 percent. Three alternative theories exist to explain the inability of police and other interested agencies to locate missing vehicles:

1. The vehicles have been cannibalized for component parts and scrap, and identifiable portions of the vehicle no longer exist.
2. The vehicles have been altered and a new identity created, and then fraudulently retitled.
3. The vehicles have been exported and are no longer in the United States.

Unrecovered stolen vehicles are a result of commercial/professional theft operations that use the methods of operation identified above.

The detection of stolen vehicles has not always been viewed by motor vehicle administrators as a function within the scope of their responsibilities. Increasing recognition and concern about abuses of the titling program related to vehicle theft have altered this view. The increased interest of these administrators is much in evidence in the discussions and activities of representative organizations such as the American Association of Motor Vehicle Administrators (AAMVA) and the International Association of Chiefs of Police (IACP).

B. Relationship of the Title Process to Vehicle Theft

It has long been believed by officials concerned with vehicle theft problems that a majority of unrecovered stolen vehicles are still in use, albeit operating under the cover of a new identity, supported by legitimate and properly issued title and registration documents. There is ample evidence that large numbers of stolen vehicles annually receive a false identity and are undetected in the title review process.

Whether as a result of title program deficiencies or abuses, commercial/professional theft operations may obtain legitimate and State approved titles to stolen vehicles as a result of the following:

1. **Title by mail**—New titles are issued that are unsupported by previous official evidence of ownership, with no required examination of the vehicle for which the title was issued.
2. **Fraudulent use of official documents**—Documents are often altered, counterfeited or stolen.
3. **Lack of physical examination**—Titles are issued without any inspection of the vehicle or verification of the data presented as evidence of ownership.

The adoption of State procedures directed toward the reduction of these abuses of the system should increase the potential for detection of stolen vehicles and misuse of the titling process.

A comprehensive anti-theft program as is suggested throughout this manual, should reduce the number of fraudulently titled vehicles, counteract the market for stolen vehicles, and ultimately, the incidence of motor vehicle theft.

Chapter II THE PROBLEM

This chapter of the manual summarizes the titling and registration process and identifies the points in the process that are susceptible to the techniques that are employed to conceal the identity of stolen motor vehicles and thereby, obtain valid titles and registration documents.

A. Techniques to Re-Title Stolen Vehicles

The techniques that are described in the following paragraphs are common to commercial/professional vehicle theft operations throughout the United States.

1. Salvage Switch

The salvage switch is the most commonly encountered tactic that is employed to conceal the true character and identity of a stolen vehicle. The thief may dispose of the vehicle by sale to an unsuspecting party without first registering the vehicle, or after obtaining legitimate ownership/registration documentation based on the apparent legitimate identity of the vehicle.

Although the salvage switch process is relatively simple, other factors, such as lack of control of ownership documents, combine to create a complex series of procedures which make detection of the "switched" stolen vehicle extremely difficult. The following is a summary of the typical circumstances and problems associated with salvage (total loss) vehicles and ownership document control.

- a. A total loss settlement occurs between an insurance company and the insured party when the insured vehicle is extensively damaged in some manner, or stolen and not recovered. In the case of damage to the vehicle, the settlement is usually made because the estimated cost of repairs exceeds the fair market value of replacement cost of the vehicle. In the "settlement due to damage" situation the insurer may cause a transfer of title for the vehicle, from the insured to another party such as a dismantler. In this instance the insurance company may (or may not) send notice of the transaction and the executed ownership certificate to the State Motor Vehicle Department (DMV). The insurer may also provide the third party buyer with a Salvage Bill of Sale, as evidence of ownership. As an alternative, the insured might retain ownership of the damaged vehicle, in which case the DMV may or may not be informed of this disposition.
- b. In a situation where the settlement is for a total loss unrecovered theft, the insurer generally receives title to the missing vehicle. However, procedures developed for total loss processing generally are intended to insure notification to DMV of an extensively damaged vehicle and to impose certain safety requirements, whenever the vehicle is restored to operation. Therefore, the procedures for total loss reporting of stolen vehicles generally do not anticipate the use of this process to conceal the identity of stolen motor vehicles.
- c. State laws generally do not address the transfer of ownership or disposition of ownership documents in the case of a total loss settlement for an unrecovered stolen vehicle. DMV registration procedures usually require only that the transfer to the insurer be accompanied by an explanatory statement of facts indicating the reason for the transfer.
- d. Once the transfer is completed, the recovered vehicle, if the vehicle is recovered, becomes the property of the insurance company regardless of condition and is usually sold at auction or to a salvage/dismantler dealer. In some States specific notice and registration procedures become operable if a dismantler acquires the recovered vehicle. Otherwise, the transfer of ownership of the vehicle following the total loss insurance settlement is generally handled as a "normal" transaction by the DMV.

The above described situations demonstrate the conditions and procedures that commonly exist to make both valid ownership documents and salvage vehicle available to the thief. At this point the method of the salvage switch becomes more direct.

- a. The thief obtains the salvage vehicle and some type of legitimate documentation that is associated with the vehicle.
- b. A vehicle similar in year, make, and model to the salvage vehicle is stolen and, using the salvage VIN plate, license plates, and any other identifiers, it is converted to the identity of the salvage vehicle (the remaining component parts of the salvage vehicle may be stripped and sold, or the salvage hulk is abandoned).

This tactic can be successfully employed using the original registration/title documents, a bill of sale, or similar record of transfer of ownership for the salvage vehicle, or fraudulent documents. Titling procedures for the "revived" salvage vehicle which do not require the physical inspection of the vehicle by a trained, experienced examiner are generally inadequate to deter or discover this method of concealing the identity of the stolen vehicle.

2. Altered or Stolen Vehicle Identification Numbers (VIN)

This method is closely related to the salvage switch and involves the use of a legitimate VIN to conceal the identity of the stolen vehicle in order to obtain registration documents. The VIN plate is a plate attached in a visible place on the vehicle which contains the unique identification number assigned by the manufacturer to the particular vehicle. The current NHTSA safety standard requires the VIN plate for passenger cars to be attached within the passenger compartment and be visible through the windshield (FMVSS No. 115).

Typically, a VIN plate is stolen from a vehicle that may be parked, stored, or in a damaged condition. The fact that the VIN plate is missing is not normally discovered for an extended period of time and, as a result, the VIN may successfully "cover" a stolen vehicle. The stolen VIN plate is attached to a stolen vehicle of the year, make, and model similar to the vehicle from which the plate was stolen. The vehicle may then be sold directly, or retitled in a State other than the one in which the theft occurred, employing fraudulent documents prepared for the vehicle.

Another method of altering the VIN plate has been employed with late model vehicles on which the VIN plate is attached to the dashboard. The method requires the alteration or complete replacement of the "hot" VIN with similar appearing numbers that are not likely to be listed as stolen with law enforcement agencies. Techniques employed to alter or replace these VIN plates strips include plastic tape, paint, and prepared metal plates.

This method of concealing the identity of a stolen vehicle does not initially involve or employ specific weaknesses in DMV procedures concerning document control. To be successful, however, the registration of the stolen vehicle is usually attempted in those States where vehicle titling procedures do not require:

- a. Physical inspection of ownership documents, the vehicle, and the VIN at the time of retitling.
- b. Verified ownership documents be presented at the time of retitling, and/or specific review of out-of-state registrations or special examination for fraudulent documents.

3. Fraudulent Documents

Many attempts to conceal and re-register/retitle stolen vehicles require both the alteration of the VIN and the use of fraudulent documentation. The most common types and uses of fraudulent documents are described below:

3.1 Counterfeit Documents

The use of counterfeit documents (e.g., a simulated state-issued title certificate) is generally indicative of commercial/professional vehicle theft operations. Commercial printing processes are able to produce high quality reproductions of nearly all of the title documents in use throughout the country. The use of counterfeit title documents is

most prevalent in interstate registration of a stolen vehicle, where registration is sought in a State other than the State of original title issue. The use of the fraudulent document in this manner serves to minimize the possibility of detection, due to the lack of familiarity of State officials with foreign State title documents that are tendered as evidence of vehicle ownership.

Counterfeit documents are most commonly utilized in one of the following transactions:

- a. To conceal the identity of a stolen vehicle that is presented for registration following a salvage switch operation. The counterfeit documents (assuming legitimate ownership papers were not available when the salvage vehicle was obtained) are (a) offered to obtain current registration and ownership records for the vehicle, or (b) to support the direct sale of the stolen vehicle to an unsuspecting buyer, often including a used automobile dealer.
- b. To record an apparent change of ownership on the vehicle and obtain a genuine title, for a fictitious party, which may later be used to sell the vehicle. This transaction most often takes place in a State other than the State that issued the title document. This transaction is particularly suited for use in those States where title laws have been recently enacted and older vehicles are excluded from the provisions of the new law.
- c. To support the sale of a stolen vehicle to an innocent buyer without attempting to conceal the true character or identity of the vehicle. This method simply requires the use of a counterfeit title, accurately describing the vehicle but bearing a fictitious name, to record the transfer of ownership during a direct sale of the vehicle between two private parties (the thief and the buyer). The innocent purchaser may be located through newspaper ads, contact in bars, garages, etc., and may include used automobile dealers. This tactic is especially effective where the close inspection of the title and a DMV registration check of the vehicle at the time of sale are not probable.

In addition to counterfeit title documents, two other items may be fraudulently produced and offered as evidence of ownership. These documents are:

- a. Bill of sale—tendered to demonstrate an apparent change of ownership in support of the application for title and registration.
- b. Manufacturer Certificate of Origin (MCO)—produced as proof of ownership in support of an application for original title and registration. This document is commonly associated with late model (or "new") domestic vehicles or with imported vehicles.

3.2 Altered Documents

The use of legitimate documents, altered to correspond to the identifiers of the vehicle for which registration is sought, is another technique that is employed to obtain current documents for a stolen vehicle. Alteration of the document may be attempted using a variety of methods to defeat (or attempt to avoid) the "safety" characteristics of the title paper, including, as examples:

- a. "Washing" and "weathering" the document to minimize color, color contrasts, erasures, and other evidence of alteration.
- b. Bleach and re-typing of selected letters or digits to create the desired identifiers.
- c. Partial destruction of the document, including portions of the information that is to be altered.

The actual incidence of use of altered documents at the State registration process is difficult to assess. The most common use is believed to occur during the direct sale of the vehicle to an innocent buyer. The use of altered documents are particularly appropriate however, when:

- a. Title documents are issued over-the-counter, at the time of application and without reference to a master title record for the vehicle.
- b. Multiple documents provide carbon copies of the title which are given to the owner of the vehicle.

- c. Safety characteristics such as special paper, inks, or printing processes, are not incorporated in the title document.
- d. Photocopied documents are employed and accepted as legitimate evidence of title and registration.

3.3 Stolen Documents

The use of stolen title and/or registration documents has increased in recent years. For example, stolen documents from Canada enable the fraudulent registration of stolen vehicles in Canada and, the importation and registration of Canadian stolen vehicles in the U.S. More importantly, the availability of these documents also allows the export of U.S. stolen vehicles to Canada.

Documents that describe currently registered vehicles or temporary operating permits stolen from automobile dealers are among the most commonly encountered forms of stolen ownership records. These documents may be altered if necessary to describe the stolen vehicle for which they are intended or, in the case of blank permits, completed in the original to create the impression of legitimacy. The incidence of thefts of blank title documents from DMV offices, leased State facilities and printing establishments, while infrequent, has caused considerable concern in those States where it has occurred.

B. Weaknesses in the Titling/Registration Process

The vehicle theft techniques that are described in the previous subsection, when matched with a "generalized" or more common title/registration process, indicate the vulnerability of that process and identify the characteristics of the various points in the process which reduce the potential for detecting an attempt to register or retitle stolen vehicles. A summary analysis of the vulnerability of the title/registration process follows. The comments provided below are applicable to the generalized process and it must be recognized that variations are employed by individual States.

1. Document Intake and Processing

The intake process refers to the receipt of motor vehicle ownership documents by the Department of Motor Vehicles in conjunction with applications for titling non-resident (foreign) vehicles, re-titling local vehicles or recording changes in ownership. The documents submitted to DMV at this time are generally the current, existing title and registration certificates. Other documents (e.g., bill of sale, Manufacturer's Certificate of Origin, etc.) may be submitted, however, in lieu of missing or nonexistent title/registration records.

The intake process is susceptible to the receipt and acceptance of fraudulent documents when the following conditions exist:

- a. The absence of procedures which cause documents to be reviewed and inspected for indications of counterfeiting or alteration. Specifically, the intake process does not incorporate inspection of the document for integrity or interruption of the safety characteristics, or comparison with a known standard for evidence of counterfeiting.
- b. DMV counter clerks and supervisors are not specifically instructed nor trained to inspect and recognize indications of altered or counterfeit title/registration documents. Most DMV personnel who are experienced in document processing are aware of the more obvious evidence of potentially fraudulent documents. However, personnel are seldom trained in this aspect of their work nor is its importance adequately stressed. As a result, the review of documents is generally cursory as it relates to the detection of fraudulent ownership records.
- c. Foreign (outside the issuing State) title documents are accepted and a local title issued, often without determining the validity of the foreign title. Initially, when foreign title documents are received, they are usually processed without reference to a known standard or existing document security characteristics. The absence of this specific

inspection procedure, even on a random sample basis, provides the opportunity for the acceptance of invalid, altered, or counterfeit foreign title documents. Further, many States do not communicate with or return foreign documents to the States of origin and thereby preclude the possibility of the discovery by the issuing State of the fraudulent documents.

- d. The issue of new titles is often completed without reference to the existing master file for the motor vehicle in question or without confirmation of the validity of the foreign title, in the case of non-resident vehicles. The potential for the acceptance of undetected fraudulent documents and the issuance of new valid title/registration records is particularly great where the "over-the-counter" title process is employed.
- e. New titles are issued without reference to a regional or statewide stolen vehicle file or the automated Stolen Vehicle File maintained by the National Crime Information Center (NCIC). While the volume of routine ownership transfer/retitle transactions might prohibit the routine inquiry of the system for all vehicles, this type of inquiry is uncommon in the titling/registration process, even for exceptional transactions. High theft hazard vehicles, restored salvage vehicles, and title transfers received from several specific States whose title processes are susceptible to misuse are appropriate subjects for local and NCIC inquiry during title document processing.

2. Vehicle Processing for Title/Registration

"Vehicle processing for title/registration" refers to those procedures that are employed to verify the identity of the vehicle for which title and registration documents are sought. These procedures are critical to the integrity of the titling process and any weakness in the system at this point severely impairs the ability of motor vehicle administrators to detect stolen vehicles. The absence of procedures providing for the physical inspection of motor vehicles, for which title is sought, is such a critical weakness. In the context of this discussion, the physical inspection of the vehicle is not for the purpose of approval of vehicle safety equipment, but rather is intended to confirm the identity of the vehicle as it is described by the related ownership records and to detect alterations of the vehicle identifiers that may conceal a stolen vehicle.

Vehicle inspection programs, while common to a large number of States, are neither universally employed nor effectively conducted. In most instances, only selected vehicles are subject to inspection and as a result many high theft hazard vehicles are not inspected in this manner during the titling/registration process. Where an inspection process is employed, the inspection may be inadequate as a result of:

- a. Failure to interpret the VIN provided on ownership records to determine that the vehicle description it contains is consistent with the vehicle that is presented and with the vehicle described in the ownership documents.
- b. Failure to inspect the VIN plate for signs of alteration and to interpret the VIN to determine that it is consistent with the vehicle on which it is attached.
- c. Acceptance of inconsistencies or apparent errors on documents and the attached VIN without reference to other identifiers on the vehicle.

There is an absence of personnel designated and specially trained to perform the vehicle identity inspections. Generally, the vehicle inspection function is performed by any available DMV employee and/or any available local peace officer. Relatively few States provide or require special training in vehicle identification techniques to support the inspection program. As a result, most inspections are performed and the vehicles' identity accepted by persons unfamiliar with VIN derivation, VIN alteration methods or the specific procedures and techniques by which vehicle identity may be reliably established.

Procedures to provide replacement of original vehicle identification numbers are generally inadequate to protect the integrity of the numbers, or the vehicle to which they are assigned. These procedures allow specially designated numbers to be placed on a vehicle to replace missing or damaged identification numbers, for the purpose of restoring a unique

identity to that vehicle. Such numbers are also used to provide original identification for special constructed, home-made, and similar vehicles for which no manufacturer's identifier exists.

The lack of security and integrity of these numbers and the manner in which they are distributed or affixed to a vehicle provides an obvious potential for misuse to conceal the identity of stolen vehicles. In those States where special numbering programs exist, many of the following program defects impair the integrity of the system:

- a. Absence of control over the inventory and assignment of the special numbers.
- b. Inadequate physical or inventory control of the plates or tags upon which new numbers are placed.
- c. Inadequate control over attachment of assigned plates.

3. Salvage Vehicle and Document Process

The ability of commercial/professional vehicle theft operators to obtain ownership documents and vehicle identifiers from salvage vehicles has been summarized previously in this chapter. These items become available as a result of the general absence or insufficiency of State controls governing the vehicle salvage/dismantling/rebuilding/scrap processing activities.

The major weaknesses in the control of salvage vehicles and related ownership documents are:

- a. Original title documents associated with vehicles declared to be salvage, as a result of a total loss insurance settlement, frequently are not surrendered and/or returned to the local DMV or the State of issue.
- b. Notification of the salvage/total loss nature of a vehicle is not routinely provided to DMV.
- c. The business operations and practices of auto wreckers, dismantlers, etc. are not generally regulated or inspected. As a result:
 - (1) Salvage vehicles bearing VIN plates and/or current registration tags may not be protected, providing the opportunity for the theft of the identifying numbers and tags with minimal hazard of discovery.
 - (2) Records of salvage vehicles received and the final disposition of those vehicles are incomplete or non-existent.
 - (3) Ownership of the vehicle acquired by wreckers and dismantlers is not subject to review.
 - (4) Vehicles acquired for salvage may be processed (destroyed) immediately without a waiting period following acquisition, thereby limiting the opportunity for inspection and the discovery of the stolen nature of the vehicle(s).
- d. VIN plate removal programs, still authorized in several States, eliminate the opportunity to inspect and identify salvage vehicles awaiting processing and expose VIN plates to loss and theft.
- e. Insurers may, after acquiring title to total loss/salvage vehicles, pass the original titles to a third party (e.g. auto dismantlers) without properly endorsing the title or otherwise being identified as a party to changes in ownership of those vehicles.

C. Other Weaknesses

In addition to the specific procedural weaknesses described previously in this chapter, other, more general, deficiencies exist that affect the overall titling/registration process.

1. Document Uniformity

The fifty States employ a wide variety of forms that are intended to provide evidence of vehicle ownership. This lack of uniformity is evidenced in document size, appearance, presence (or absence) of document safety characteristics and data content. The most

obvious results of the lack of title document uniformity include:

- a. The absence of document safety features with the resultant susceptibility of the document to alteration and counterfeiting. The ability to detect the misuse of legitimate title documents is impaired by the absence of these safety features.
- b. Lack of uniformity in document appearance, including size, color, and data format hampers the process of determining the validity of foreign title documents. DMV clerical personnel are not intimately familiar with the variety of documents they may receive for processing, represented to be legitimate certificates of title. Some document samples and standards for reference are available to these clerks. However, comparison of foreign documents with these references normally takes place only if the clerk has a specific concern about a particular document. Comparison of all foreign documents with reference samples is not normal procedure.
- c. Document storage capabilities and equipment, generally cannot easily accommodate the variety of document sizes that are presently in use. This lack of uniformity impedes internal handling procedures and the review of documents for alteration and counterfeiting.

2. Title Document Security

Weaknesses exist in the measures taken to protect the safety of original blank title documents from theft, conversion, and misuse. In many agencies, inadequate procedures exist for:

- a. Control and security of original, blank title and registration forms at the time of printing.
- b. Inventory control and physical security of original, blank title documents during storage.
- c. Control of individual original title documents by the assignment of unique document identification numbers.
- d. Security of satellite motor vehicle offices where blank, original and/or completed title documents are stored.
- e. Security of motor vehicle dealer offices where blank, original Temporary Operating Permits are stored.

3. Related Laws

Several procedural weaknesses related to the title/registration process can be attributed to insufficient legal authority to monitor and control the process. The specific areas wherein the weaknesses may be found include:

- a. Control of original title documents associated with salvage/total loss vehicles. State laws related to the total loss settlement/salvage vehicle situation do not uniformly require the surrender of the title and notification of this transaction to the DMV. At the same time, laws and DMV regulations are widely disparate concerning the use and control of documents that provide evidence of salvage vehicle ownership and legitimate restoration.
- b. Licensing and regulation of the variety of auto wrecking/dismantling and related businesses. State laws may not provide adequate controls on the various business activities that are susceptible to abuse and aid vehicle theft activities. Where statutes exist to support administrative regulations, these controls are often insufficient to assure:
 - (1) State licensing and regulation of business activities, including fees, infractions, and disciplinary procedures.
 - (2) Complete business records related to the acquisition and disposition of salvage vehicles and major component parts.
 - (3) Security of the business premises and vehicles in the possession of the business.

- (4) Identification of vehicles awaiting disposition which allows cross reference to the business records.
 - (5) Holding or waiting period between the acquisition and disposition of salvage vehicles, to allow inspection and investigation, if necessary, by local law enforcement officials.
 - (6) Authority of designated officials to enter the business property for the purpose of inspecting the inventory and records of the business.
- c. Authority to investigate vehicles that bear altered, illegible, or missing identification numbers. Motor vehicle laws generally permit specific enforcement or investigative activities that may be necessary to establish vehicle ownership. Few statutes, however, expressly permit seizure of vehicles bearing a falsified or removed VIN. The absence of such legal authority, which is quite common throughout the U.S., is perceived to represent an impediment to effective law enforcement and investigation of motor vehicle theft.

Chapter III

ANTI-THEFT GUIDELINE POLICIES AND PROCEDURES

This chapter contains suggested policies and procedures that should be implemented to counteract the titling/registration procedural weaknesses described in Chapter II.

A. Title Document Inspection

1. Perceived System Weaknesses

- a. Absence of specific inspection and review procedures for the detection of altered or otherwise fraudulent documents.
- b. Inadequate standards or criteria for evaluation of documents.
- c. Existing document safety characteristics are not examined.

2. Policy

Title documents, foreign and local, should be subjected to inspection and testing procedures that are designed to detect fraudulent documents.

3. Procedures

- a. Development of bi-level (basic and detailed) procedures for evaluation of document integrity and value. Examples of typical document inspection procedures include:
 - (1) Comparison of the document to be processed with an accurate reproduction of a valid document, noting such features as document size, texture, color, arrangement of data, type face styles, and the presence of specific document safety features (including watermarks, laminated stock, latent images, and ultra violet sensitive designs).
 - (2) Close inspection of the document adequate to discover erasures, bleaching, artificial aging or weathering, retyping or photocopying.
- b. Analysis of the local or statewide motor vehicle theft problems to identify high theft hazard vehicles and foreign jurisdictions from which the greatest volumes of non-resident stolen vehicles are received, thereby assuring detailed evaluation of documentation pertaining to these vehicles.
- c. Analysis of document processing workload to identify the guidelines for the random selection of sample documents that are to be subjected to detailed review and inspection.
- d. Identification of the procedural locations at which document reviews will take place.
- e. Implementation of title document standards and installation of technical equipment necessary to inspect the various document safety characteristics.

B. Uniform Certificate of Title and Manufacturer Certificate of Origin (MCO)

1. Perceived System Weakness

- a. The lack of uniformity in size, data content, and format creates confusion and impairs the effectiveness and document processing systems.
- b. The lack of uniformity and the absence of uniform document safety characteristics increases the potential for the use of fraudulent documents while impairing the ability to detect such activity.
- c. Because of the variety of documents that enter the title/registration process, records storage becomes inefficient, costly, and cumbersome.

2. Policy

Each State should issue a Certificate of Title as evidence of motor vehicle ownership.

Selected data elements, format and document safety characteristics should be uniform among States for those documents designated as a Certificate of Title.

3. Procedures

- a. Establish minimum requirements for a Certificate of Title and use of a document that is uniform in these requirements for data content, format, and safety characteristics. Due to the extensive efforts put forth by the American Association of Motor Vehicle Administrators (AAMVA) and the American National Standards Institute (ANSI) D19.4 Subcommittee, a uniform Certificate of Title has been developed and is now available. NHTSA has officially recognized and endorsed this uniform title for implementation by the States. Similarly, NHTSA endorses the uniform Manufacturer Certificate of Origin that has been developed by the AAMVA and the ANSI Subcommittee.
- b. Adoption by all States of certificates of title conforming to the standard established by the above-mentioned organizations.

C. Training for Document Intake

1. Perceived System Weakness

- a. DMV personnel are not adequately instructed or trained, nor is necessary emphasis placed on inspection of the documents that are reviewed for indications of alteration or counterfeiting.
- b. Title documents, and specifically foreign certificates of title, are not inspected or compared against known document standards to determine if the document initially appears to be genuine.

2. Policy

DMV employees, responsible for conducting document inspections and review, should receive specialized training.

3. Procedures

- a. Creation of a specific training program (attention is drawn to NHTSA Training Program for Titling and Registration Personnel) to instruct selected employees in the techniques for:
 - (1) Title document recognition.
 - (2) Common techniques for alteration/counterfeiting.
 - (3) Use of standards, special equipment, etc.
 - (4) Recognition of fraudulent documents.
 - (5) Actions to be taken on discovery of fraudulent documents.
- b. Selection and training of personnel designated for the inspection program.

D. Verification of Foreign Title

1. Perceived System Weakness

Local titles are issued, based on foreign title documents tendered as evidence of ownership, without communication with the State of origin to ascertain the validity of the offered title. Further, some States do not return the original document to the State of origin, thereby reducing the opportunity for the detection of fraudulent documents at the point of issue.

2. Policy

Foreign title documents received from applicants during the titling/registration process should be returned to the State of issue, after initial inspection and review for verification of title.

3. Procedures

Develop internal procedures to:

- a. Retain information from foreign title documents to provide evidence of ownership to support the issue of local title. Where local policy requires documentary evidence of the foreign title be retained, a photocopy should be acceptable.
- b. Return original title received during the transaction to the State of origin with a request for immediate confirmation of title validity. If effective interstate procedures can be established, exception reporting may be adequate.
- c. Validation by State of origin of vehicle identification and ownership information against master files. This also enables States of origin to delete old records from master files, thus reducing unneeded storage space.
- d. Delay final issue of the local title pending foreign title confirmation or until an established waiting period has elapsed. The waiting period should be sufficient to permit receipt of the foreign title by the State of origin and return of derogatory information concerning the title, if any, from the foreign jurisdiction.

E. Confirmation of Valid Title**1. Perceived System Weakness**

Transfer of title to motor vehicles may occur without reference to existing State records reflecting the ownership of the vehicle, or to vehicle theft records, to assure that the persons requesting transfer are in legal possession. Under these conditions, evidence of fraud or illegal possession may only come to the attention of officials long after issuance of legitimate title documents has occurred.

2. Policy

Transfer of title to a motor vehicle should occur only after confirmation that the existing title and right to possession are as represented in application documents.

3. Procedures

- a. On completion of initial document inspection and application acceptance processes, a conditional ownership permit may be issued pending confirmation of clear title. Sale or transfer of vehicles with conditional permits should only occur after final confirmation of title by DMV.
- b. State and local law enforcement agencies should report theft of motor vehicles to the motor vehicle department.
- c. DMV should "flag" title/registration records of vehicles reported as stolen within the State, the code to include the name of the reporting law enforcement agency.
- d. All transfers involving foreign titles, salvage vehicles, recovered vehicles, vehicles with questionable physical characteristics or unusual title documents should require direct confirmation of prior title by comparison with source records and clearance against NCIC and/or State stolen vehicle listings.
- e. Where title/registration records of State registered vehicles have been "flagged," DMV should contact the reporting law enforcement agency to confirm the continued stolen status of the vehicle prior to reporting location of a "stolen vehicle."
- f. The time period associated with completion of these checks should be adequate to assure updating of the reference files and their current status to the date of application.
- g. The title status of all vehicles should be confirmed prior to issuance of clear title.

F. Physical Examination of Vehicles**1. Perceived System Weakness**

Title and registration are commonly issued to certain category vehicles without a VIN verification inspection or the vehicle inspection is performed by personnel who are

untrained and unfamiliar with vehicle identification systems. The absence or inadequacy of this inspection represents a major weakness of the title process.

Sophisticated techniques to alter the VIN and otherwise conceal the identity of a vehicle may be detected in the course of a detailed inspection, performed by personnel trained for that function. DMV personnel and law enforcement officers are often unfamiliar with vehicle identification characteristics and the processes by which the alteration of vehicle identification may be accomplished.

2. Policy

Selected categories of motor vehicles should be subject to physical examination by trained personnel, at the time of titling/registration for the purpose of vehicle identification and verification of the integrity of the VIN. Vehicles subject to examination should include:

- a. Rebuilt or restored salvage vehicles.
- b. Specially constructed and homemade vehicles.
- c. Foreign (non-resident) vehicles, both out-of-state and imported.
- d. Vehicles unregistered for more than 1 year prior to the current registration year.
- e. Selected high theft hazard vehicles as determined from analysis of statewide or regional vehicle theft records.

3. Procedures

- a. Development of statute or administrative regulation to require the vehicle identification inspection for selected vehicles as necessary condition for the issue of title.
- b. Personnel to be trained and authorized to perform vehicle identification inspections should be selected from the following State and local agencies or organizations:
 - (1) Local law enforcement.
 - (2) State police/highway patrol.
 - (3) DMV.
- c. As a minimum, the categories of vehicles that should be subject to the physical examination should include:
 - (1) Rebuilt or restored salvage vehicles, whether or not ownership has transferred and regardless of the reason for the initial definition of the vehicle as salvage.
 - (2) Specially constructed and home-made vehicles, in order to identify any existing identification numbers and, in the event none are present, to assign and record the official identification number.
 - (3) Foreign (non-resident) vehicles should be subject to inspection. In the event the volume of such vehicles exceeds the resources of a State to inspect every vehicle, then specific classes or types of vehicles within this category should be established and the inspection required of these. Typical classes of vehicles in this category include:
 - (a) high-theft hazard vehicles such as import models, luxury vehicles, and certain motorcycles.
 - (b) vehicles previously registered in selected States (e.g., recent title States, major vehicle theft problem States, adjoining States, etc.).
 - (4) Selected high theft hazard vehicles, as determined from analysis of current statewide or regional vehicle theft data—the vehicles identified within this category may include consistent theft targets together with other vehicles that are determined to be current, though not necessarily long-standing theft targets. These additional vehicles may be added to the inspection program as necessary and replaced periodically by others, as required by the current vehicle theft situation.
 - (5) Vehicles unregistered for more than 1 year prior to the current registration year.
- d. Personnel designated to perform the vehicle identification inspections should, as a minimum, receive specific training and become proficient in the following tasks:

- (1) Vehicle identification including recognition of the physical characteristics of vehicle makes, models, and model years.
 - (2) VIN derivation and interpretation of the vehicle description from the content of the VIN.
 - (3) Location and techniques for the inspection of the VIN and other vehicle identifiers on the vehicle.
 - (4) Techniques for alteration and replacement of the VIN.
- e. The inspection of the vehicle should be conducted with reference to the original ownership records that are submitted with the application for title. The inspection should, as a minimum, include:
- (1) Comparison of the VIN with the number listed on the ownership records.
 - (2) Inspection of the VIN plate to detect possible alteration, modification or other evidence of fraud.
 - (3) Interpretation of the VIN recorded on the original ownership documents to assure that it describes the vehicle presented for inspection.
 - (4) Resolve any discrepancies that are observed between the attached VIN and the ownership documents.
- f. When the inspection determines that an original, assigned identification number is required, this assignment should be performed prior to continuation of the application intake process.

G. Vehicle Identification Number Assignment

1. Perceived System Weakness

States without a "VIN replacement" program lack effective control over a large class of vehicles. The lack of a controlled identifier on a vehicle cannot be considered de facto evidence of illegal possession thereby frustrating one of the principal mechanisms for combating fraudulent acquisition of motor vehicles.

States that do have programs requiring assignment of unique identifiers to vehicles lacking a manufacturer generated number or an illegible or otherwise unacceptable number, often allow the following practices which limit the effectiveness of those programs:

- a. Numbers are developed and attached to the vehicle by the owner, without control or involvement by DMV.
- b. Special VIN "plates," bearing the state-assigned identification number are provided to the vehicle owner but are attached without the assistance or control of the DMV.
- c. State issued and assigned VIN plates are not subject to effective inventory/assignment control procedures.

This lack of control over the assignment and attachment of special identification numbers impairs the integrity of the special numbering program and offers the potential for misuse to conceal the identity of stolen vehicles.

2. Policy

Vehicles that do not bear acceptable (manufacturer assigned and attached) vehicle identification numbers, tags, and markings, but which can be otherwise legitimately identified, should have such identification assigned and attached to the vehicle by the DMV in accordance with Vehicle Equipment Safety Commission Regulation, VESC-18, Standardized Replacement Vehicle Identification Number System.

3. Procedures

- a. Enactment of statute or issuance of administrative regulation to describe a state-controlled VIN replacement program, applicable to specific categories of vehicles, such as:

- (1) Specially constructed and home-made vehicles which do not bear an acceptable, unique manufacturer-generated identification number.
 - (2) All vehicles from which the manufacturer assigned VIN is missing.
 - (3) All vehicles which bear an altered, damaged, or otherwise illegible VIN.
- b. Special procedures should be implemented to assure confirmation of original identification of the vehicle including originally assigned VIN. In all cases the original VIN should be utilized as the special ID number when it can be determined.
 - c. Recommended special VIN plates should be designed and used. They should be permanently attached and susceptible to destruction upon removal, once attached. The VIN plates should be distinctive, bearing State identification, the manufacturer's VIN or replacement VIN, and a State control number.
 - d. Attachment of the special plate should be performed only by specially trained personnel, designated by the DMV. Storage of plates awaiting use should be secure and subject to detailed inventory and assignment controls.
 - e. State vehicle titling/registration records should indicate application of special plates, the plate number, and the original VIN when determinable.
 - f. Program records should provide detailed inventory control for used and unused plates. In addition, each plate assigned should be supported by records identifying the vehicle and owner, State personnel involved and the reason for the assignment.

H. Salvage Vehicle and Document Control

1. Perceived System Weakness

Major system procedural weaknesses pertaining to salvage vehicles and associated ownership records are as follows:

- a. Original title documents for salvage vehicles are available without notation of the condition of the vehicle and are, thereby, susceptible to misuse to conceal the identity of stolen vehicles.
- b. The State of issue of the original title may not be notified of the condition of the vehicle.
- c. VIN plates are removed from salvage vehicles thereby reducing the later possibility of identifying the vehicle. Further, inadequately secured VIN plates are susceptible to theft and misuse.
- d. Identification and ownership of major component parts used in the restoration of the vehicle need not be demonstrated.
- e. Title certificates issued to rebuilt salvage vehicles do not indicate the previous physical condition of the vehicles.

2. Policy

A program should be established to require:

- a. The owner of a vehicle, which is the subject of a total loss insurance settlement and thereby declared to be a salvage vehicle, to surrender the certificate of title for that vehicle to the State in which the salvage occurs.
- b. The State in which salvage occurs, upon receipt of the original title, issues a salvage certificate of title or other appropriate document, and in the case of a foreign title document, notifies the State of origin of the salvage action taken when returning the original title for confirmation of validity.
- c. Transfer and surrender of the "Certification of Salvage" to the purchaser of salvaged vehicles as evidence of purchase from the original holder of the certificate.
- d. Notification to DMV within a specified period of the complete dismantling or destruction of the vehicle by a licensed wrecker/dismantler, or related business.
- e. Re-titling and registration of a rebuilt salvage vehicle after complying with the required

physical inspection, demonstrating satisfactory evidence of ownership and complying with other applicable laws and regulations.

- f. The Certificate of Title issued following the restoration or rebuilding of a salvage vehicle to include a notation stating that the vehicle is rebuilt.

3. Procedures

- a. The owner of a vehicle, declared to be a salvage vehicle, should surrender the Certificate of Title, originally issued for the vehicle, to the State in which salvage occurs within ten days of the determination of the status of the vehicle. The surrendered title should also contain or be accompanied with evidence of a transfer of ownership, if applicable, of the salvage vehicle. When the salvage vehicle is the subject of a total loss insurance settlement, the insurer should receive the title document and be responsible for its transmittal to DMV.
- b. The State of issue should return to the specified owner of the vehicle a salvage certificate of title which should constitute the sole evidence of ownership of the salvage. The salvage title should be valid for transfer of ownership by assignment. Salvage titles should be recognized and accepted by other States as valid proof of ownership in interstate title transfer.
- c. The owner of a salvage vehicle acquired for the purpose of dismantling or destruction should, within ten days after such acquisition, surrender to DMV the license plates for the vehicle (if they are available) and notify DMV of the final status of the vehicle. The VIN plate should remain on the vehicle to facilitate inspection of the vehicle, if necessary, prior to dismantling or destruction. Vehicles received without VIN must have certification of identification by a law enforcement agency and such certification should be attached to the certificate of salvage.
- d. Application for title for a rebuilt salvage vehicle should be accompanied by:
 - (1) Salvage certificate of title as evidence of ownership.
 - (2) Evidence of ownership for those major component parts, specified by the DMV, which were required for rebuilding the vehicle.
- e. The re-issued certificate of title should bear a notation describing the vehicle as a rebuilt salvage vehicle.

I. Automobile Wreckers, Dismantlers and Related Businesses

The lack of regulation of the business conditions and practices of concerns that deal primarily in salvage vehicles and vehicle parts provide substantial opportunity for the use of the businesses to conceal or destroy stolen vehicles and market stolen components. Specific vehicle theft activities and conditions which impact on the effectiveness of deterrent programs include:

- a. Ability to acquire and dispose of vehicles and major component parts without accountability.
- b. Availability, without control, of VIN plates and current license plates.
- c. Lack of security for vehicles awaiting disposition.
- d. The precipitous dismantling or destruction of vehicles of potential concern in investigation of vehicle theft cases, thereby eliminating the opportunity of inspection.
- e. Inadequate procedures for the disposition of abandoned vehicles.

2. Policy

A program should be established to license and regulate the business practices of concerns commonly known as auto wreckers, dismantlers, rebuilders, mobile crushers, demolishers and transporters to assure compliance with procedures intended to limit fraudulent practices supporting vehicle theft and illegal conversion of vehicle titles. In addition, those municipal

areas experiencing high theft rates should consider procedures relating to the licensing and bonding of tow truck operators.

3. Procedures

- a. Development of statutes and administrative regulations to require the licensing, control, and inspection of concerns whose primary business is the salvage and sale of motor vehicles and their salable component parts, the demolition of motor vehicles or the rebuilding of salvage vehicles.
- b. Specific regulatory requirements should include:
 - (1) Maintenance of sufficient business records to demonstrate the acquisition and disposition of each vehicle and major component parts acquired during the course of business.
 - (2) Holding period between the acquisition and disposition of vehicles to allow for the inspection of the vehicles to determine identity and ownership.
 - (3) The surrender of license plates acquired with vehicles.
 - (4) A secure storage area for vehicles and component parts.
 - (5) Authority for the inspection of the business practices, records, and stored inventory by designated officials.
 - (6) Specific notification to DMV of the acquisition, status, and disposition of vehicles received.
- c. Periodic inspection of businesses licensed as described above for the purpose of monitoring the business practices and inspecting the vehicles and component parts under the control of the business.

J. Salvage Vehicle Ownership

1. Perceived System Weakness

- a. Ownership records and the chain of possession of salvage vehicles are incomplete and do not reflect the actual possession, including title, of the vehicle by the insurer.
- b. DMV, which issues and maintains the vehicle ownership records, may not receive either timely or accurate notification of the salvage character of the vehicle or the subsequent constructive transfer of ownership.
- c. Ownership documents submitted at the time of application for title for a restored salvage vehicle may not accurately describe the chain of ownership of the salvage vehicle.

2. Policy

Each party that receives title to a vehicle declared to be salvage, as the result of a total loss insurance settlement, should be endorsed as a title holder on the appropriate ownership documents and appear as such in the chain of ownership that will be developed for the vehicle. Specifically, the insurer making the total loss settlement should endorse the title document to reflect actual possession of title to the salvage vehicle prior to any subsequent ownership.

3. Procedures

Enactment of statutes or issuance of administrative regulations which, in conjunction with the procedures supporting Salvage Vehicle and Document Control, should require the endorsement on the original Certificate of Title of the direct transfer of ownership of the salvage vehicle from the insured to the insurer or any other party. Each transaction subsequent to the initial transfer of ownership should be recorded on the approved Salvage Certificate of Title.

Appendix A

SELECTED BIBLIOGRAPHY

1. Arthur Young & Co., *Guideline's Manual Vehicle Theft Countermeasures in the Issuance of Certificates of Vehicle Title*, for National Highway Traffic Safety Administration, Contract No. DOT-HS-6-01425, August 1977, Report No. DOT-HS-803-236.
2. National Committee on Uniform Traffic Laws and Ordinances, *Uniform Vehicle Code and Model Traffic Ordinances*, 1968 and 1979 (Revised).
3. National Highway Traffic Safety Administration, *Highway Safety Program Manual, No. 2, Motor Vehicle Registration*, September 1974.
4. R.L. Polk & Co., *Polk's Motor Vehicle Registration Manual*, 1976 and Revisions.
5. Arthur D. Little, Inc., *Vehicle Anti-Theft Security System Design*, for National Highway Traffic Safety Administration, Contract No. DOT-HS-7-01723, December 1978.
6. New York State Senate Committee on Transportation, *National Workshop on Auto Theft Prevention*, Compendium of Proceedings, October 1978.
7. New York State Senate Committee on Transportation, *Auto Theft, 1979, A Survey of Recent Motor Vehicle Theft Prevention Activities and Publications*, September 1979.
8. The National Association of Attorneys General, Committee on the Office of Attorney General, *Organized Auto Theft*, July 1979.

Appendix B

NHTSA GUIDELINES FOR STATE MOTOR VEHICLE TITLING AND ANTI-THEFT PROGRAMS

I. Introduction

This guideline specifies uniform procedures that should be adopted by all States for the titling of motor vehicles and for the disposition of titles after vehicles are sold for salvage. These model procedures are designed to address the major problems identified in the operation of a State motor vehicle titling program as they relate to the reduction of motor vehicle theft.

II. Definitions

"Certificate of title" means a document issued by a State as proof of a vehicle's ownership for purposes of registration or assignment.

"Reconstructed motor vehicle" means any motor vehicle which has at any time been a salvage vehicle and for which application is made to a State for retitling.

"Salvage vehicle" means a motor vehicle which is sold for the purpose of being scrapped, dismantled, destroyed, or salvaged for parts.

III. Model Procedures

Each State should have a motor vehicle titling program which provides for the following:

- A. Requires the issuance of a certificate of title upon proof of purchase to each owner of a motor vehicle, other than a dealer who has purchased a vehicle for purposes of resale, and should provide space on the certificate of title for an affidavit, or other declaration authorized by law, by the seller that the vehicle is or is not being sold as a salvage vehicle.
- B. Requires each owner of a motor vehicle, for which a certificate of title has been issued, who scraps, dismantles, destroys, or salvages for parts the vehicle, or who sells the vehicle as a salvage vehicle, to surrender the certificate of title to the appropriate agency of the issuing State for cancellation. Also, insurance companies, which acquire a vehicle after being declared a total loss, should be required to surrender the certificate of title to the appropriate agency of the issuing State.
- C. Requires the issuance of a specially designated certificate of title for each reconstructed vehicle and that the request for such certificate be accompanied by a cancelled certificate of title or by such other evidence of ownership as the State shall require.
- D. Provides that no reconstructed vehicle may be permanently registered for highway use unless it has been inspected for safety in accordance with State criteria, and by an inspector authorized by the State to determine that the vehicle is in fact the vehicle which has been sold for salvage pursuant to (B) above.
- E. Requires a record of the vehicle identification number (VIN) of each vehicle for which a title is issued and of each vehicle for which a title is submitted for cancellation pursuant to (B) above.
- F. Requires that the State return to the State of origin the title document obtained in the retitling process.
- G. Requires the State to transmit the VIN of each vehicle which is stolen to the National Crime Information Center.
- H. Requires the State to query its records to determine if the VIN of the vehicle whose owner seeks titling corresponds to a vehicle which has either been stolen or whose title has been cancelled and, in the case of an out-of-state vehicle, physically verifying the VIN and querying the National Crime Information Center to determine if the vehicle has been stolen.
- I. Requires the assignment of license plates to owners and not to vehicles.
- J. Requires the State to provide for the control of salvage vehicle transactions by the issuance of a salvage certificate of title, or other document evidencing ownership of the salvage vehicle, prior to its being retitled as a motor vehicle.
- K. Requires that sufficient safeguards are attached to the issuance of special and/or replacement vehicle identification plates to eliminate their misuse.
- L. Requires the certificates of title to be manufactured from materials that will reveal document counterfeiting and/or tampering.

Mr. SCHEUER. Thank you, Ms. Claybrook. We are delighted that you took the time out from your busy schedule to come up here.

Next we have Mr. Philip B. Heymann, Assistant Attorney General in charge of the Criminal Division of the Department of Justice.

We are happy to have you. Your testimony will be printed in full in the record and, as I suggested to Ms. Claybrook, you might wish to proceed informally, chatting with us, and hitting the highlights and make any reference you might care to about anything that has transpired this morning.

Before you proceed, would you be kind enough to introduce us to this impressive entourage of henchmen you brought with you this morning.

STATEMENT OF PHILIP B. HEYMANN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MICHAEL ABBELL, DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS CRIMINAL DIVISION; WILLIAM J. RILEY, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION; RALPH C. CULVER AND STEPHEN M. WEGLIAN, GENERAL LITIGATION AND LEGAL ADVICE SECTION, CRIMINAL DIVISION

Mr. HEYMANN. It is because I brought such an array of expertise with me, Mr. Scheuer, that I will make my own statement very short.

At my far left and your right is Mr. Michael Abbell, Director of the Criminal Division's Office of International Affairs. I am relying on him to answer your questions.

Next to him is Mr. William J. Riley, special agent, Federal Bureau of Investigation and an expert on property theft.

On my right and on your left is, first, Ralph Culver, and then Steve Weglian, both in the Criminal Division in the General Litigation and Legal Advice Section and both specializing in preventive measures.

With that introduction, I will be very short and go to the informal session.

There has already been reference before this committee, Mr. Chairman and members, to the fact that we are seeing an increase in the amount of auto theft. We are seeing a shift in auto theft apparently away from joyriders, that number going down to 50 percent, and in the direction of professional activities. We strongly suspect that a great part of the professional thefts of cars is accomplished for the purpose of chop-shop operations, taking cars apart and selling the pieces at that greatly expanded rate that you referred to earlier.

[Testimony resumes on p. 355.]

[Mr. Heymann's prepared statement and attachments follow:]

82900



U.S. Department of Justice

Washington, D.C. 20530

H.R. 4178

Motor Vehicle Theft Prevention Act

Testimony of

Philip B. Heymann
Assistant Attorney General
Criminal Division

Before

Subcommittee on Consumer
Protection and Finance of the
Interstate and Foreign Commerce
Committee and the Subcommittee on Inter-
American Affairs of the Foreign Affairs
Committee of the House of Representatives

At

Washington, D.C.

on

JUNE 10, 1980

My name is Philip B. Heymann. I am the Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice. I am also Co-chairman of the Federal Inter-agency Committee on Auto Theft Prevention. Accompanying me today are four representatives of the Department who are quite knowledgeable about the motor vehicle problem. Messrs. Michael Abbell, Ralph C. Culver, and Stephen M. Weglian are attorneys in the Criminal Division. Mr. William J. Riley is a Special Agent of the Federal Bureau of Investigation. Mr. Abbell is the Director of the Criminal Division's Office of International Affairs. Messrs. Culver and Weglian have worked with the Interagency Committee and have helped draft the legislation presently before your Subcommittees.

Mr. Riley is the manager of the General Property Crimes Program of the FBI's Criminal Investigative Division. It is a pleasure for us to appear before your Subcommittees today. We commend both Chairmen and their respective staffs in holding these House hearings on one of the most important crime prevention measures presently before the Congress.

Motor vehicle related theft is a serious national crime problem. In 1978 alone over three million crimes were reported to law enforcement relating to the theft of the vehicle itself (991,600), its accessories (1,141,800), and its contents (1,017,200).

Of course, countless thousands of such violations, especially the last two, were never reported to law enforcement. Besides the problem of sheer numbers, this crime produces millions of victims, increases insurance costs, and taxes the criminal justice system. In addition, each year thousands of American youths take their first steps towards developing into career criminals by stealing a motor vehicle.

Prior to 1970 the major portion of the motor vehicle theft problem related to the juvenile, the so-called "joyrider". But, while juveniles still constitute approximately 50 per cent of those arrested for motor vehicle theft, statistics show that the crime is becoming more professional. The professionalization of motor vehicle theft is evidenced not only by the declining rate of the juvenile share of those arrested for motor vehicle theft, (down from 61.9% in 1967 to 50.6% in 1978) but also by the decreasing dollar value of stolen vehicles ever recovered, (down from 86% in 1967 to 60.6% in 1978), the increased thefts of trucks (up 76.6% in 1978 over 1974), and the growing theft of "off-highway" vehicles used in the construction and farming industries. As a result of the growing "chop shop" problem, the legitimate salvage vehicle industry in some geographical areas of the country is teetering on the edge of its destruction because it is confronted with growing control of its activity by criminal elements.

At present it is fair to say that nearly 50 per cent of all vehicle theft is done for profit and fraud and not just for fun and transportation. The cost to the owner and taxpayer is estimated to be over \$4 billion a year. Organized crime groups are becoming more involved with this illegal activity because of its immense profit potential with minimal risk. And while motor vehicle theft statistics had held rather constant during the past decade, they increased at an alarming rate of 10 per cent in 1979 over 1978. The increase was reflected in all geographical areas: north, south, east, west, urban, suburban and rural.

The Criminal Division of the United States Department of Justice recognized the changing nature of the motor vehicle theft problem in the mid 1970's as did the Federal Bureau of Investigation. The number of ring cases under investigation by the FBI at any one time increased from 125 in 1970 to nearly 650 in 1979. In March 1975 the Federal Interagency Committee on Auto Theft Prevention was created. It is co-chaired by the Department of Justice and the Department of Transportation. Representatives on the Committee come from three other Federal Departments - Treasury, State, and Commerce - and include such agencies as the National Highway Traffic and Safety Administration (NHTSA) the Federal Bureau of Investigation (FBI), the Law Enforcement Assistance Administration (LEAA), the Census Bureau and the United States Customs Service. The ultimate goal adopted by the Committee was to reduce the theft of motor

vehicles by promoting: (1) The installation of improved locking systems for motor vehicles; (2) improvements in motor vehicle titling and controls over vehicle salvage; (3) better vehicle and component part identification; (4) establishment of export controls and recovery of stolen vehicles from foreign countries; (5) better coordinated law enforcement; and (6) increased citizen participation against motor vehicle theft.

The Federal Interagency Committee, as well as others who have studied the problem, realized that the motor vehicle theft problem is a very complex one to which there is no single or quick solution and that the solution requires the cooperation of federal and state governments, the private sector, and the owners and users of motor vehicles. In October 1978 the National Workshop on Auto Theft Prevention was held in New York City. This Workshop, sponsored by the New York State Senate Committee on Transportation under an LEAA grant, brought together for the first time at a national level all of the parties affected by the vehicle theft problem. The highly successful Workshop produced a series of recommendations which are serving as a de facto blue print for the actions now underway at the state and federal levels.

In November and December of 1979 the United States Senate Permanent Subcommittee on Investigations held extensive hearings on the professional motor vehicle theft and the chop shop problem.

The hearings amply demonstrate the changing nature of motor vehicle theft. Director Webster of the Federal Bureau of Investigation testified at the hearings and the Department of Justice cooperated fully, as did other law enforcement agencies, with this Senate investigation.

As indicated before, the States have a major role to play in curbing motor vehicle theft. In terms of law enforcement itself they represent over 99 per cent of manpower resources that are applied to this criminal activity. They are uniquely suited to deal with the juvenile criminal justice aspect. Of equal importance, however, from the standpoint of prevention is that the states can, through the use of their motor vehicle departments and insurance departments, exercise appropriate controls which will help detect and prevent motor vehicle theft and fraud by preventing or curbing the ability of the fences to dispose of the vehicle in whole or in part after it has been stolen. The states are, therefore, in a unique position to help take the "profit" out of stolen motor vehicles.

The state motor vehicle departments can establish, in cooperation with their sister states, a uniform titling system as well as controls over the disposition of used motor vehicles and motor vehicle parts. The state insurance departments can ensure that insurance companies do not contribute to the problem through lax business practices. It should be noted that informed persons now believe that 10 to 15 per cent of all vehicle theft may in fact be

an attempt to defraud an insurance company by the owner of the vehicle. Accordingly, the motor vehicle theft problem is also becoming a white collar crime.

The Federal Government itself has a role to play. Consistent with the Department of Justice's decision in 1970, its investigative and prosecutive priorities are directed toward the large interstate ring cases. The FBI currently expends approximately 2 per cent of its resources towards motor vehicle theft. Over 80 per cent of this manpower is spent on ring cases and the remainder is spent on individual cases involving exceptional circumstances. Contrary to some belief, the Federal Government is not out of the motor vehicle theft racket. While the overall resources devoted to this activity have been diminished over the past decade, the Department of Justice is committed -- consistent with the resources and priorities -- to providing its fair share to fight the interstate ring activity.

Besides its supplemental enforcement role, the federal Government has, through the National Highway Traffic Safety Administration (NHTSA), utilized the "safety" authority provided under the National Traffic and Motor Vehicle Safety Act of 1966 to establish the first "anti-theft" standard for automobiles manufactured or sold after January 1, 1970. Basically, this measure, known as Motor Vehicle Safety Standard No. 114, required the steering column to lock when the ignition key was removed. We believe that Standard No. 114 did help to stem the rising tide of auto theft in

the late 1960's and to hold the national total for motor vehicle theft to around one million vehicles a year during the 1970's. Standard 114 was effective against the untrained juvenile and the novice. But the growing professionalization of motor vehicle theft and its serious increase in 1979 indicate that the security measures of Standard No. 114 are no longer sufficient to control the problem in the 1980's.

At present numerous states are examining their laws relating to vehicle titling and controls over vehicle salvage. The American Association of Motor Vehicle Administrators (AAMVA) has increased its support for strong, but workable, administrative controls in this important crime prevention area. The National Association of Attorneys General (NAAG) has published a booklet entitled Organized Auto Theft which describes the legal activity now underway in many states. The New York State Senate Committee on Transportation has followed up its excellent work on the National Workshop on Auto Theft Prevention by publishing a report entitled Auto Theft, 1979 which serves more or less as a "Who's Who" in the motor vehicle theft prevention effort.

In December 1979 Governor Edward J. King of the Commonwealth of Massachusetts created a Task Force on Automobile Theft for his State. Massachusetts has led the nation in motor vehicle theft for the last 15 years. The Task Force produced a report in March 1980 entitled "Auto Theft in Massachusetts - An Executive Response." Most of its legislative recommendations have been incorporated into the

legislative package which the Governor has submitted to the state legislature. Several of its other recommendations have already been partially implemented including increased law enforcement actions by both state agencies and local jurisdictions. This report is one of the most comprehensive studies done from the perspective of what one state can do to contribute to this national effort against motor vehicle theft.

Illinois Secretary of State Alan J. Dixon has been instrumental in forming the Midwest Task Force on Auto Theft Prevention. This comprehensive Task Force contains representatives from Illinois, Wisconsin, Iowa, Missouri, Kentucky, Indiana, and Michigan. They are working together toward a comprehensive regional approach to motor vehicle theft prevention.

Many other states have recently examined or are presently examining their laws concerning the titling of motor vehicles and the controls over the disposition of vehicle salvage. There can be little doubt that spreading across the nation is a realization that there must be adequate, but reasonable, controls over vehicle salvage in order to curtail the market for stolen motor vehicles and their parts. The broad-based and cooperative efforts being undertaken in the various states is a wonderful example of the principle of "Federalism" working at its best.

The National Highway Traffic Safety Administration (NHTSA) of the United States Department of Transportation has recently issued a publication entitled Anti-Theft Guidelines Manual for State Motor Vehicle Titling Programs. This manual consolidates those principles which are felt by most experts to be necessary by the state motor vehicle departments to help control and prevent professional motor vehicle theft and fraud. Most of the guidelines have already been incorporated in the Uniform Vehicle Code (UVC), which serves as the model law for the states on vehicular matters, by the National Committee on Uniform Traffic Laws and Ordinances at its meeting in August 1979. It is hoped that the States will use all available sources of information and funding to attack this problem in accordance with the guidelines and procedures recommended in this manual in order to help take the profit out of motor vehicle theft.

The Department of Justice is in the process of revising its prosecutive guidelines relating to interstate motor vehicle theft. This proposed revision has been carried out in consultation with the nation's law enforcement community. The proposed revision is intended to clarify the goals and procedures of the policy. The revision will not change the basic thrust of the existing federal policy that federal resources should be expended primarily on

interstate ring activity. Efforts are also underway with the Republic of Mexico to improve the recovery and return of vehicles, as well as vessels and aircraft, which were stolen in one country and taken to the other.

While the states, private industry, and individual vehicle owners all have their responsibilities, the federal government also has the obligation to do those things which are appropriately within the responsibility of the national government. The various provisions of H.R. 4178, the Motor Vehicle Theft Prevention Act, reflect those areas where the Federal Government can contribute to this fight. The Federal Interagency Committee helped draft the predecessor to H.R. 4178 in the 95th Congress (H.R. 14252). The Department of Justice supports the enactment of H.R. 4178. We are in agreement with the section-by-section analysis printed in the Congressional Record at the time of the introduction of S.1214 in the Senate which is identical to H.R. 4178. I have attached a copy of the section-by-section analysis as Appendix I. We note that both H.R. 4178 and S.1214 have broad-based support in the Congress. We do have three specific suggested changes to Title II of the bill which are set forth in Appendix II. We feel these changes will make the bill more workable. We have seen and reviewed the suggested changes to Title III of the bill proposed by the Coalition to Halt Auto Theft (CHAT). These suggested changes improve the clarity of the bill and meet with our approval. They clearly remove from the coverage of the prohibitions of Title III certain legal and/or accidental destruction of the

identification numbers on motor vehicles and motor vehicle parts. We are not in a position at this time to comment upon other possible changes to Title II of the bill which we have heard being discussed. However, we are not opposed to changes to Title II as long as they do not harmfully limit or needlessly hamper the security authority being provided the Secretary of Transportation under the bill. We and NHTSA are willing to discuss specific changes to Title II of the bill with your staff if such consultation is desired.

In response to questions raised by your staff we will provide some specific comments on some aspects of the bill.

Title II

Title II is the cornerstone of this legislative effort. It is the essential preventative aspect of the bill. It should be remembered that any federal standard issued should be cost-beneficial. The requirements of a standard must take into consideration any inconvenience to the consumer. Identification numbers on the major components of the motor vehicle are an essential tool necessary for law enforcement if the "chop shop" activity is to be curtailed. Improved ignition locking systems are also necessary to reduce the number of motor vehicle thefts which in 1979 should be around 1.1 million vehicles. We concur in the findings of the Arthur Little study entitled Vehicle Anti-Theft Security System Design

that improved ignition systems can help eliminate "juvenile" theft and seriously hinder the ability of professional thieves to steal a vehicle. We are confident that innovative and cost effective systems can be created by the motor vehicle manufacturers to accomplish this goal.

In the absence of a mandatory federal standard there is, however, no real incentive for a motor vehicle manufacturer to develop such techniques because of the cost disadvantage it would create for the manufacturer over its competitors. The manufacturers are simply unwilling to risk their limited capital to undertake such an effort unless all competitors must do so also. In the last ten years, manufacturers have improved their locking systems. But the fact remains that the increase in deterrence is measured in seconds and any thief who has a modicum of experience can steal practically any vehicle he desires at any time. Something must be done about this. The average retail price of new motor vehicles because of inflation will undoubtedly be over \$10,000 at the time of the realistic effective date of this legislation should it be enacted by Congress this year. A minimal part of the initial cost of a new motor vehicle should be an effective security system. We are confident that such cost-effective systems can be created. As a nation, we have lamented for decades about the "joyrider" and all its detrimental societal aspects. In the 1980's the technology has arrived that

can substantially eliminate the "joyrider" problem in the future. In conclusion, Title II would require that future motor vehicles be designed with better security features. This would include improved ignition locking systems and identification numbers for the major crash components on the vehicle. The former is essential to eliminate the "joyrider" and slow down the professional while the latter is essential to help control the "chop shop" activity and the disposition of stolen vehicles and their major component parts by the fences.

Title III

This title squarely places federal criminal law behind the preventative measures of Title II. It will give the federal government better prosecutive tools to deal with professional interstate theft rings. It will help take the profit out of the interstate aspect of this activity. As previously noted, the suggested changes to this title by CHAT improve the bill. The most important feature of this title is the application of the RICO statute (18 U.S.C. 1961 et seq.) to professional motor vehicle theft rings. The forfeiture provisions of RICO can meaningfully convince businessmen not to traffic in stolen motor vehicles and their parts. Title III also makes some changes in existing federal law. One of these is Section 303 which will ease the federal jurisdictional burden

in present law. This modification is consistent with the approach to stolen property taken in the Senate version of the proposed new Federal Criminal Code by S.1722 in Sections 1731-1733 thereof. In addition, the insertion of the word "possesses" into the present Dyer Act will facilitate our prosecutions of the fences of stolen motor vehicles. This provision is also consistent with S.1722 as well as H.R. 6915, the House version of the new Federal Criminal Code. Neither of these provisions imposes any affirmative defense or other burden on the defendant. The prosecutor must still prove the defendant knew the vehicle to be stolen (i.e. had guilty knowledge). These provisions are intended to facilitate efforts of federal prosecutors in dealing with this interstate crime by removing unnecessary technical or legal impediments which do not concern the guilt or innocence of the accused.

Title IV

We are unaware of any objection to the substance of Title IV. This is an essential provision to control the exporting of stolen vehicles. As we all know, export and import matters are the primary responsibility of the federal government. While some objection has been raised to Section 403 of the bill, it should be noted that this provision simply provides Custom officers with the same authority as now held by other federal law enforcement officers. In view of the new responsibilities given by Title IV to the United

States Customs Service, it needs authority to enforce such provisions. Section 403 gives such authority and brings Customs up to the same level as other federal law enforcement agencies.

Title V

Section 501 has created some objections. This provision calls for a study by the Attorney General of the "off-highway" vehicle theft problem. For over the past three years the Department has been pressed by the users of such vehicles to do something. We have heard complaints about the growing theft of such vehicles. We have by our investigated activities observed more criminal activity in this area. Because the Uniform Crime Reports (UCR) does not include these types of vehicles as "motor vehicles" within its reporting provisions, we cannot provide concrete statistics on the scope of the theft problem. However, the concern of the users and the experience of our criminal investigations cause us to believe that this is a growing problem which, at the least, must be studied. The recent segment on the TV show 60 Minutes concerning this problem more than adequately demonstrates the need for this study. In all candor, we are somewhat surprised by the intensity of the objections to this study. Such fervor can almost in and of itself be cause for a thorough study of this area. A criminal problem of an estimated magnitude of more than \$500 million a year cannot be ignored.

Conclusion

Finally, I have attached as Appendix III a list of 10 questions and the answers thereto which are often asked concerning this important legislation. We thank you for giving us this opportunity to testify on behalf of this worthwhile legislation.

May 22, 1979

Section 202 requires the Secretary of Transportation to consult closely with the law enforcement community in the development of the anti-theft standards. It also requires the Secretary of Transportation to examine all technological developments which may assist in accomplishing the Act's purposes. The section sets maximum timetables for the establishment and implementation of the anti-theft standards.

Section 203 ensures that any Federal anti-theft standards would preempt any such state legislation which is not identical to the Federal standard. This would not, however, prevent any state from enacting a state standard identical to the Federal standard and enforcing such state standard to the degree authorized by the Motor Vehicle Safety Act of 1966, as amended.

TITLE III—ANTI-FENCING MEASURES

Section 301 creates a new federal offense in section 510 of title 18, United States Code, relating to the alteration and removal of motor vehicle and motor vehicle part identification numbers required by the Secretary of Transportation. New Section 511 of title 18, United States Code, creates a statutory right of seizure for federal law enforcement officials, with two small exceptions noted hereinafter, which could result in forfeiture to the United States of any motor vehicle or motor vehicle part which has had its identification number altered, removed, tampered with, or obliterated. Section 511 incorporates by reference the law relating to seizures and forfeitures under the customs laws.

The first of the two exceptions referred to above is where a motor vehicle part with a removed, obliterated, tampered with, or altered identification number has been attached back to a legitimate motor vehicle owned by an innocent purchaser of such part who had no knowledge of its illegal character. The second exception to the statutory right of seizure is where the motor vehicle or motor vehicle part has been given a replacement identification number by a lawful authority. Neither of these two exceptions is intended to limit the ability by law enforcement officials to obtain the custody of such motor vehicle or motor vehicle part for evidentiary purposes by the means of judicial process (e.g. specific search warrant or subpoena issued by a judge for such property). Nor would either restriction prohibit the recovery of such property by its true owner in a civil suit if such owner is able to establish his ownership of such property during any civil proceedings. Admittedly however, in view of the lack of identification numbers on such property the chances of the true owner proving his ownership of such property is mainly academic. Moreover, the need for law enforcement to ever obtain any judicial warrant for the property covered by the two exceptions is remote because the innocent purchaser of such property will in almost all cases be cooperating fully and voluntarily with law enforcement in prosecuting those individuals responsible for the knowing illegal disposition of such property.

SECTION-BY-SECTION ANALYSIS OF THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979

TITLE I—FINDINGS AND PURPOSES

Section 101 makes a series of findings by the Congress.

Section 102 states the primary purposes of the legislation.

TITLE II—EMPLOYED SECURITY FOR MOTOR VEHICLES AND THEIR PARTS

Section 201 amends section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1393) by adding a new subsection which would give the Secretary of Transportation authority to issue standards whose purpose would be to deter motor vehicle related thefts. Currently, the National Highway Traffic Safety Administration (NHTSA), the agency which implements this Act, is limited to issuing standards with a clear safety benefit. The new authority would permit issuing anti-theft standards. Such new standards could require improving the locking devices for the ignition, doors, trunk, and hood of motor vehicles as well as identification numbering systems for certain key components of the motor vehicle in addition to the motor vehicle identification number itself. The former would "harden" the motor vehicle and its parts against thefts primarily by the amateur. The latter would make it more difficult for the professional thieves to dispose of the stolen motor vehicle or its parts.

At present the Department of Transportation has issued regulations relating to only a vehicle identification number (VIN). (This is Federal Motor Vehicle Safety Standard No. 118 whose original effective date was Jan. 1, 1969.) Under Title II of this Act, the Secretary of Transportation will be given regulatory authority to require identification numbers for key components of the vehicle also. Consequently, after the enactment of Section 510 it would be a federal crime to remove or alter the VIN on any existing motor vehicle manufactured after January 1, 1969 or future motor vehicle since such identification number is already required by Department of Transportation regulations. On the other hand, the removal or alteration of

the identification number for certain components (e.g. motor, transmission, and certain "crash" parts) would only become a federal crime when such removal or alteration occurred after the establishment of a Department of Transportation regulation requiring an identification number for such component. Neither Section 510 or 511 are intended in any fashion or manner to restrict or preclude the states from passing and enforcing their own criminal laws relating to the removal or alteration of identification numbers affixed by the manufacturer to the motor vehicle and its components. The definition of "motor vehicle" for sections 510 and 511 is found in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(3)).

Section 302 amends the definition of "securities" in section 2311 of title 18, United States Code to specifically include motor vehicle titles. At present a fully executed motor vehicle title would qualify as a "security" under the provision "document evidencing ownership of goods, wares, and merchandise" in the definition of "securities" in section 2311 of title 18, United States Code. (See *United States v. Dickson*, 452 F.2d 184 and *United States v. Canton*, 473 F.2d 861.) However, a blank certificate, like a blank check, would not be a "security." Furthermore, to avoid the problem of when a motor vehicle title ceases to be a "security" it is felt necessary to expressly state when such character terminates. (See *United States v. Teresa*, 429 F.2d 13.) In view of the fact that the regulatory scheme for vehicle retitling recommended by the U.S. Department of Transportation envisages the sending of old titles back to the state of original issuance at the time of retitling, it is felt, for purposes of a possible prosecution under 18 U.S.C. 2314 involving a counterfeit title, that it should be clear that the title remains a title until it is canceled by the state of issuance. There is ample justification for federal prosecution in these situations. First there is an interstate crime which by its nature normally causes problems if left solely to state prosecution. Secondly, the true owner of the vehicle, is in another state and the state which received the counterfeit title could be less disposed to use its criminal resources to protect the property of a citizen of a different state. And finally, the situation involving counterfeit titles will almost always involve ring and organized criminal activity. The federal jurisdiction will be generated by the defendant presenting a counterfeit out-of-state title and asking for a new title. The defendant's actions causes the interstate transportation of the counterfeit title when it is sent back to the state of original issuance.

Section 303 amends section 2313 of title 18, United States Code, relating to the receipt of stolen motor vehicles which have been transported across state lines after being stolen. Under this amendment, Federal jurisdiction would attach and remain with the stolen motor vehicle once it crosses a state line after being stolen. Under the statute's existing language the prosecutor has to prove that the stolen vehicle was still retaining its interstate character at the time of the illegal operative act (i.e. receipt concealment, sale disposition, etc.) This is a burden which has no benefits to proper law enforcement. It only increases the difficulties in prosecuting the fence or possessor of stolen property. Under the amendment the prosecutor would still have to prove guilty knowledge on the part of the defendant (i.e. he knew it to be stolen). Likewise, "stolen" retains its broad character. See *United States v. Turley*, 352 U.S. 407, (1957). The addition of the word "possesses" expands the statute to reach another criminal act of the fences of stolen property in order to facilitate their federal prosecution. Both of these amendments are patterned after proposed sections 1731-33 of

the new Federal Criminal Code which passed the Senate last year (S. 1437 95th Congress).

Section 304 creates a new section 2319 to deal with traffickers in stolen motor vehicles or their parts which have had their identification numbers removed, obliterated, tampered with, or altered. The statute consistent with the thrust of the present Dyer Act policy of the Department, requires that the illegal possession of such a vehicle or part include an intention on the part of the possessor to dispose of the vehicle or part. The language of the statute is patterned after that contained in proposed section 1732 of the new Federal Criminal Code (S. 1437) which relates to trafficking in stolen property. As such, it is aimed at the dealers and peddlers of such stolen items. The statute is not designed to reach an individual who possesses such a vehicle or part for his own personal use even where the individual knows that the vehicle or part's identification numbers has been removed, obliterated, tampered with or altered. It is felt that those singular offenses, although certainly condemnable, should not inundate the Federal courts, which should concentrate on organized ring activity. The singular matter would be better handled by prosecution under appropriate state and local laws. The definition of "motor vehicle" for section 2319 is contained in section 2317 of title 18, United States Code.

Section 305 amends section 1961 of title 18, United States Code, commonly known as the RICO statute (Racketeer Influenced and Corrupt Organizations), to allow prosecution under this statute of those individuals and businesses which traffic in stolen vehicles and their parts. The presence of this coverage and a few prosecutions under it should have a significant deterrent impact upon those businesses engaging in the receipt and disposition of stolen vehicles and their parts.

Section 306 amends the Master Key Act (39 U.S.C. 3062) to prohibit the mailing of manipulative devices which are designed to open to make inoperable any of the locks on two or more motor vehicles. The provision also prohibits the mailing of any advertisement for such a device and authorizes the United States Postal Service to issue a mail stop order in an appropriate case. Violations of this section would be within the investigative jurisdiction of the United States Postal Service.

Section 307 is self-explanatory.

TITLE IV—IMPORTATION AND EXPORTATION MEASURES

Section 401 creates a new federal offense in section 552 of title 18, United States Code within the investigative jurisdiction of the United States Customs Service relating to the importation or exportation of stolen self-propelled vehicles, vessels, aircraft and the parts thereof and the importation or exportation of self-propelled vehicles and self-propelled vehicle parts which have had their identification number removed, obliterated, altered or tampered with. The section also defines "self-propelled vehicle", "vessel", and "aircraft". The section would obviously not be applicable to the importation or exportation of the conveyance or part by the lawful owner or his agent.

Section 402 creates two new sections in the Tariff Act of 1930. Section 625(a) subjects any individual who imports, exports, or attempts to import or export any stolen self-propelled vehicle vessel, aircraft or parts thereof or any self-propelled vehicle or self-propelled vehicle part having its identification number removed, obliterated, tampered with or altered, to a civil penalty of \$10,000 per instance. Section 625(b) makes any of the above described self-propelled vehicles, vessels, aircraft or parts subject to seizure and forfeiture if they are imported or exported. This section would likewise not be applicable to the importation or exportation

of the conveyance or part by the lawful owner or his agent. Section 627(a) authorizes the Secretary of Treasury to issue regulations concerning the exportation of used self-propelled vehicles. Section 627(b) defines "self-propelled" "aircraft" and "used" self-propelled vehicle.

Section 403 creates a new section in the Tariff Act of 1930 giving Customs officers the same powers of arrest as presently possessed by other Federal law enforcement officials. Under current law a Customs officer has authority to make an arrest without warrant only for violations of the narcotic drug and marijuana laws under section 581 of the Tariff Act of 1930, as amended (19 U.S.C. 1581), where the violation is committed in his presence or where he has reason to believe that the person to be arrested has committed or is committing such violation. The Customs officer, because of the nature of his duties, is often unable to detect fugitive felons entering the United States and violators of the other Federal criminal laws such as the statutes

prohibiting theft from interstate and foreign shipments (18 U.S.C. 656) and the interstate and foreign transportation of stolen property (18 U.S.C. 2312 and 2314). He cannot, however, under present law, make an arrest in such situations. He must seek the assistance of another law enforcement official who has the proper arrest authority. This can be difficult, depending upon the time of day and his geographical location. The present limited arrest authority for a Customs officer is inconsistent with the arrest authority provided other Federal law enforcement officials and hampers effective enforcement of Federal criminal laws. Section 403 of the bill corrects this deficiency and in accord with section 3013 of S. 1437, the "Criminal Code Reform Act of 1977," (95th Congress) which would likewise grant a Customs officer the same arrest authority possessed by other Federal law enforcement officials.

Section 404 repeals the provision in the Internal Revenue Code of 1954, as amended, giving Customs officers statutory arrest authority only for narcotic offenses.

TITLE V—VARIOUS REPORTS

Section 501 requires the Attorney General to file a report with Congress 18 months after the passage of the Act dealing with the growing problem of theft of "off-highway" vehicles in the agricultural and construction industries. The report will be prepared in consultation with the Secretaries of the Departments of Agriculture, Commerce, Transportation and Treasury. The section specifies those areas on which the Attorney General should report developments.

Section 502 requires the Attorney General to file with Congress a series of annual reports concerning the implementation and effectiveness of Titles II, III, and IV of the Act. The reports are to be prepared in consultation with the Secretary of Transportation, Secretary of Treasury, and the Postmaster General.

OUTLINE OF THE PROPOSED MOTOR VEHICLE THEFT PREVENTION ACT OF 1978

Title I. A Series of findings and purposes are set forth.

Title II. The National Traffic and Motor Vehicle Safety Act of 1956 would be amended to give the Secretary of Transportation authority to issue regulations which would help prevent the theft of the motor vehicle, its major components, and its contents taking into consideration several factors.

Title III. Title 18 of the United States Code would be amended to:

(1) Make it a federal crime to alter or remove any motor vehicle or vehicle part

identification number required by the Secretary of Transportation;

(2) Make any motor vehicle or vehicle part which has a removed or altered identification number required by the Secretary of Transportation subject to seizure and possible forfeiture;

(3) Amend the definition of "security" in the National Stolen Property Act (18 U.S.C. 2311) to cover motor vehicle titles until cancelled by state of issuance;

(4) Make it a federal crime to traffic in motor vehicles or motor vehicle parts which have had their identification numbers required by the Secretary of Transportation removed or altered; and

(5) Amend the RICO statute (Racketeer Influenced and Corrupt Organizations—18 U.S.C. 1961 et seq.) to include as a racketeering activity trafficking in stolen motor vehicles and their parts. This would be done by incorporating the present Dyer Act (18 USC 2312/2313) and the new trafficking statute described above within the definition of racketeering activity.

The Master Key Act in Title 39, United States Code (39 U.S.C. 3062), would be amended to cover other manipulative devices designed to open, circumvent, or make inoperable any of the locks of two or more motor vehicles. This change would prohibit the mailing of both the device itself and any advertisement of such devices.

Title IV. The Secretary of the Treasury would be given authority to issue regulations concerning the exportation of used self-propelled vehicles.

Title V. The Attorney General would prepare a report on the growing problem of the theft of off-highway vehicles (i.e. construction and farm equipment). The Attorney General would also advise Congress in a series of annual reports on the effectiveness of the Act.

There are three areas in Title II of H.R.4178 where we would recommend change. They are:

1) Section 202(b)(2) and (3) state that the Secretary of Transportation must take into account in the proposed and final standards certain specific ongoing technological developments. While we believe that the specific technological areas cited should be fully considered, we are apprehensive that focusing the rulemaking process by statute on specific technology could predetermine the results and undermine the whole program. Accordingly, we recommend that section 202(b)(2) be amended to read:

"(2) the proposed rules concerning the prevention of the unauthorized starting of the motor vehicle and the theft of motor vehicle parts shall take into account ongoing technological developments."

Section 202(b)(3) should then be deleted and paragraph "(4)" should be renumbered paragraph "(3)". The specific technological areas presently cited could then be set forth in the section-by-section analysis of the bill. This approach would accomplish the purposes of the provision without unduly prejudicing the rulemaking process.

2) In section 202(a) of the bill there is reference to several specific groups with which the Secretary must consult closely in exercising his authority. While each of the specific groups mentioned should be consulted there are undoubtedly others. Accordingly, we recommend that Section 202(a) be amended to read in relevant part:

" . . . , the Secretary shall consult closely with the Attorney General, the law enforcement community, the insurance industry, the motor vehicle manufacturers, and any other groups and individuals interested in or affected by the motor vehicle theft problem."

Of course, the specific groups now listed as well as other equally capable groups could be set forth in the section-by-section analysis of the bill.

3) Finally, we believe in the section-by-section analysis of Section 201 of the bill it would be advisable to use appropriate language to show that the cost/benefit analysis that the Secretary must make is one of judgment and that an absolute conclusiveness for his determination is not required, if such were indeed possible, in such an area where the various contributing factors to motor vehicle theft are not humanly controllable and are constantly changing.

Appendix III

Ten Questions Often Asked About The Motor Vehicle
Theft Prevention Act (S.1214 and H.R. 4178)

1. Q. Does Title II of this legislation give the Secretary of Transportation regulatory authority over any state agency, vehicle dismantler, rebuilder, or scrap processor?
 - A. No. This bill gives authority to the Secretary of Transportation to regulate only the manufacturers and distributors of new motor vehicles and motor vehicle parts by requiring them to comply with certain federal security standards which the Secretary has determined after careful study to be cost beneficial to the consumer.
2. Q. If the Secretary of Transportation has no authority under this bill to regulate vehicle dismantlers, vehicle rebuilders, scrap processors, etc., who has such authority and to what degree should it be exercised?
 - A. The states presently have the authority to regulate these businesses and will continue to have such authority even after the passage of this legislation. The degree to which these businesses have to be regulated is a determination to be made by each state based upon its own particular problems and needs.
3. Q. Will vehicle dismantlers, rebuilders, scrap processors have to keep any special records for any federal agency under this legislation?
 - A. No. All requirements for business records which must be kept for vehicle control purposes by these entities will remain governed by state law.
4. Q. Does Title III of the legislation prohibit states from passing or enforcing their own criminal laws relating to the removal or falsification of the vehicle identification number (VIN)?
 - A. No. On the contrary, the legislation encourages states to enact and enforce similar state laws which parallel the federal statutes. In fact, over 30 states presently make it a state crime to remove or falsify a vehicle

- identification number. It is hoped that all states will make such removal or falsification a state crime and make any such vehicle or part having a removed or falsified number subject to seizure and possible forfeiture under state law.
5. Q. What exactly is meant when the concept major "component part marking" is mentioned?
 - A. "Component part marking" means affixing to certain major components of the vehicle the vehicle identification number (VIN) or a derivative of the VIN so that the part can be identified to the vehicle from which it came. The marking would take place during the original assembly process of the vehicle.
 6. Q. A motor vehicle has thousands of parts, what exactly are the major components to be marked with identification numbers?
 - A. Component identification is aimed at curtailing professional motor vehicle theft and the so-called "chop shop" operation. The parts most often mentioned for automobiles are the motor, transmission, doors, hood, both front fenders, radiator core support, deck lid, and trunk floor. Most experts agree this is the outer limits of the parts needed to be numbered.
 7. Q. How much will it cost to number those additional parts not already being numbered by the vehicle manufacturers?
 - A. Based upon testimony given recently to a United States Senate Subcommittee the motor vehicle manufacturers believe that such additional numbering can be done by them at a cost to the consumer of less than \$5 per vehicle and probably in the \$2-3 range.
 8. Q. Does this legislation interfere with any state law relating to the replacement and restoration of missing or damaged identification numbers for vehicles or vehicle parts?

- A. No. The legislation recognizes the need for a strong state system for replacement and restoration of missing or damaged identification numbers. The Vehicle Equipment Safety Commission (VESC) has recently approved Regulation VESC-18 "Standardized Replacement Vehicle Identification Number System". It is hoped that all states will adopt laws and procedures consistent with this VESC regulation.
9. Q. Does Title II of this legislation preclude the States from passing their own security regulations to which the manufacturers and distributors of new motor vehicles and parts must comply?
- A. Title II of the legislation does require for the sake of national uniformity that any such state security standard must be identical to the federal security standard. As a practical matter, no state has any security standard at the present time and only two or three states require that the manufacturer identify uniquely any part of the motor vehicle and such parts are limited to the motor and transmission.
10. Q. If a state should enact a security standard identical to a federal security standard can the state enforce such a standard?
- A. To be permitted to enact a standard but not enforce it would be a meaningless gesture. However, the degree and manner of enforcement may be subject to legal limitations. A recent federal court opinion in the Third Circuit (Truck Safety Equipment Institute v. Kane, 466 F Supp 1242) holds that while states may enact safety standards identical to the federal safety standard the state may not enforce its standard against a manufacturer prior to first sale of the product if the manufacturer has certified his compliance with the identical federal standard. What this appears to mean is that a state cannot require a manufacturer who has complied with the requirements of federal certification to be subjected to prior testing by each state before sale of his federally certified product in that state. However, the states are still free to buy such products in the marketplace, test them at state expense, and punish in accordance with state civil and criminal laws any manufacturer whose product is not in actual compliance with any state safety standard which is identical to the federal safety standard. It would appear that the state's enforcement power of any identical security standard it may enact would be comparable to that which it presently has for any identical safety standard.

Mr. SCHEUER. What percentage of the stolen cars do you think end up in chop shops and what percentage go swiftly to a dock, onto a boat, to sell to developing world countries?

Mr. HEYMANN. Here is where I go right to my expert. Mr. Weglian seems to have an answer.

Mr. WEGLIAN. Mr. Chairman, we would say probably about 25 percent for chop shops.

Mr. SCHEUER. Seventy-five percent for sale overseas?

Mr. WEGLIAN. No, Mr. Chairman. The percentage of vehicles that are stolen that go overseas is a very small portion of the total number.

Mr. SCHEUER. Resale in this country?

Mr. WEGLIAN. Right. Most of the vehicles are probably resold in this country; 25 percent are chopped, and the remaining vehicles, or parts of them are recovered.

Mr. HEYMANN. As you know, the overwhelming volume of law enforcement resources devoted to auto theft is as it should be, State and local. The Federal Government is moving and has moved heavily in the direction of auto theft rings. We have more rings under investigation, the FBI does, by a substantial measure than has ever been true in the past. But at the same time we have for a number of years reduced the Federal presence in single theft cases, particularly joyriding cases, other than to help the States obtain the return of a suspect.

We take very seriously the type of measure you have before you, and we are urging it strongly, in part because we think that prevention has perhaps a bigger role than after-the-fact law enforcement in dealing with this very substantial problem, certainly one that involves billions of dollars worth of theft.

We think the original standard 114 was helpful with regard to joyriders, the steering wheel lock, but we think that an additional standard, perhaps developed over a substantial period of time, as Mrs. Claybrook was suggesting, can further diminish if not come close to making manageable the problem of amateur joyriding and the theft of cars. Hopefully, while still allowing the rest of us to get into our cars, drive them and repairmen to get at them.

We, like Ms. Claybrook, think the most obvious case is for the expansion of the VIN system to a number of parts in cars. We are prepared to argue that our estimates—and we are not good at estimating costs in the Justice Department—our estimates are \$15 a car. I would trust the manufacturers' estimates are more, but we are talking about an inexpensive—

Mr. SCHEUER. That means less than \$15?

Mr. HEYMANN. We would estimate less than that. I would be happy to settle for \$15. We are talking about a small amount of money. We think the technology is there for producing identification which is difficult to counterfeit, and we believe that—

Mr. SCHEUER. My staff person tells me the manufacturers are talking more or less in the order of magnitude of \$5 a car.

Mr. HEYMANN. That is what our figure should have been. We would have taken a figure in that neighborhood.

Mr. WEGLIAN. Fifty cents a number is a fair estimate.

Mr. SCHEUER. When you think that the spare parts, let's say, on a car are worth in the order of \$25,000 you are talking about one—

fifth of 1 percent. The cost of the identification system is on the order of magnitude of one-fifth of 1 percent of the value of the parts that you are protecting.

We have not impacted into that the cost of the computer storage and retrieval system that would be necessary to identify parts in a repair car in order to find out whether they were legally or illegally procured.

Mr. HEYMANN. Let me stop my prepared statement and say a word about that, and if you would let Mr. Weglian say a word about it.

We anticipate the system, if I understand it right, would work rather simply. Right now, the FBI maintains vehicle identification numbers on stolen vehicles.

Mr. SCHEUER. On the motor and on the transmission?

Mr. HEYMANN. We would think much the same number or an abbreviated form of that number would be used for all parts. It could not be a 17-digit number which I think the VIN is, but an abbreviated form of that number would be used as the parts identification number.

A State law enforcement official, a policeman, State trooper, going into a parts distributor's establishment would be able to look over the parts and would be able to say, "Gee, there are parts here"—it is going to take a while before all parts would be marked—"there are parts here with no identification on them." Those parts are subject to forfeiture if the identification has been removed willfully.

Mr. SCHEUER. As I understand, it would be impossible to remove that VIN without it being clearly evident that it had been removed.

Mr. HEYMANN. And I am told it would be difficult to counterfeit a substitute once you had removed it.

The setup I am trying to suggest would not require elaborate recordkeeping. There is some recordkeeping in it but if a State trooper went into an establishment that was selling parts and that might have bought them from a chop-shop artist, he would either find parts with no identification number on them, which would be immediately suspicious and subject to forfeiture under the bill, or he would find parts with identification numbers on them which he could, if he felt like it, randomly check against the numbers that we already have in the system with regard to stolen vehicles.

If he randomly checked three or four, the owner of the legitimate parts distributing place would get a little nervous about buying stolen parts.

Yes, they would have their numbers on them. They would have the number of the stolen car, but we already have the number of the stolen car.

Am I getting that right, Steve?

Mr. WEGLIAN. That is correct.

Mr. HEYMANN. The result of that would be that the person who buys parts from an automobile chop shop—somebody who has stolen them and torn them apart—would not like much buying stolen parts. He would recognize he was in danger himself of prosecution and certainly forfeiture by a simple check of the number on the part against what we already have in terms of the numbers of stolen vehicles.

Mr. SCHEUER. So what you are saying is, it would not require any more basic recordkeeping; that has already been established. It would just provide a few more items to check against your basic record?

Mr. HEYMANN. I think that is correct. We would anticipate that States, I believe, might require the owner of a parts shop to list whom he bought the parts from and the number or something like that. But relatively little recordkeeping.

Let me turn to my expert.

Mr. WEGLIAN. Mr. Chairman, in terms of recordkeeping, the only additional basic requirement would be that the parts shop, dismantler, repair shop, would be required to put the VIN—the identification number of the part—on the invoice he now provides to his customers, whether it is at wholesale or at retail.

I would want to correct a little misconception here in terms of the number of parts we are talking about when we talk about component identification. We are only talking about dealing with the problem of the chop shop which steals cars for the repair of cars that were involved in other accidents. So we are talking about the sheet metal assembly parts of the automobile, like the frontend assembly, the doors, the hood, the rear clip, the trunk lid, and so forth.

We are also including motors and transmissions, but they are currently numbered anyway. In reality, what we are talking about is seven additional numbers if it is a two-door and nine additional numbers if it is a four-door. The frontend assembly, because it is a collection of various pieces, has to be marked in a couple of locations because you can disassemble it and still get a pretty good, valuable piece of material.

But its primary value to the criminal elements has been as a complete assembly, because it is a unit; it is all together; it has hundreds of pieces, headlights and all that goes with it. The value has become as the complete units, but that particular thing has to be marked a couple of times because you can throw off a part or two and still have a very valuable unit.

Mr. SCHEUER. Mr. Yatron?

Mr. YATRON. Thank you, Mr. Chairman.

Mr. Heymann, if it would be possible, could you give us an estimate on the number of stolen vehicles and the dollar value for these cars, trucks and vehicles, including off-the-road equipment that has been transported over the Mexican border from Texas, Arizona, New Mexico, and California in 1979, as an example?

Mr. HEYMANN. Let me turn to Mr. Abbell. He may want to come back to fill in the record.

Mr. ABBELL. The estimate I have been given, again from Mr. Weglian, is 10,000 to 20,000 vehicles, roughly \$100 million to \$200 million in value, going across the southern border of the United States.

Now, a portion of these, of course, are recovered, especially through the recent program we have operating in the Baja California, area, where there is excellent cooperation between the State governments of the State of California and the Mexican State of Baja California.

We have achieved a good deal of returned automobiles there, but there still are some lingering problems.

Mr. YATRON. Would you provide for the subcommittees some details of the negotiated treaty with Mexico to improve the recovery and return of the vehicles?

Mr. ABBELL. We have had two negotiating sessions with the Government of Mexico concerning the recovery of stolen vehicles and

aircraft. The first occurred last July and the second occurred this past January. We have reached basic agreement on all issues except one point, and that point deals with the treatment of stolen aircraft primarily that are used—the stolen and rented aircraft that are used in the commission of crimes in the country to which they are taken.

Mexico has a very severe problem with illegal contraband goods coming into Mexico via aircraft. They estimate as much as \$1 billion worth of goods, much of which is legally purchased in the United States, is transported into Mexico every year and sold there.

The reason why it has value in Mexico is that for electronic appliances and other electronic equipment which are the major part of this illegal trade, there are very high duties in Mexico and it pays even to buy them at retail or discount houses in the United States and transport them by aircraft to clandestine airfields in Mexico to be sold in Mexico.

Also, there is a certain amount of traffic in firearms, the sale of which is prohibited in Mexico. Mexico is seeking to inhibit this kind of activity and they feel, and have taken the firm position thus far, that in order to effectively deter it, they have to have the right to retain all aircraft that are seized in connection with such contraband trafficking.

We have taken the view, in order to protect the innocent owners of these aircraft in the United States, that we are willing to have our Customs Service conduct an investigation of these thefts, of the thefts where the planes are then used in bringing contraband into Mexico, and to provide a copy of that report to the Mexican Government upon which it can base its decision as to whether the owner was truly innocent or was in some way implicated in the theft.

It is our attempt to try to protect innocent owners of fairly valuable planes, some of them, of course, worth hundreds of thousands of dollars. We hope to make some progress on this.

Our biggest problem has been the turnover of personnel in the Mexican Treasury Department, which is responsible for the negotiations. There have been three different heads of the relevant organization since May of 1979, and every time we start getting on track with one, he is either demoted or promoted and we have had some problems in that regard.

Mr. YATRON. Has any progress been made in trying to put in the treaty an effort to have the automobiles returned more quickly? I understand it takes about 2 years now for their return.

Mr. ABBELL. The vehicles, some of them in the Baja California area, are being returned within days of when they are obtained over there. This program, through the cooperation of the Mexican Attorney General and Mexican Treasury Department's Registry of Motor Vehicles, is being extended elsewhere along the border on a piecemeal basis and wherever it has been extended we have noticed a sharp increase in the number of returned stolen vehicles to the United States.

Mr. YATRON. Does this also exist in El Paso?

Mr. ABBELL. I have to defer to Mr. Weglian on that.

Mr. WEGLIAN. The Baja program itself has not moved to the corresponding states of Mexico that cover that region. There has been more willingness and acceptance by Mexican law enforcement officials in other States that border our States to try to work out some informal

and easier mechanisms for return of these vehicles. This is an evolutionary process but at least we feel very good about it and the feedback we are getting here is that at least progress is being made in areas where there has not been progress in decades.

Mr. YATRON. In what circumstances may a county officer or Federal law enforcement officer stop a vehicle which he suspects is stolen?

Mr. WEGLIAN. He can stop a vehicle if he suspects it is stolen. If he has reasonable cause to suspect it is stolen, he can just stop it. Most Federal law enforcement officers are not in the process of checking license plates and things like this in terms of their surveillance activities. They are not like highway patrol and city police who are constantly checking license plates. But notice that a car is stolen can normally come through inquiry of NCIC or lookout report they have received.

Mr. SCHEUER. For the record, would you spell out NCIC?

Mr. WEGLIAN. NCIC is National Crime Information Center. It is a computer network operated for the Nation's law enforcement community by the FBI.

Mr. SCHEUER. On a car being driven across the border, could an officer routinely ask for the registration?

Mr. WEGLIAN. The problem with checking vehicles when they leave the country, Mr. Chairman, is the sheer volume of the number of vehicles.

Mr. SCHEUER. I am aware of that, but most of these cars are inspected, they look in the trunk, they look at the people, they ask who the people are. Couldn't they routinely ask for the registration?

Mr. WEGLIAN. There is a difference between exiting the country and entering the country. When a vehicle enters the country, what you have described does take place. We are constantly checking to see what is in the vehicles that is being brought back into the country, because the importation of illegal goods. That is the basic crime that exists right now along the border.

When a vehicle does come across the border, we do check the license plate—"we" meaning the Customs Service—checks the license plates on all incoming vehicles.

Mr. SCHEUER. We are talking about vehicles being shipped abroad illegally?

Mr. WEGLIAN. They are being driven across the border. The number coming across at El Paso and San Ysidro everyday measures in terms of thousands. There are tourists going down or people coming across for work purposes. It is thousands. When the racetrack used to be open they would release thousands of people; they would be backed up for miles to get across the border.

We do not for the most part check vehicles as they leave the country for a Federal purpose in terms of cars. Trucks, heavy trucks, that are carrying equipment, are required, if they are carrying goods, to file a shippers' export declaration with the Customs Service, but the checking of vehicles and vans, we just do not do that now, and the main reason we don't do it at the Federal level is twofold: One, it is very costly because—

Mr. SCHEUER. On a random basis you could do it from time to time; you could take 5 minutes an hour, a different 5 minutes an hour.

Mr. WEGLIAN. We have encouraged that type of activity. Generally, the States along the borders have tried to do that. It is a question of manpower for the most part, Congressman. It is very expensive to put personnel to do this. That is part of the problem.

Ideally, what you describe would be the solution, to check for the registration papers when they go across the border. But it is a question of convenience to the people in terms of trying to get across that border, because they zip across some of the borders at 30 or 40 miles an hour. They don't even have to stop until they get to Mexico. That would mean backing them up in the States more than is necessary.

Mr. SCHEUER. That is a subjective judgment "more than is necessary."

Again, we are looking at costs and benefits, inconvenience cost, let us say. If it is a question of being held up a minute or two—it seems to me it would not take long to check a registration—less than a minute.

Mr. WEGLIAN. A minute is—only 60 cars can go through a line during the course of an hour. They are going across at a much rapider rate than that. The Department of Justice in California is very concerned about the problem also as are equivalent law enforcement agencies along the whole border. The State of California is working on a pilot program out there to establish some kind of checkpoint system at the border crossing points, and they have received the legislative authority from the State legislature to do that. And they have gone to the insurance industries to seek some moneys to underwrite the cost of this pilot project.

I think they are asking in the neighborhood of \$1.5 million for an 18-month project to study it and to work with it and see what can be done from the standpoint of cost effectiveness along the border. It certainly is an area where we are willing to hear any ideas that exist, because Mike Abbell and I met out in San Diego about a year ago and discussed this with law enforcement, and it is a tough area to try to work out.

Your suggestion is the solution if the money is there to do it.

Mr. SCHEUER. Then it is not a question of inconvenience to people; it is a question of funding the inspectors you need there, asking people to show their registration?

Mr. WEGLIAN. It is both, because people do complain and if their complaints are excessive and extended and they are inconvenienced too much, there will be a lot of pressure to terminate it no matter how much money is available.

Mr. ABBELL. If I might interject, there are two problems: Absent a registration check, you may recover only a very small amount of cars through this means, because so many of the cars are stolen and taken across the border before their theft can be reported. It takes a day or so to get into the NCIC system and it is usually long before that—even if it takes only 6 hours—it is long before that that the cars are actually taken over the Mexican border. So without a full registration check, which means stopping every driver and making him produce the registration, you have a very significant problem.

Mr. SCHEUER. You say a full registration check?

Mr. ABBELL. Having him produce his registration, checking it against his driver's license to see if he is the name or can explain the ownership, and so on.

If you will recall, about 10 years ago or somewhat less, 8 years ago—

Mr. SCHEUER. A registration check is simply to see whether that car, that registration, matches that license plate?

Mr. ABBELL. It can also be that the name on the registration card also is the name of the driver or he can explain—

Mr. SCHEUER. The driver can be driving somebody else's car.

Mr. ABBELL. He would have to explain it.

Mr. SCHEUER. In other words, you are saying if he stole the car with the registration in there, then he could get across, unless—

Mr. ABBELL. If he knew where the registration card is.

Mr. SCHEUER. It is in the glove compartment. That is where I keep mine.

Mr. ABBELL. I keep mine there, too.

Mr. SCHEUER. Most people do, I suppose, but what you are saying, this check process could not be just a simple registration check, as I was suggesting; it would also have to be a check on who the guy was and if the name on his license was not the name on the registration, how come?

Mr. ABBELL. There are two aspects: One, we had hoped to study the feasibility of optically scanning license plates to get some reaction as to how many cars that are going across the border the license plates indicate either the license plates or the automobile itself have been stolen in the past. The other is stopping the motorists, making him produce the card and so on.

If you will recall, there was a program attempting to interdict drugs coming over the border from Mexico about 8 years ago—lines of people hours long and people were complaining about these checks that were being conducted. I see the same thing happening going the other way with traffic backed up in the United States trying to get across to Mexico if we have to stop every car to check registration.

It is a very grave practical problem.

Mr. SCHEUER. Just checking the license plates, I don't think, would prove much because I don't think the average guy who stole a car and drove it across the border would leave those license plates on.

Mr. WEGLIAN. Even if he did, they would not be in the system because they will steal the car at 3 in the morning while you are asleep. You wake up at 7; you go outside at 8 and look to start your car and it is not there. You call the police and they ask what is your vehicle identification number, and you say, where did I ever leave my title, and you eventually find the VIN on your registration—but the net effect is it takes 6 hours to get into the system, or a day to get into the system. We are not saying that once law enforcement gets notice of it it takes a day, but it takes a day in the reporting of the relevant information to law enforcement so they can put it in the system.

The way the border situation is, you can drive easily across the border before anybody wakes up to find their car stolen.

So, checking the license plates is not the only solution. It can be part of it, and, as I understand it, the scanning project is part of the pilot project they want to explore. They are not ruling it out. It is not a

panacea. There is no panacea for anything in this area; but a little here and a little there.

Mr. YATRON. Do Mexican customs officials check vehicle registrations, and if they do, why aren't they able to detect—

Mr. ABBELL. If you are going into the interior of Mexico, yes, they do check them. You have to have special permits to get into the interior of Mexico. That is 15 miles into Mexico. In the border cities they do not check. You can drive across to Juarez or Tijuana without any checks. If you try to go down the 10 or 12 roads they have into the interior from the border areas, then you are going to have to have special permits because they do control cars going in further with much greater registration checks.

Mr. HEYMANN. Do they have our list of stolen vehicles, license plate registration, VIN numbers?

Mr. ABBELL. They do not at this time and we have been discussing the possibilities of this, but there are some practical problems where you have had people who say, "Well, that is not on the list and therefore it looks like a good stolen car. I am going to help get it in." You may have some complicity of certain officials where it causes particular problems.

There has been some reluctance in sharing some information in this regard.

Mr. WEGLIAN. At the border, Mexican customs officials are faced with the same problems we are, in the sense that, first of all, a stolen vehicle is not of primary importance to the Mexican customs official, although if they are going to keep it in Mexico it is because the person has to pay the duty. But the Mexican customs official has to be worried about backing up that line of traffic. He has all these people trying to get into Mexico to buy services and goods and he does not want to inconvenience the American visitor from coming down.

Mr. SCHEUER. Thank you, Mr. Yatron.

Mr. Heymann, on page 13 you discuss RICO—Racketeer Influence Corrupt Organization—Act. Could you describe for us the RICO statute and tell us why this would be of such great help?

Mr. HEYMANN. The RICO statute passed in 1970, Mr. Chairman. It is the single most powerful law enforcement statute we now have. It makes it a crime to participate in, invest in, enjoy the proceeds from, what is racketeering, defined by statute as a racketeering enterprise. A racketeering enterprise is any joining together generally under a false legitimate cover, of two or more people who engage in the form of that enterprise in what are statutory listed as racketeering acts—bribery, narcotics, murder. It includes within it State crimes. Defined State crimes can also be what we call predicate acts. If a person is tightly enough associated with an enterprise that is engaging in this serious crime, defined by Congress, it gives us a set of powers that are rather considerable.

It has strong forfeiture provisions. You can forfeit the interest in the enterprise. You can forfeit the profits of an enterprise, different property of the enterprise, and we are big on forfeitures in order to take the profit out of crime. It gives the potential of long sentences up to 20 years. It gives the power to reach State crimes when they are committed as part of a substantial organized effort.

I think that is appropriate and proper. When it is a large enough and substantial enough organization, I think Federal law enforcement ought to get into it, or should be free to get into it, even if the organization is largely committing State crimes.

It is true that motor vehicle theft is not at the moment a predicate act. You could be running the largest motor vehicle theft ring in Michigan and it could be very substantial and you could be stealing hundreds of cars, but it would not be a racketeering enterprise.

We would not be able to act without proving interstate transportation of the car and the suggestion on page 13 is to add that as a RICO predicate act to the 15 or so that are there which would give us a substantial new enforcement device.

I would like to see burglary added at the same time, but I don't think that is within your jurisdiction.

Mr. SCHEUER. Could you elaborate on your statement, on page 5, "There is a danger that insurance companies contribute to the problem through their lax business practices"?

Mr. HEYMANN. Since I have learned the notion from Mr. Weglian, I think I will let Mr. Weglian take on the insurance companies, Mr. Scheurer.

Mr. WEGLIAN. There is basically two or three areas where the insurance companies can help in this area. One of them is when they issue the policy to begin with—the inspection of the vehicle, to make sure that the vehicle does not have any damage to it, that it is what it purports to be, an operating vehicle. In terms of the theft, we see that 10 to 15 percent of the reported thefts are really insurance frauds.

A portion of this problem is insuring a vehicle that does not even exist. So one of the things the insurance industry could do is on a profile basis check out a certain number of the new applications for insurance, especially when the customer is one that they have not been doing business with and they do not have a previous car.

A second area where the insurance companies can improve their operations—and I think most of them will admit it themselves—is in the area of vehicle salvage. Once a vehicle has been damaged, the insurance industry tries to recoup. If it takes title and pays off, the insurance industry tries to recoup as much as they can from the hulk that is left. It is usually sold at auction to people who buy it and sometimes there are usable parts.

If there are no usable parts, there is scrap. One of the techniques of vehicle theft is to—let us say a Cadillac or a sports car or Mercedes-Benz, a very valuable car has been totally wrecked in an accident and its only worth for scrap purposes is \$200. These will be sold at auction will pay large sums of money, \$1,500, \$1,800, to get that.

Obviously, it is not for the scrap metal content or the few parts that are usable. The purposes he wants that cars are for its paper title and the vehicle identification number on that car because, with those two things he can go out and steal a car that is very similar and transfer the identification from the wrecked car to the stolen car and use the paper for the wrecked car and get the car retitled.

Mr. SCHEUER. He has to forge the VIN?

Mr. HEYMANN. He will remove the VIN from the salvaged car that he buys and he will simply put it on the new, shiny stolen car and then he will have a car, new, shiny.

Having bought a salvaged vehicle from the insurance company, he will end up with a brand new, shiny car, with a VIN number for which he actually owns the title. He bought that VIN and he bought that title for the wrecked car.

Mr. SCHEUER. I don't understand that because the title will have the VIN that is on the wrecked car.

Mr. WEGLIAN. That is what he is going to put on the stolen car.

Mr. SCHEUER. But he has to put that VIN number on all of the parts.

Mr. WEGLIAN. There are very few places where you can see the VINS when sitting in the passenger compartment, the numbers are on the motor, the transmission.

Mr. SCHEUER. There is already a number on the motor and the transmission that will be hard to remove.

Mr. HEYMANN. We are not talking about after the passage of this statute. We are talking about now.

Mr. WEGLIAN. The motor on the wrecked car could still be usable, so he might just put the motor on the stolen car. He might grind the motor number down. He uses the identity of the wrecked vehicle. He uses some of its identification, actually identification plates, but he might go further and grind off the VIN, any identification which relates to the stolen car.

It depends on the sophistication and the necessity of the marketplace. If law enforcement checks him closely, he crosses the t's and dots the i's but—I am from Ohio, so I can say this with no problems—I heard testimony last December from thieves who in Ohio didn't bother to change the identification because nobody looked for it. So this was the second area, where the insurance industry could do something.

The third area was in their improvement in their processing of claims on reported thefts, to check them out, the fraudulent things, the after-the-fact-type thing. Several good insurance companies are really getting into this antifraud detection units or whatever they are called, and they are finding that it is very profitable for their companies to engage in that practice.

Mr. SCHEUER. Congressman Green?

Mr. GREEN. I would like to turn, if we could, to the off highway vehicles problem, because for some reason even though all the act calls for is a study, that seems to arouse a good deal of controversy.

I notice you do make some comments about that. Could you spell that out a little more, the scope of the problem?

Mr. SCHEUER. Are we talking about both construction equipment and agricultural equipment?

Mr. GREEN. I would like to get their views on it.

Mr. HEYMAN. I believe we are talking about both agricultural equipment and construction equipment. We think the size of the problem may be quite large. I think our estimate in testimony was in the nature of \$1½ million in thefts.

I did happen to see, as perhaps some of you did, the 60 Minutes piece on this type of equipment. We have frankly urged the study because we think some action is likely to have to be done, and even a study is extremely controversial.

If the question is why would some system of recording numbers be extremely controversial, I would have to once again turn to either Ralph or Steve.

Mr. WEGLIAN. The Department of Justice for over the last 3 years has been very concerned about the growing amount of theft in this area. Our investigations are picking up rings that are stealing this equipment and there has been a growing amount of it.

About 3 years ago we—we meaning the FBI—held seminar in Quantico, in which they invited the major manufacturers of construction equipment, which for the most part are the same as the manufacturers of agricultural equipment, and went over problems law enforcement was having with this type of equipment.

Basically, the 13 or 14 or 15 items listed on that study are part of the problem. It is like all problems, it is not a simple thing. So, we, the Bureau, the FBI, made several suggestions to the manufacturers, and some manufacturers were receptive to it, some were not.

It is a multifaceted problem, in the sense that law enforcement itself has to become more aware of the types of equipment. It is not something they deal in every day.

So, the result was there seemed to be a lot of problems that existed for the manufacturers, for the users, for law enforcement, with this type of equipment, and that it required that somebody make a concerted effort to review it all in its entirety to come up with what should be done here.

We are very hopeful that the manufacturers will do most of what law enforcement has been asking it to do. We are hopeful that this report will generate the private sector to respond without the need for any legislative effort.

But if the magnitude of the problem is what the users have given us as estimates, it is a considerable one, and it acts upon the Nation's economy and it causes losses of profit to a lot of independent companies and when you lose that type of a piece of equipment, it is very inconvenient.

Mr. SCHEUER. If you are not insured and you are a small construction outfit, you are wiped out. It is the difference between inconvenience and total destruction.

Mr. GREEN. Is there considerable opposition from the users of that equipment?

Mr. HEYMANN. I have not heard from that group in a considerable period of time. But the manufacturers have been the most vocal opponents, opposed to it. The farmers seem to be more in favor of it because of the fact that they are the victims.

Mr. GREEN. Is there some concern if we start reporting these numbers people will start levying taxes at the same time the reporting is done?

Mr. WEGLIAN. It is my understanding they are already subject to taxes, they are personal property, they are business property, and hence they are subject to taxation under local ordinances right now. And I think what they are afraid of is that if they title them—which is one of the suggestions that has been raised—that the State's ability to track down the personal property for tax collection purposes would be greater.

That could be one of the concerns. We heard that cited on the "60 Minutes" program as one of the concerns.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. SCHEUER. Let me ask on page 4, Mr. Heymann, you talk about a number of things that ought to be done. Among them is increase citizen participation against the motor vehicle thefts. Can you tell us what you have in mind there?

Mr. HEYMANN. This was the list of what has come out of the inter-agency committee effort, the committee involving transportation and justice. I think we have in mind there such self-protective devices as locking your own cars, educational devices. Anything else, Ralph?

Mr. CULVER. We definitely had in mind salvage titles. That was under the salvage title switch that has been discussed earlier today to take steps to cause—many States already have these salvage title laws.

Unfortunately, the laws are not uniform and we were trying to include a method to, hopefully, through a standard which has been mentioned here today, to have those laws brought into uniformity because of the dependency of those operations to go to the weakest State.

Mr. SCHEUER. I am talking about citizen participation.

Mr. CULVER. Yes.

Mr. SCHEUER. How does citizen participation relate to this?

Mr. CULVER. This is done through the ACT committees. This is where we have brought in the insurance industry and they have gone to various States—to Massachusetts, New York and New Jersey. They have also gone to Illinois and Texas, and other States. And they, in large part, can vary from media campaigns where they contact the public, they keep auto theft before the public's eyes—it may be in individualized instances where there is an auto theft, they broadcast it over the radio and alert the public to the theft.

Mr. WEGLIAN. The basic goal has been the "lock it and pocket it" campaigns of the insurance industry. Generally, these campaigns have a favorable impact during their duration, but like everything, once the pressure is removed, nature takes its course and the forces for theft move back into those areas.

Mr. SCHEUER. Congressman Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. Mr. Heymann, you testified before with regard to the number of vehicles crossing the border into Mexico. Do we have any information on border crossings into Canada?

Mr. HEYMANN. I think we have about the same type of information, Mr. Gilman.

Mr. WEGLIAN. To be honest, we do not know in terms of the number. We do know the problem along the Mexican border is much greater than along the Canadian border. But the number of vehicles or the number of vehicle parts, we don't have any statistics on it. I am sure that there are investigations underway, but I have never seen an estimate along the Canadian border.

That 10,000 to 20,000 figure cited for the Mexican border I want to make sure is an estimate based on law enforcement's impression along the border and the National Automobile Theft Bureau. It is not a Department of Justice estimate per se, but it is a combination of what Texas says, what Arizona says, what California says.

Mr. GILMAN. Do we know whether there is any substantial traffic into Canada of stolen autos?

Mr. RILEY. We don't have a good indication that there is substantial traffic, Congressman, as compared to the Mexican border. The prob-

lem is a little different. The kind of border we have with Mexico is part of an overall problem—growing.

Specifically, we have a border there—population on both sides of the border has been expanded tremendously. Law enforcement is only one of the many problems that both the Mexican Government and American Government will have to deal with.

Automobile theft is one of the pieces of this and it is much more prevalent there than across the Canadian border. I am thinking back over the past 4 or 5 years of major cases that we should have had in interstate transportation of cars across the Canadian border. And I come up with one now.

I am sure there have been some. I cannot say the same for the Mexican border.

Mr. ABBELL. One of the factors in the Mexican border is, in Mexico there is about as much duty on a car as the value of the car. So if you can get a car successfully registered in the interior of Mexico, it is worth twice what it was in the United States. That is a big incentive to steal in the United States and bring it to Mexico. There is not that same difference with Canada.

Mr. WEGLIAN. The other point I want to make is, generally law enforcement agencies along the Canadian border and the United States border work very good together in joint investigation and things of this nature, in sharing of information. And Canadian authorities, I believe the Mounted Police, do have a terminal in Ottawa by which they can inquire into NCIC for information on stolen motor vehicles.

In other words, they have their own law enforcement network in Canada, but they can interface in Ottawa and come into our data banks for information. So, generally, the law enforcement cooperation has progressed to a higher degree than it has along the other border.

Mr. SCHEUER. Do the Mexicans have the capability of interfacing in the same way?

Mr. WEGLIAN. They don't have a system to interface with. They are trying to improve their systems and make remarkable changes in their professionalization of their law enforcement efforts. But it takes time. You want to remember here that NCIC itself is only 12 years old, created in the late 1960's, and is still evolving and still developing in terms of its potential uses.

Mr. GILMAN. Has there been some obstacle set up by the Mexican authorities with regard to sharing of information?

Mr. ABBELL. Not that I am aware of. We have gotten a great deal of cooperation, especially from the present attorney general's office in Mexico. They are trying to do everything they can to assist in this effort including recommendations that the Baha, Calif., program be implemented all across the border.

The problem is on a local or regional level where there is a great deal of independence of some of the police organizations and a few of them, some of them—there have been problems of corruption along the border that is being fought by the Mexican attorney general's office especially through greater professionalization of his federal judicial police.

Mr. GILMAN. We have made great strides in obtaining better cooperation with Mexican authorities in narcotics interdiction. It would

seem to me we should be able to have a similar success with regard to auto theft.

I would hope that, in the joint mechanism on law enforcement with the Mexican authorities, that you are raising this issue. And I would assume they probably are. Is that so?

Mr. HEYMANN. Absolutely. Mr. Abbell has been down there several times negotiating on that subject.

Mr. ABBELL. Yes. It was brought up in our first law enforcement subgroup meeting at the end of May of last year. And that is what resulted in the two negotiating sessions we have had on the Motor Vehicle Aircraft Recovery Treaty. It resulted out of this law enforcement mechanism.

Mr. GILMAN. Has auto theft been made a part of that agenda?

Mr. ABBELL. Absolutely.

Mr. HEYMANN. It is perhaps the central part. It also includes airplanes and sea-going vessels.

Mr. ABBELL. It is one of the priority items under discussion.

Mr. WEGLIAN. Another reason why cooperation with Canada is at a higher level is because we share a common language for the most part. And we are able to communicate rather rapidly. But with Mexico we do have the language problem. Not necessarily right along the border, but what about a vehicle that was stolen in Oklahoma and ends up 300 miles south in Mexico? You have a language problem.

Mr. SCHEUER. The problem is the automobile cannot speak Spanish or what is the problem?

Mr. ABBELL. The law enforcement officials in this country generally cannot speak Spanish.

Mr. SCHEUER. It seems to me that is a terrible reflection on the Department of Justice. If you don't have the ingenuity to get Spanish speaking lawyers and professionals in your Department, you have a long way to go in getting your act together. I do believe that could be a problem. Is it a problem, Mr. Heymann?

Mr. HEYMANN. I am having a problem focusing for the minute on exactly how it concretely gets to be a problem. Maybe we should ask Mr. Weglian that and then I can tell you whether we have enough Spanish speaking people to handle it.

Mr. WEGLIAN. I am referring to the local authorities in Oklahoma and the equivalent authorities in a State in the interior of Mexico. I did not have reference to the Department of Justice or to the NATB which are the go-betweens or the interpreters.

Mr. SCHEUER. Let's zero in on that problem. Some police chief in some rural town in Oklahoma has a car stolen in his community, OK. Where is the problem in language communication? How does it come up?

Mr. WEGLIAN. Within the United States there is no problem because he puts that information into the computer.

Mr. SCHEUER. The car turns up in Mexico.

Mr. WEGLIAN. There will be an inquiry made on it. One of the first things you have to do, the way the NCIC works, is that the agency who makes the inquiry then has to confirm it when it gets a hit. That means it has to be able to talk to the person who originally put the record into the system.

Mr. SCHEUER. Why does he have to talk to him? Why can't he send a message on the telex, yes, car is stolen or yes, that is our car?

Mr. WEGLIAN. Whether the communication is written or oral, it has to be done. The reason you have to check is to verify the outstanding nature of the theft because the vehicles could be recovered and they may not have been taken out of the system. So one of the things that is necessary is that there be direct communications.

Now, when you are dealing with a law enforcement agency that does not speak the same language, that means it has to pass through a central source, some interpreter. In this case it means almost all of those would be funneled through Mexico City, through the Mexican Attorney General's Office over to our State Department to NATB back into our system. So it is a time factor and the difference in language causes additional people to be brought into the structure.

Mr. SCHEUER. Mr. Heymann, maybe you could look into this problem. It does not seem to me that that should be a problem. And as they have all kinds of computerized interface, miniature electronic computers—you can pick up almost any magazine and you can see advertisements of computers that you put something in in English and it goes out in seven different languages.

You can buy them for a couple hundred bucks. Give us some kind of report on this problem. If your Department focused a little attention on it maybe you might figure out a way of short circuiting some of this elaborate involvement of extra people and extra systems and what not.

If it is as complicated as you say it is, I can't believe sufficient attention has been focused on it because it should not be that much of a problem.

Mr. HEYMANN. We will be happy to [see p. 374].

Mr. SCHEUER. We will hold the record up for 10 days or 2 weeks to let you get a record in.

The strength of the chain is the weakest link and if we have tens of thousands of cars stolen and taken to Mexico and if the system is falling down because some guy can't call some other guy in Spanish, on a cost benefit basis, we would be well advised to make an investment in time and efforts to solve that communications problem.

Mr. HEYMANN. The first thing I will do is cross examine Mr. Weglian and see if that is really the problem.

Mr. SCHEUER. You ought to cross examine him in Spanish.

Mr. GILMAN. Mr. Heymann, would your Department have any specific statistics with regard to whatever information is available on vehicles recovered from Canada and vehicles recovered from Mexico. Could you provide that?

Mr. RILEY. I will make it available. You are specifically interested in—

Mr. GILMAN. I am interested in the number of stolen vehicles that have been recovered in Canada and in Mexico for the past few years so we have an indication of the extent of this. I would like to include that in this portion of the record.

Mr. HEYMANN. The Bureau will provide what it can on that [see p. 376].

Mr. GILMAN. Mr. Heymann, what information do you have with regard to stolen vehicles being shipped overseas?

Mr. HEYMANN. We believe it is substantial. I don't know whether we have any figures that adequately document it. We believe it is substantial, the motivation of it being the same reason Mr. Abbell mentioned earlier with regard to Mexico. And I mentioned differences in the value of a car here and in certain parts of the world attributable to their local duties.

Mr. RILEY. As a recent example—we don't have good figures—however, on April 24 of this year, Customs, U.S. Customs agents called our Newark office late in the afternoon and said they discovered there were certain cars, a shipment bound from this country to Kuwait that appeared to have altered VIN's.

Our agents descended upon the loading dock, they checked these cars out. They determined that all of a 100-car shipment were stolen vehicles. Investigations indicated there were 24 other cars to complete the 100-car shipment in a warehouse in New York. These cars were all seized then along with two stolen shotguns and some other items in the warehouse indicating a commercial theft operation underway.

So, what we had were 100 cars, most of which were stolen out of the State, being shipped overseas to a Third World country. So there is a problem there. The scope, the magnitude of it, I just don't have that to give you now. But it is a problem, we know.

Mr. GILMAN. Again, Mr. Heymann, if you could provide us with whatever statistical information you might have for the past few years with regard to any stolen vehicles being shipped or recovered overseas, we would welcome having that. I would ask it be made part of the record at this point.

Mr. HEYMANN. We will check with Customs on that [see p. 374.]

Mr. ABBELL. If I may, we are beginning to see the problem in reverse. Two days ago I received a call from a U.S. attorney who said he was investigating the theft of 19 Mercedes from Germany and Italy which were in his district and he was asking me to help him get witnesses from Italy and Germany for the prosecution in connection with those stolen Mercedes. So it is beginning to come back to us in this way.

Mr. GILMAN. I will be pleased to yield to our subcommittee chairman.

Mr. YATRON. We have had some reports that approximately 50 automobiles a day are being shipped out of Miami to South America. Is there any truth to that?

Mr. WEGLIAN. Stolen?

Mr. YATRON. Yes.

Mr. WEGLIAN. We have no information.

Mr. RILEY. I know nothing about it.

Mr. HEYMANN. We can also give you at least a guess as to whether there is any basis for that by checking with our Miami law enforcement people.

Mr. YATRON. We received our information from the Senate Investigating Committee.

Mr. GILMAN. Mr. Heymann, when we conducted the hearings in New York there was some testimony that those who were shipping overseas would make use of the contractor and drive the vehicle up at the last minute. They would then load it on the ship and with very

little checking accomplished. Isn't there some present requirement for a bill of lading indicating what is being shipped overseas?

Mr. HEYMANN. There are limited requirements now. We would propose that they be extended under this bill.

Mr. CULVER. At the present time there is a requirement for a shipper's export declaration, but there is no requirement that the declaration have the VIN the vehicle's identification number of the auto being shipped.

Mr. GILMAN. You can just list that you are shipping 20 Cadillacs and you don't have to indicate any serial numbers?

Mr. CULVER. Under the present Commerce Department census regulations there are no requirements. We did have an interim requirement for 6 months for this to be done, but that time has already expired.

Mr. SCHEUER. Could the Commerce Department change those regulations and require that the VIN's be registered without legislation? Could they do that on their own initiative?

Mr. CULVER. I believe the Commerce Department could do that, Mr. Chairman, if they chose to do so.

Mr. SCHEUER. And you believe that would be helpful?

Mr. CULVER. That would definitely be helpful if they chose to do that.

Mr. WEGLIAN. They can require the information, but unfortunately under their disclosure law they can't tell anybody too much about it. This is why the bill gives that authority to Customs, so that a law enforcement agency has that authority and can make proper use of it. The census regulation is for a very valid purpose. It is to collect information about the value of goods that are leaving the country for export-import balances and that is the purpose of it. So, it is not interested in what Cadillac left the country. It is only interested that a 1978 Cadillac left the country having a value of \$3,000 or \$5,000 or whatever it is so they can total that in as an export and generally measure the export market for the use of different types of property.

A shippers export declaration has to be filed for all forms of property leaving the country, not just for automobiles.

Mr. GILMAN. There was also some testimony in our New York City hearing with regard to shipping by enclosed crates. I have forgotten the term they used—where they load these metal containers, sea containers I guess they call them, on board ship.

They are sealed and there is no opportunity to examine them. Do you have any recommendations with regard to what can be done to give our law enforcement people an opportunity to make proper inspection and verification of what is in the sea container?

Mr. WEGLIAN. It is my understanding that we do have the right to open these containers if we have some reason to open them. But it is a question of suspicion, the degree of suspicion warranting the cost to the person in regard to determining whether these containers have been used for shipping stolen motor vehicles.

Mr. GILMAN. There was testimony that parts were being shipped overseas in this manner. There was no opportunity to inspect or get verification on its origin.

Mr. WEGLIAN. I heard that before, Congressman, but there are millions of pounds of property that is being shipped overseas and unless

you have some probable cause to believe that that particular container contains something illegal, it is just not quite reasonable to tear it apart to look into it, I would imagine. But I would think the Customs Service would be in a much better position to answer that question.

Mr. GILMAN. In the testimony we heard, there was objection to tearing apart containers because it delayed the ship. There was cost in taking it apart and putting it back together again and this created a problem for law enforcement. I was wondering whether the Department had addressed that problem or not.

We have the same problem in narcotics.

Mr. HEYMANN. Mr. Gilman, it would be a problem that Customs would have to face. And the best way for us to give you an answer on that is to ask Customs whether there is a problem there and to get back to you with it.

Mr. GILMAN. Would you have an interagency task force that works on this problem?

Mr. HEYMANN. We have an interagency task force that works on the problem of motor vehicle theft. But the overseas aspect, and particularly the type of questions you are asking, I take it have not been taken up with Customs.

Mr. WEGLIAN. Not the practical investigative problems.

Mr. GILMAN. I would hope at your next interagency task force meeting you could take up these issues and give us any recommendations that might be beneficial to this legislation.

Mr. HEYMANN. I hope we can give you recommendations within the time you are keeping the record open. We will be in touch with Customs and see what they have to say.

Mr. SCHEUER. I have one last question and then we will move on. You mentioned, Mr. Heymann, on page 15, right in the middle, that because the uniform crime reports don't include listings of off highway vehicles as motor vehicles, you can't provide concrete statistics on the scope of the theft problem. Is a change in the uniform crime reports indicated so that you can report off highway vehicle theft?

Mr. HEYMANN. Uniform crime reports are kept by the FBI so let me ask Bill what it would take whether that would be right and what it would take to change it.

Mr. RILEY. I can't give you a straight answer because this is not my field, uniform crime reports. We can find out, and let you know. But I am not prepared right now.

Mr. SCHEUER. Margaret Durbin, minority staff?

Ms. DURBIN. General Motors will be testifying later and I will quote them as follows. "Another factor to be considered is that not all cars need high levels of security. Some cars are not attractive to thieves."

Would you comment as to whether or not the crime statistics bear this out?

Mr. HEYMANN. The answer to that is yes. I thought as we were listening to Ms. Claybrook talk that as we give more and more protection to more valuable cars, we may find we are moving thieves into the less valuable cars.

The answer is certainly some cars are much more attractive to thieves than others. I had the good fortune never to have a car that we own

stolen. And I had an aunt who used to make it a practice to leave the keys in it with the motor running in the hope it would be stolen and she never had her car stolen.

Ms. DURBIN. I won't ask what kind of car it was.

Mr. HEYMANN. It was not an attractive car.

Ms. DURBIN. In the interest of keeping costs down both for consumers and auto manufacturers, shouldn't this be considered in this legislation?

Mr. HEYMANN. It depends. At the time, as we are talking about vehicle identification numbers as the sharp focus and the immediate focus, we are talking about a device and a proposal so inexpensive and with such decent if not high prospects of success, that I can't imagine we would want to exclude any category of new cars from the requirement. It would be within the power of the Department of Transportation to do that, but I can't imagine that you would want to—if we are talking about \$5 or \$15 per vehicle—eliminate the smallest compacts then.

Ms. DURBIN. What about the locking device requirement?

Mr. HEYMANN. I would be speaking for the National Highway Traffic Safety Administration and I don't know what they would do. I could imagine you might want to have different requirements for different cars in that area.

Mr. YATRON. In the interest of time I have a few additional questions. May I submit them in writing for response?

Mr. SCHEUER. We will hold the record open for another 2 weeks. We appreciate your time and efforts and patience and coming and talking to us. We have known you for a long time and your testimony and your answers were so interesting. Thank you so much.

[Testimony resumes on p. 392.]

[The following letter was received for the record:]

Department of Justice
Washington, D.C. 20530

JUL 21 1980

Honorable James H. Scheuer
Chairman, Subcommittee on Consumer
Protection and Finance
House of Representatives
Washington, D.C. 20515

Dear Congressman Scheuer:

During the testimony of Assistant Attorney General Philip B. Heymann on June 10, 1980 concerning H.R. 4178, The Motor Vehicle Theft Prevention Act, several questions were asked of Mr. Heymann for which the answers were not immediately available and it was indicated that the Department would furnish responses to those questions in writing. In addition, several additional questions which were not asked at the Hearing were subsequently furnished to Mr. Heymann for appropriate response. Attached hereto are the questions asked of Mr. Heymann both during and subsequent to his testimony and our responses thereto. It is requested that this material be made part of the record.

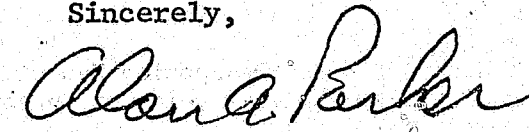
I would also like to advise that during the preparation of the draft for the revised treaty for the recovery and return of stolen vehicles, which is presently being negotiated with the Republic of Mexico, this Department attempted to solicit the advice and recommendations of the affected private sector as well as the state and local law enforcement authorities for the States of California, Arizona, New Mexico and Texas. Pursuant to our request the California Department of Justice hosted a meeting in San Diego on June 28, 1979. Each Attorney General for these border states was asked to seek representation at the meeting not only from his own Department but also from the State Police, the State Motor Vehicle Department, and

hopefully two municipal or county law enforcement agencies in his state which were near the Mexican border. In regard to Texas we specifically suggested that the Police Departments for the cities of El Paso and/or San Antonio be invited. Whether these Departments were actually contacted, we do not know.

Forty officials did attend the San Diego meeting. Besides the representatives of the four state Attorneys General, the following agencies were represented: California Highway Patrol, San Diego Police Department, California Department of Motor Vehicles, Arizona Department of Public Safety, Tucson Police Department, New Mexico State Police, Texas Department of Public Safety, National Automobile Theft Bureau, United States Department of State, United States Embassy in Mexico City, United States Consulate in Tijuana, United States Attorney's Office for the Southern District of California, Federal Bureau of Investigation, and Criminal Division of the United States Department of Justice.

We hope the information we are providing will be of benefit to your Subcommittee in facilitating the enactment of H.R. 4178.

Sincerely,



Alan A. Parker
Assistant Attorney General

Attachments

- Q. What problems do containerized shipments cause the United States Customs Service?
- A. The cost and time required to examine containerized imports does present a problem for Customs and Customs therefore examines this cargo on a selective basis. Customs would not open containers to inspect exports unless Customs had reason to believe that the cargo was being exported illegally or Customs was conducting a random spot check.
- Q. Are you in receipt of information that 50 stolen motor vehicles per day are being exported from the port of Miami?
- A. We are not in receipt of any such information. While stolen vehicles are undoubtedly being exported from the Miami port, we doubt it is at such a rate since available statistics show that approximately only 100 used motor vehicles are exported from Miami on an average daily basis.
- Q. What statistics does the Justice Department have on the number of stolen vehicles being exported to foreign countries?
- A. The Department has no figures which accurately reflect the total number of stolen vehicles which are exported from the United States. We have heard that 10,000 to 20,000 stolen vehicles may be taken into Mexico each year. As a best guess, we would estimate the total number of stolen vehicles exported

nationally to be less than 25,000. This figure would include those taken into Mexico. In terms of the 1.1 million vehicle thefts in 1979, this would mean that approximately 2.25% may have been exported. Only a small portion of these vehicles are ever recovered. They are normally late model vehicles or the more expensive luxury vehicle. Consequently, they represent a substantially higher proportion of the cost factor per theft.

- Q. What statistics does the Department of Justice have on motor vehicles stolen in the United States and recovered in Mexico and Canada.
- A. The Department itself maintains no statistics on such recoveries. However, to be as helpful as possible we contacted several different agencies and obtained the information set forth below. It should be noted that it is highly likely that the data for recovered vehicles along the Mexican border could be duplicative since more than one of the agencies may have been involved in a particular vehicle's recovery. Consequently, the figures should not be totaled together. However, we believe they are an accurate reflection of the scope of the recoveries at different regions along the Mexican border and also indicative of any trends for those perspective regions.

I Canada

United States Customs Service advises that they recovered the following number of stolen motor vehicles trying to reenter the United States from Canada:

1977*	-	3
1978	-	6
1979	-	17

(*It should be noted that the U.S. Customs Service procedure for checking license plates on incoming vehicles was not fully operational until October 1977.)

Royal Canadian Mounted Police, Ontario Provincial Police and Quebec Provincial Police forces advised they keep no records which reflect their recovery of motor vehicles stolen in the United States. All of these forces advised, however, that a very large number of stolen motor vehicles are handled on a local informal basis between the United States and Canadian law enforcement agencies along the United States - Canadian border.

The Canadian Police Information Center has recorded "hits" on NCIC for motor vehicles stolen in the United States based upon an inquiry made by a Canadian law enforcement agency. During the past three years the following "hits" were recorded. (We are unable to say whether the vehicle itself was always recovered but such is highly likely in most instances.)

June 1, 1977 - May 31, 1978	289
June 1, 1978 - May 31, 1979	385
June 1, 1979 - May 31, 1980	354

II Mexico

United States Customs Service advises that they recovered the following number of stolen motor vehicles trying to reenter the United States from Mexico:

1977*	229
1978	471
1979	522

(*It should be noted that the United States Customs Service procedure for checking license plates on incoming vehicles was not fully operational until October 1977.)

The National Automobile Theft Bureau (NATB) provided the following information:

<u>TIME</u>	<u>TOTAL</u>	<u>PACIFIC REGION</u>	<u>SOUTHWEST REGION</u>
Jan. 1 - June 12, 1980	285	252	33
1979	438	354	84
1978	354	N.A.	N.A.
1977	289	N.A.	N.A.

The Pacific Region covers California and Arizona. The Southwest Region would include Texas and New Mexico.

The United States Embassy in Mexico City and the United States Consulates in Tijuana, Ciudad Juarez, and Matamoros advised they do not keep a statistical record of the recoveries in which they participated.

The Texas Department of Public Safety advised that its four agents (recently increased to five) which work the Mexican border in regard to motor vehicle theft have made the following recoveries of stolen vehicles from Mexico:

1978	84
1979	93
1980 (as of June)	72

These figures do not include the recoveries made by other municipal or county law enforcement officials in Texas wherein the Texas Department of Public Safety did not participate.

The New Mexico State Police advised that they do not keep statistics on the number of vehicles stolen in New Mexico which were recovered in Mexico.

The Arizona Department of Public Safety advised that their agency was able to recover the following number of vehicles stolen in Arizona from Mexico:

1978	-	4
1979	-	4
1980 (until May 31, 1980)		0

Checks with appropriate municipal and county law enforcement agencies in Arizona revealed they maintain no statistics on such recoveries accomplished by such agencies. NATB investigators working the Arizona border recovered the following number of vehicles:

1978	-	35
1979	-	25
1980 (until June 12, 1980)		15

A large number of these NATB recovered vehicles had been actually stolen in California and transported to Mexico through Arizona.

The California Department of Justice advised that it would attempt to collect the desired information for recoveries by California law enforcement agencies but pointed out that no central repository of such information existed. As of the date of this letter, the compilation of the information has not been accomplished. It is our understanding, however, from past conversations, that the number of recovered vehicles from Mexico along the California border is close to a thousand a year. Of all the border states, California seems to have established the best working relationships to accomplish such recoveries and returns.

Q. What language problem does the Federal Government have in dealing with the motor vehicle theft problem along the Mexican border?

A. The FBI and the U.S. Customs Service, which are the two primary federal agencies which get involved with stolen motor vehicle problems, have a sufficient number of bilingual personnel along the Mexican border and in Mexico. Hence, the language difference referred to in our testimony is not itself a problem of the federal law enforcement agencies. The reference to the difference in language was intended to raise an additional factor which could help explain the differences in the nature of the problem between our respective borders with Canada and Mexico. Nearly 99% of all law enforcement in the United States relating to stolen motor vehicles is performed by state and local officials. Many of these jurisdictions, the farther you go away from the Mexican borders, do not have available to them at all times bilingual personnel. Moreover, law enforcement functions best when there can be rapid and accurate communications between law enforcement agencies. When such agencies share a common language, it is less cumbersome for them to communicate promptly without the need for an interpreter.

Accordingly, along our border with Canada the common language of English is available to most law enforcement agencies on both sides of the border. Hence, the ease of communication nurtures continuing informal relationships which are essential for effective police work. Moreover, Canadian law enforcement officials have the ability to directly make an inquiry of the National Crime Information Center's (NCIC) files relating to stolen property. They can also enter in NCIC property, including vehicles, which is stolen in Canadian. This is accomplished through the Royal Canadian Mounted Police having an NCIC terminal in Ottawa, Canada. A Canadian law enforcement official is thus able to inquire on a suspicious vehicle through a Canadian law enforcement communication system to Ottawa where such an inquiry is then manually made of NCIC. Besides going through Ottawa, a Canadian officer could ask an officer in a United States law enforcement agency across the border to make such an inquiry for him. The method which gives him the better service would normally dictate which method he uses.

With Mexico there is presently no NCIC terminal in Mexico with inquiry or entry capability. Nor has Mexico developed its own computer communications network for its law enforcement agencies. Accordingly, at present inquiries from Mexican law enforcement officials must be channeled through a law enforcement agency in the United States. The California Department of Justice has established a "hot line" by which Mexican law enforcement officials in Baja, California are able to call Sacramento directly whereupon a computer operator who is bilingual will make the inquiry in the California computer system which interfaces with NCIC and promptly notify the Mexican officials of the results. Over 90% of the "hits" have resulted in recovered vehicles.

Q. What are the various difficulties in including "off-highway vehicles" used in the construction and farming industries as motor vehicles for purposes of the Uniform Crime Reports?

A. For the purposes of Uniform Crime Reporting, a motor vehicle is generally defined as a self-propelled vehicle that runs on the surface and not on rails. Examples of motor vehicles are automobiles, trucks, buses, motorcycles, etc. The theft of a motor vehicle is considered a Crime Index offense. The Program collects statistics on motor vehicle thefts in three subcategories; automobiles, trucks and buses, and other vehicles.

Specifically excluded from the motor vehicle category are such items as farm equipment, construction equipment, airplanes, and motor boats. Theft or attempted theft of these types of items are scored as a larceny-theft category, also a Crime Index offense. Items such as the foregoing are not identified specifically within the Program; therefore, the current collection mechanism does not allow for identifying the theft problem connected with such off-street machinery.

Q. How will increased authority for a Customs officer help?

A. Presently, a Customs officer has authority only to stop and examine outgoing commercial shipments under authority of the Export Administration Regulations. However, in situations involving stolen vehicles which may be departing the United States, one can seldom articulate facts sufficient to warrant a stop of such a vehicle unless there has been considerable evidence gathered beforehand indicative of a commercial exportation of said vehicle. In view of the high amounts of normal vehicular traffic across the land borders, such a purpose is difficult to discern. In the absence of evidence of a commercial exportation, any stop would necessarily be made under the citizen's arrest law for that state and at the personal risk and liability of the Custom's officer. Title IV of H.R. 4178 would rectify this situation by giving our Custom's officers the clear legal authority to better detect stolen vehicles attempting to either depart or enter the United States and arrest such individuals responsible for such illegal activity.

Q. How will a Customs officer know or suspect that a vehicle has been stolen?

A. There are several ways by which a Customs officer may acquire such information. He may have heard a broadcast of a "look out" for a particular vehicle which has been actually reported as stolen. He may have a tip from an informant that a certain type of stolen vehicle is going to be taken across the border at a certain time. He may be working off a "profile" of stolen vehicles. In this situation he checks out the vehicles meeting the profile characteristics more closely. Finally, in running a license plate and/or VIN check on the vehicle through the Treasury Enforcement Communications System (TECS) he may get a "hit" on a vehicle which has been reported stolen and has been entered into the National Crime Information Center (NCIC) by some law enforcement agency in the United States.

In regard to exports at our seaports the Customs officer would be given authority under this legislation to require the VIN of the vehicle and some proof of ownership before exportation. The VIN would be checked against NCIC. In terms of the land borders, all incoming vehicles could be checked out because they, as at present, can be required to stop. Departing vehicles could be stopped on a random basis, profile basis, or other suitable method which does not needlessly impair vehicular traffic across the border.

Q. Could a Customs officer stop a vehicle if it is being driven by a known car thief?

A. Under existing law a Customs officer would have little authority to stop such a vehicle departing the United States without knowing other relevant factors. Under the new authority given by the bill a Customs officer would have the authority to stop such a vehicle once it was committed to departing the United States. Of course, under existing law, the Customs officer does have adequate authority to stop a vehicle entering the United States. However, if it is determined that the vehicle is stolen, the vehicle and subject must be promptly turned over to a law enforcement agency which has jurisdiction over the stolen vehicle since Customs presently lacks such criminal jurisdiction.

Q. Does the Justice Department have any data which would substantiate the contention that marked parts will decrease chop shop activity or vehicle theft activity?

A. Since component marking has not been instituted by the manufacturers, it is impossible to obtain such data outside of the two small pilot projects which are being independently conducted by the Ford Motor Company and General Motors Corporation. As indicated in Ford's testimony the pilot project seems to indicate more than a 10% decrease in vehicle thefts. But the pilot project has not been operating a sufficient time to reach a definite conclusion.

There is however considerable evidence which supports the validity of component numbering. Law enforcement agencies are almost unanimous about its need and value. Thieves testify they throw away any parts with traceable numbers because of the increased risks such provide.

While the statistics available on component identification are presently limited, an examination of the Uniform Crime Report (UCR) statistics on recovered stolen property may be enlightening. While the value recovery of motor vehicles has dropped from 90% to around 60%, this is still very favorable compared to all other forms of stolen property for which the recovery rate is only 10% of its value. While the VIN on the vehicle is not the only reason for the vehicle's high recovery, it certainly assists. The three other major factors contributing to the higher recovery rate of vehicles are the annual registration of vehicles, the titling of vehicles, and the fact that these vehicles are operated upon the public roadways where they are subject to the view of law enforcement. This is in contrast to other personal property which is normally located upon private property and is concealed from law enforcement's view. Numbering of component parts supported by licensing of used parts dealers, reasonable record keeping, and physical inspection of such records and inventory by law enforcement personnel at reasonable times will undoubtedly help deter and detect illegal activities relating to such numbered parts in the same manner as it has helped with vehicles.

- Q. If identification numbers are placed on major parts, as provided in the legislation, how would a Customs officer at the New York border know that a part came from a stolen vehicle in California?
- A. While a Customs officer would probably only be inquiring upon used parts which are being exported where he has some suspicion about their legality, he could determine whether the part is stolen by making an inquiry with the National Crime Information Center (NCIC). Of course, if the part was missing its identification number, he would have sufficient evidence of a crime right from that fact. At present NCIC stores the VIN of all stolen vehicles. Hence, if the identification number on the part is the full VIN then a positive check can readily be accomplished. As the component identification concept becomes more formalized, it is possible that the identification number for the component part will be a derivative of the full VIN. If such occurs, it is highly likely that NCIC will be reprogrammed to store the derivative VIN as well as the full VIN in order to accommodate inquiries on numbered parts.

- Q. So-called gas-guzzlers are driven to Miami for shipment to such countries as Venezuela, where gasoline is 40 cents a gallon, or rented cars are shipped to the Bahamas. Another major port is in Belize. Do you have any comments or reports on such activities?
- A. We have heard similar allegations not only for those countries but other countries in Latin America, as well as countries in the Middle East, Far East, and Africa. To the extent we have sufficient information an appropriate investigation is initiated into such allegations.
- Q. Do you think such activity could take place without corruption of officials either in this country or the importing countries?
- A. In view of the fact that there is at present no obligation to furnish any information to a United States agency which would identify a vehicle being exported with sufficient particularity, we seriously doubt whether there is presently any need to bribe any public official in the United States. To the extent that a foreign country has laws relating to the importing of such vehicles and to the extent the importer desires to avoid compliance with such laws, and to the degree that such laws may be enforced by the foreign country, it is possible that corruption of some foreign officials may be utilized by international theft rings in order to facilitate entry of such vehicles into the foreign country.

- Q. I understand Mexico imposes a 100% import tax on all vehicles less than three years old. Would the number of cars being taken into the interior of Mexico be due to lax law enforcement or possible corruption?
- A. To the extent that Mexican officials do not collect the proper tax owed on such vehicles when they are registered in Mexico and taken out of the "free zone" into the interior of Mexico, it is not unreasonable to assume that some public officials may not be vigorously enforcing such laws or, if such laws are vigorously enforced, that someone is corrupting some public official to avoid paying the proper tax.
- Q. Is there any evidence that cars are being traded for narcotics along the Mexican border?
- A. We are aware of instances where we believe such has occurred. But we are unable to state that we have evidence of a continuing pattern of such exchanges.
- Q. Could you estimate the dollar amount of stolen parts crossing into Canada and the extent of the problem?
- A. Based upon present information available to us we are unable to give any estimate for either of these items.

Mr. SCHEUER. We will now have a panel of two experts, Mr. G. R. Williams, vehicle regulations manager, environmental safety engineering of Ford Motor Co., and Mr. David E. Martin, director of automotive safety engineering for General Motors. Your prepared testimony will be included in the record. We are running late so perhaps it would be advisable for you to chat with us covering the highlights of your testimony and adverting to anything you have heard this morning from us or from the witnesses.

And then we will have some questions. So, Mr. Williams, you go ahead first.

STATEMENTS OF G. R. WILLIAMS, VEHICLE REGULATIONS MANAGER, ENVIRONMENTAL AND SAFETY ENGINEERING, FORD MOTOR CO., AND DAVID E. MARTIN, DIRECTOR, AUTOMOTIVE SAFETY ENGINEERING, ENVIRONMENTAL ACTIVITIES STAFF, GENERAL MOTORS CORP.

Mr. WILLIAMS. Thank you, Mr. Chairman. We are concerned about the incidence of vehicle theft and its impact on the total cost of owning a Ford vehicle. Because of this concern we have voluntarily instituted a number of vehicle security improvements including improved door and trunk locking mechanisms to thwart the use of special tools such as "slim-jims" and "slam pullers" and strengthened ignition lock cylinder retention in the steering column. These actions we believe have proved successful in deterring or frustrating the amateur or joy-ride thief. However, it is important to distinguish between the amateur thief and the increasingly sophisticated methods of the professional.

Ford has a continuing program designed to keep ahead of the professional thief. Door lock improvements, anti-"slim-jim" shields in the doors and strengthened trunk lock designs have deterred the professional. However, we must candidly admit that new antitheft devices and actions are effective for only a limited period of time—until the professional thief devises tools and techniques to defeat them.

Further, our efforts are less effective because the details of new anti-theft devices must be made available to dealer service facilities, independent repair shops, locksmiths, car rental agencies and others, giving the professional thief access to the design information needed to defeat these new devices.

Compared to vehicle antitheft design improvements—which in time are defeated by professional thieves—we believe a more effective approach may be in the area of vehicle identification. To test this theory, Ford initiated an experimental program to label major components on its 1980 luxury cars.

In addition to the traditional vehicle identification number (VIN) placed on the engine, transmission, left-front door, and dash panel, a unique label containing the VIN is affixed to six other major components of the 1980 Lincoln Continental and Continental Mark VI.

These cars were selected because of their high theft jeopardy and because they were all new vehicles whose parts were not interchangeable with previous models. We believe our programs will determine the value of components identification as a method of avoiding vehicle theft and reducing the cost of ownership to the consumer.

In our prepared statement we have stated why we are opposed to enactment of title II in the Motor Vehicle Theft Prevention Act. This is a very brief summary of my statement. I hope it will allow you to ask me any other questions you may have on our statement.

[Mr. Williams' prepared statement follows:]

STATEMENT OF G. R. WILLIAMS
 Vehicle Regulations Manager, Environmental and Safety Engineering
 Ford Motor Company
 Before the Subcommittees on Consumer Protection and Finance and
 Inter-American Affairs, U.S. House of Representatives
 June 10, 1980

I am Jerry Williams, Vehicle Regulations Manager, Environmental and Safety Engineering Staff, Ford Motor Company. We welcome the opportunity to describe Ford's programs aimed at reducing vehicle theft and to offer some general comments on this subject.

We are concerned about the incidence of vehicle theft and its impact on the total cost of owning a Ford vehicle. Because of this concern, we have voluntarily instituted a number of vehicle security improvements including improved door and trunk locking mechanisms to thwart the use of special tools such as "slim-jims" and "slam pullers" and strengthened ignition lock cylinder retention in the steering column. These actions we believe have proved successful in deterring or frustrating the amateur or "joy-ride" thief. However, it's important to distinguish between the amateur thief and the increasingly sophisticated methods of the professional.

Reducing professional theft represents a more complex problem. Professional thieves utilize sophisticated tools and techniques to gain access to vehicles. They have highly organized affiliations that either change a vehicle's identity or dismantle a vehicle into its components. And they maintain a network of experts that buy or sell vehicles or their components.

Although difficult to precisely quantify, it appears that from the declining recovery rate of stolen vehicles, professional motor vehicle theft has increased in the past several years. We believe this is due to a combination of its high profitability and the low risk of prosecution or incarceration.

Ford has a continuing program designed to keep ahead of the professional

thief. Door lock improvements, anti-"slim-jim" shields in the doors and strengthened trunk lock designs have deterred the professional. However, we must candidly admit that new anti-theft devices and actions are effective for only a limited period of time -- until the professional thief devises tools and techniques to defeat them. Further, our efforts are less effective because the details of new anti-theft devices must be made available to dealer service facilities, independent repair shops, locksmiths, car rental agencies and others, giving the professional thief access to the design information needed to defeat these new devices.

Compared to vehicle anti-theft design improvements -- which in time are defeated by professional thieves -- we believe a more effective approach may be in the area of vehicle identification. To test this theory, Ford initiated an experimental program to label major components on its 1980 model luxury cars. In addition to the traditional vehicle identification number (VIN) placed on the engine, transmission, left-front door, and dash panel, a unique label containing the VIN is affixed to six other major components of the 1980 Lincoln Continental and Continental Mark VI. These cars were selected because of their high theft jeopardy and because they were all-new vehicles whose parts were not interchangeable with previous models. The components identified are each front fender, the right front door, the hood, the deck lid and the rear body structure.

An integral aspect of this experimental program involves working with law enforcement officials to determine the effectiveness of component identification in reducing thefts of these vehicles and in thwarting "chop shop" operations. Based on data obtained from the FBI, the theft rate of these vehicles (through April, 1980) is approximately 10% less than 1979 models and the vehicle recovery rate is slightly improved (based on thefts compared to vehicles sold).

Although these results are encouraging, it's still too early to determine the role the additional component identification has played. To be truly effective, of course, a component identification program must be utilized not only by law enforcement officials as evidence in the apprehension and conviction of thieves and illegal salvage yards

but must be recognized and utilized by insurance companies. To date, we are not aware of any action insurance companies have taken to reduce insurance premiums of Ford vehicles included in the experimental program. The competitive system will work best if demonstrated results from anti-theft measures undertaken by manufacturers reduce the cost of ownership. Also, car purchasers, insurance companies, salvage yards and car dealers must be encouraged to utilize the identification labels to establish the legitimacy of the vehicles.

To assure high program visibility, Ford is working with the Department of Justice, the FBI, the Department of Transportation, the National Automobile Theft Bureau, the American Association of Motor Vehicle Administrators, the International Association of Chiefs of Police and the Automotive Dismantlers and Recyclers of America. We have included a description of the program in two service publications -- "Body Repair Tips" and "Shop Tips" -- which Ford distributes nationally to independent body repair shops, Ford and Lincoln-Mercury dealers, insurance companies and wholesale distributors.

Another approach to making it more difficult to alter the vehicle identification is through the "manufacturer's statement of origin" (MSO). Ford revised its MSO beginning with 1979 model vehicles in such a way as to ensure that alterations and photocopies could be detected -- leading the industry in this effort. This document -- like a birth certificate for an individual -- is used for titling a new vehicle. With 1980 model vehicles, additional security improvements for MSO's were developed in conjunction with officials from Massachusetts, the American Association of Motor Vehicle Administrators, the document security industry and auto manufacturers -- and are now utilized industry-wide. This action will make it extremely difficult for thieves to utilize the MSO to falsify vehicle identification. In order for these measures to have substantial impact, states should adopt for their vehicle titles security features equal to those incorporated in the MSO.

These actions represent Ford's principal efforts to date targeted at reducing professional thefts. If the experimental parts identification program proves successful in theft reduction, Ford would expand this program. We plan to continue various design

actions aimed at theft reduction because this is one area where competitive pressures are at work. As stated earlier, reducing theft reduces cost-of-ownership and is an important factor in maintaining customer loyalty. Competitive pressure will increase as more insurance companies adopt make and model rating systems to establish insurance premiums based on actual loss experience reflecting damageability, repairability and historical theft rates of the vehicles.

It is important to again emphasize that vehicle security actions are but one part of the vehicle theft picture. We would suggest the subcommittees' consideration of anti-theft measures in a number of other areas. For example, one program already being implemented in New York requires insurance companies to inspect the vehicle before issuing insurance policies in New York City. This precludes an individual from insuring a non-existent vehicle and then claiming theft -- erroneously inflating theft statistics and raising cost-of-ownership. Another potentially effective program has been instituted by the states of Washington and Illinois. Laws in these states require vehicle dismantlers, recyclers and salvage yard operators to keep records of transactions and state inspectors are sent periodically to review the operators' records. The Washington state police report that the recovery rate for Ford vehicles in 1979 was over 90% -- compared with 60% nationwide for all vehicles indicating that professionals have drastically reduced operations in that state.

None of these programs will be sufficiently effective without increasing the degree of attention paid to vehicle theft by law enforcement agencies (including increased personnel) and without more severe criminal penalties and certainty of punishment for trafficking in stolen vehicles or parts. The fact is, it is merely a misdemeanor in some states to alter, obliterate or remove a VIN or to disguise the identity of a vehicle for fraudulent purposes. We believe these actions should be subject to federal penalties. It is for these reasons that Ford supports enactment of Titles III and IV of the "Motor Vehicle Theft Prevention Act."

Finally, we must work to increase the public's awareness of its responsibility. According to Aetna Life and Casualty about 20% of stolen cars are driven away with keys left in the ignition and in another 20%, the keys were "hidden" (in the glove compartment, under the floor mat, etc.).

There is some legitimate concern that the improved anti-theft door locking systems present real problems to owners. Recently Ford met with a local major insurance carrier who indicated that it has claims for vehicle damage when owners inadvertently locked themselves out of their cars. We'd like to avoid a situation where the goals of theft-prevention are in conflict with customer convenience.

In summary, Ford believes that automotive manufacturers will continue to improve the vehicle security features of their products. This can best be accomplished by allowing manufacturers to maintain their flexibility to react to changing theft patterns. Specific theft standards, as some have suggested, could even make it easier for the professional thief to gain access to needed design information and encourage uniformity among manufacturer approaches. Therefore, Ford is opposed to Title II of the "Motor Vehicle Theft Prevention Act."

Thank you for this opportunity to discuss Ford's views on vehicle theft. I would be pleased to answer any questions you might have.

Mr. SCHEUER. Why don't we hear from your colleague, Mr. Martin?

STATEMENT OF DAVID E. MARTIN

Mr. MARTIN. I would like to start by just itemizing some things that we believe would be the most effective solutions in this very serious problem. Increased penalties upon conviction of a theft, more vigorous law enforcement among all jurisdictions, tighter export controls, uniform vehicle titling procedures, more vigorous efforts in prosecuting auto thieves, implementation of uniform salvage titling laws, enactment of laws making it a felony to alter any manufacturer-applied vehicle identification number, establishment of a uniform vehicle theft data collection system, granting of insurance discounts to owners of vehicles equipped with special antitheft systems and educational programs to inform the public of the magnitude of the problem, its costs to society and how individuals can respond constructively.

Each measure would be beneficial but collectively they should have a significant impact on the overall problem of motor vehicle theft. Relative to the vehicle itself experience indicates the professional thief is quite adept at defeating or circumventing in time most anti-theft measures.

And I think that is evident from other testimony. Their ability to cope with new designs is enhanced by the necessity of providing details of our security features to various service and repair facilities.

Unlike bank vault security, where detailed knowledge of design and operation can be restricted to a handful of people, details of the anti-theft features of automobiles must be made widely available to those who service and maintain vehicles.

As a result, the professional thief has reasonable access to, and can be kept well informed of what countermeasures are on the car, where they are located, and even how they operate.

Unlike bank vault locks, automotive locks and ignition systems are not, and cannot, be extremely complex since they must be mass produced, must provide reliable operation through many thousands of cycles, must be convenient to use and must be easily serviced.

I was gratified to see that Ms. Claybrook in her statement alluded to the possible conflict between an elaborate security system that would frustrate a thief and one that might also frustrate service.

I share her concern that the act's obligation of rules in this area could easily be counterproductive. Clearly any antitheft approach in vehicle designing must be balanced to consider the owner and the mechanic, not just the thief.

They must be allowed to vary in design and function. In this way, the thief's task becomes more complicated since he must overcome different obstacles on various cars.

Our experience indicates that once a few antitheft device is introduced, car thieves eventually develop new theft techniques. Thus, we are confronted with a moving target that requires us to constantly adjust our aim in the development of effective countermeasures.

Again I would like to divert from my text here and just indicate that relative to regulations specifying antitheft features, I see some practical problems in terms of the way the regulations would be

drafted. Reference has been made to increasing the time it would take a thief to enter and start a car to say 10 or 20 minutes.

Indeed this would be desirable and beneficial because in many instances they can do it in dramatically less time than that. However, in writing a regulation one cannot specify that it only takes 10 minutes or that the vehicle will be theft-proof. That is clearly impractical.

If one specified that you cannot enter and start a car within 10 minutes, that preposes the existence of an objective and repeatable test for that criterion for all different systems and all different designs.

So I would be very much concerned that any regulation that might be promulgated under such authority as envisioned by this bill would have to take on the character of either a design or functional—

Mr. SCHEUER. Might it be a simple performance standard?

Mr. MARTIN. How would it be specified? Would you say that a person cannot steal a vehicle in less than 10 minutes? Then what would be the performance criteria against which this was measured? You would have to have a standard skill guidance on all different countermeasures. I would be much concerned it would take on the character of a design or functional specification which might indeed be counterproductive because it might inhibit innovation on the part of the manufacturers and even give a road map to a thief.

Mr. SCHEUER. It would encourage it if it were a performance standard? We have fire wall performance standards. We say how long a wall must resist fire. We don't tell them what the chemical makeup should be, whether it's steel or tin or aluminum. We leave it to the construction industry to meet the performance standard of that fire wall.

Why couldn't we write the same kind of standard?

Mr. MARTIN. Under those circumstances you can write an objective repeatable definition of what that fire wall test is. You can specify the combustion of the fuel. You can specify the fuel air mixture ratio and the precise circumstances under which it must meet that objective. But I am at a loss to understand how one would write a comparable objective standard that said you cannot steal a car in less than 10 minutes.

Mr. WILLIAMS. You would need a human subject and it varies.

Mr. SCHEUER. We might train Mr. Heymann.

Mr. WILLIAMS. We may pass the test, but someone else may come along and he could flunk the 10-minute test.

Mr. GREEN. In the lock industry realistically speaking locks are recognized as better or worse. Presumably there is some way to evaluate what is better or worse. Locksmiths will tell you for your home door this lock gives you the best protection, and this lock is next best, and so on down the line.

Presumably they have some basis on which to judge.

Mr. WILLIAMS. That may be true. Locksmiths also have contests in their magazines for tricks of the trade, how to circumvent locks that are made to keep the bad guys out and they pass this on in their national magazines. Even how to defeat security devices that the manufacturers have designed into their vehicles.

Mr. GREEN. I am not suggesting there is ever going to be a device that no one will ever be able to overcome. All I am suggesting is there does seem to be in the trade a feeling one can say that locking system

A is better than locking system B. Therefore there must be standards by which they evaluate.

Mr. MARTIN. I would agree that there are relative comparisons, but it is difficult to write a relative comparison into an objective performance specification.

I had not really finished summarizing my statement.

Coming onto the current or the question relating to parts marking. I think our statement makes it evident we do have an interest in this.

The statement does describe an experimental program we have on our Cadillacs. And from this I think you can see we are not opposed to parts marking with the identification numbers so long as there is a reasonable basis to conclude it will pay off for the consumer.

However, we don't believe to date there is evidence to indicate that the consumer would derive a net benefit. Again I would indicate that may not be the only way to accomplish the desired objective on chop shops. I believe Vladimar Iskovich testified early this year that under the authority of Illinois laws they were able to have a very dramatic effect on the operation of chop shops.

[Testimony resumes on p. 417.]

[Mr. Martin's prepared statement and attachment follow:]

402

Statement of
General Motors Corporation
on
Motor Vehicle Theft

to the
Subcommittee on Consumer Protection and Finance
of the
House Interstate and Foreign Commerce Committee
and the
Subcommittee on Inter-American Affairs
of the
House Foreign Affairs Committee

Presented by
David E. Martin
Director, Automotive Safety Engineering
Environmental Activities Staff

Washington, D.C.
June 10, 1980

403

Thank you Mr. Chairman. I am David E. Martin, director,
Automotive Safety Engineering, General Motors Corporation.
General Motors welcomes the opportunity to address this sub-
committee on the subject of automobile theft.

Introduction

While there are many factors involved, it seems reasonable to con-
clude that the root of the auto theft problem is the high profit-low
risk presently enjoyed by professional auto thieves. Unless something
can be done to decrease those profits or to increase the risk of
apprehension and conviction, it will be difficult, if not
impossible, to make a significant reduction in motor vehicle
theft.

In our view the most effective solutions include the
following:

- Increased penalties upon conviction of a theft
- More vigorous law enforcement among all jurisdictions
- Tighter export controls
- Uniform vehicle titling procedures
- More vigorous efforts in prosecuting auto thieves
- Implementation of uniform salvage titling laws
- Enactment of laws making it a felony to alter any
manufacturer-applied vehicle identification number

- Establishment of a uniform vehicle theft data collection system
- Granting of insurance discounts to owners of vehicles equipped with special anti-theft systems
- Educational programs to inform the public of the magnitude of the problem, its costs to society and how individuals can respond constructively

Each measure would be beneficial, but collectively they should have a significant impact on the overall problem of motor vehicle theft.

GM Efforts

Vehicle improvements are equally important and we fully intend to continue our search for effective anti-theft concepts to make it more difficult to illegally enter and start a GM car. To the extent that GM cars are stolen, our customers can suffer immediate financial loss, and inconvenience. There is a clear competitive incentive to improve the theft resistance of our cars to help us improve owner satisfaction by holding down the total cost of ownership.

Among the most effective anti-theft features introduced on GM cars are the increased number of key codes in 1967, the steering column lock in 1969, and separate keys for the door and ignition in 1974. Attachment I identifies, by model year, vehicle security improvements made by GM since 1967.

In 1980, we improved our electronic anti-theft system by adding a device which prevents the vehicle from being started after forced entry. This improved system, available as an option on a number of our full-size cars, satisfies the definition of a "passive disabling device" as specified by the Insurance Services Office (ISO). This qualifies the owner for the 15 percent comprehensive premium discount offered by ISO members and other insurance companies.

While we believe that our design changes have improved vehicle security, particularly with regard to the amateur thief, we have not been able to fully verify the individual effectiveness of each. More detailed data is needed to assess their performance than is available from most theft statistics. In 1977, in a joint project with several insurance companies, GM conducted a study to identify the range of data that is needed on a continuing basis in order to determine where improvements in anti-theft measures could be made. The survey has been made available to various state and federal agencies, as a means to encourage the development of a comprehensive auto theft data retrieval system. A copy of the survey is being submitted to this subcommittee for the record.

CONTINUED

4 OF 6

Marking Parts

Recently there has been legislative interest in marking vehicle parts as a deterrent to so-called "chop-shop" activities. Even though there is no experience to indicate that marking parts will have the desired result, a number of organizations are vigorously supporting legislation in this area.

In theory, by applying vehicle identification numbers to selected component parts, law enforcement agencies or insurance companies could determine whether specific parts came from a stolen vehicle. GM has been applying an abbreviated Vehicle Identification Number on engines and transmissions since 1968. In addition, we have evaluated a number of potential marking methods to uniquely identify other parts of the vehicle, such as the fenders, trunk lid, doors, hoods, etc. Our ground rules have been that 1) the system must resist counterfeiting, 2) the markings must resist transfer or show evidence of attempted alteration, 3) the system must be compatible with current manufacturing and assembly processes, 4) the markings must be durable and remain legible during the expected life of the car, and 5) the system must be cost effective.

The current methods of stamping or embossing, used to identify engines, transmissions and frames were judged not feasible. Laser technology provides unique identification that is difficult

to reproduce. However, based on our investigation of this process, including the use of experimental equipment on a moving assembly line, we have concluded it is impractical at the present stage of development.

Recent developments in label technology led us to implement a pilot marking program earlier this year, using a label with special security features. This experimental program should allow us to determine the feasibility and costs of labeling parts on an automotive assembly line and, ultimately, to obtain some idea of the effectiveness of marking parts in reducing vehicle thefts.

The problems encountered thus far are typical of most new programs and are not viewed as major obstacles to the program's continuation. For the balance of the 1980 model year and for the 1981 model year, six major body parts on our Cadillac Eldorado and Seville models will be marked with computer printed labels. We believe it will be necessary to mark at least 200,000 vehicles and to monitor their theft experience over a period of about three years to obtain a statistically significant measure of the effectiveness of the program. We are informing members of the insurance and law enforcement communities of our program and how to authenticate the labels. Although we are confident that the security features of the labels will not be duplicated, further evaluation of their durability, transfer-resistance and cost-effectiveness is needed.

Future Vehicle Security

As previously indicated, we believe that among the significant steps to reduce auto thefts, there are several that can be classified as non-product related. While we claim no expertise in crime prevention, from what we have been able to learn there appears to be some significant steps that could be taken that would assist in curtailing auto theft. These include increased penalties for those who deal in stolen motor vehicles and their parts and tighter procedures and surveillance when vehicles are exported.

With respect to the vehicle itself, experience indicates that the professional thief is quite adept at defeating or circumventing, in time, most anti-theft measures. Their ability to cope with new designs is enhanced by the necessity of providing details of our security features to various service and repair facilities. Unlike "bank vault" security, where detailed knowledge of design and operation can be restricted to a handful of people, details of the anti-theft features of automobiles must be made widely available to those who service and maintain vehicles. As a result, the professional thief has reasonable access to and can be kept well informed of what countermeasures are on the car, where they are located, and even how they operate.

Unlike bank vault locks, automotive locks and ignition systems are not, and cannot be, extremely complex since they must be mass produced, must provide reliable operation through many thousands of cycles, must be convenient to use and must

be easily serviced. Clearly then, any anti-theft approach in vehicle design must be balanced and consider the owner and the mechanic, not just the thief. Further, they must be allowed to vary in design and function. In this way, the thief's task becomes more complicated, since he must overcome different obstacles on various cars.

Our experience indicates that once a new anti-theft device is introduced, car thieves eventually develop new theft techniques. Thus, we are confronted with a moving target that requires us to constantly adjust our aim in the development of effective countermeasures. Accordingly, mandating specific anti-theft devices tends to limit design flexibility and is not regarded as a practical solution to the problem of vehicle theft. Furthermore, publication of government standards, and the public information exchange that is bound to occur during rulemaking, may actually be counterproductive. Access to such information could forewarn professional thieves by providing advanced details of new countermeasures even before it is produced. Thus, in contrast to other types of regulation, such as safety, there is merit in keeping advances in theft protection out of public discussion.

Another factor to be considered is that not all cars need high levels of security. Some cars are not attractive to thieves or are located in areas of the country where car theft is infrequent. Available information indicates to us that available anti-theft devices are likely to provide the greatest benefit when used.

on cars operated in and around high theft urban areas. This suggests there is merit in promoting optional equipment which owners may elect to have installed depending on their location or the type of car they are driving. The insurance industry is developing a national program of offering economic incentives in the form of comprehensive premium "discounts" to owners of vehicles equipped with anti-theft devices, meeting certain criteria. We understand that a majority of the major insurance companies are participating, including Motors Insurance Corporation, the GM insurance subsidiary.

Independent aftermarket manufacturers offer the car-buying public a variety of anti-theft devices. Their features are varied in their design and function, and allow the individual owner a choice of security measures. We believe that the availability of these aftermarket devices, coupled with insurance discounts, would address the problem most effectively.

General Motors will continue its efforts to improve security features where we can reasonably identify problem areas. We urge, however, that improvements in vehicle security design be given proper emphasis in the overall strategy of developing cost-effective anti-theft measures.

As is evidenced by our current pilot marking programs, we are not opposed to the marking of auto parts, so long as there is a reasonable basis to conclude it will pay off for the consumer. Regrettably, to date there is no basis for such a conclusion. Regardless, to achieve any payoff from parts marking, it will be necessary to provide adequate penalties for the removal or altering the numbers from the parts.

Currently there are a number of states which have introduced legislation establishing recordkeeping requirements for salvage yards. The State of Washington, for example, has had such a law in effect for about a year. More recently, the State of Illinois enacted a similar regulation. While it is too early to assess these state programs relative to their experience in reducing auto theft, they may prove to be acceptable, cost effective solutions when backed up with proper enforcement.

In view of the lack of data to substantiate the benefits that reasonably can be expected if the new car parts are required to be marked, we believe the state programs now underway should be monitored for their effectiveness and that this effort should take precedence over any requirement to mark parts at this time.

SUMMARY

To summarize, we believe that increased penalties, more vigorous law enforcement, tighter export controls, uniform titling procedures and salvage titling laws are among the most effective actions that

can be taken to curtail auto-theft. Although there is no data to indicate that marking auto parts will prove cost effective, we believe an evaluation program, such as the one we have underway, could provide the necessary data. We urge that parts marking not be legislated and that state programs and our labeling program be continued and evaluated.

We strongly urge that manufacturers be allowed design flexibility in developing security systems and not be locked into mandated equipment. Optional or aftermarket anti-theft devices offered in conjunction with insurance discounts should prove highly effective for car owners living in high theft areas, without penalizing those owners living in areas where vehicle theft is not a problem.

Implementing such an overall approach should prove beneficial while at the same time provide manufacturers with the necessary flexibility to respond to constantly changing vehicle theft techniques.

* * * *

CHRONOLOGY OF SIGNIFICANT ANTI-THEFT FEATURES INCORPORATED IN
GENERAL MOTORS VEHICLES SINCE 1967

The following chronological outline covers the more significant anti-theft features incorporated in General Motors vehicles since the 1967 model year.

- 1967 4,000 new key codes - a threefold increase over the 1,333 codes used in prior years - were introduced. 2,000 of these key codes were for ignitions and doors and 2,000 for compartments. 4,000 additional new codes were introduced in each of the succeeding three years, by varying the cross-sections of the keys so that they could not be inserted in locks used in previous model years. The total available combinations far exceeds the requirements of Federal Motor Vehicle Safety Standard 114 which became effective January 1, 1970.
- 1967 On some vehicles, the door lock actuator button was moved away from the rear edge of the door window to make it more difficult to unlock the button with a tool inserted from outside the car. This change was made on additional models in succeeding years.
- 1968 Passenger vehicles were equipped with a warning device to notify drivers who leave the vehicle with the key still in the ignition. This practice was continued in succeeding years and became a requirement of Federal Motor Vehicle Safety Standard No. 114, Theft Protection, which was effective January 1, 1970.
- 1968 The public VIN was moved from locations on the pillars or inside the compartments to visible locations atop the instrument panel on all passenger vehicles except the Corvette where it was located on windshield pillar. This practice was continued and became a requirement of the Federal Motor Vehicle Safety Standard No. 115, Vehicle Identification Number, which was effective January 1, 1969.
- 1968 The use of the VIN derivative on engines and transmissions was expanded to all passenger cars.
- 1968 An active audible theft alarm system was introduced as an option on the Chevrolet Corvette.
- 1968 The barrier behind the rear seat was improved to prohibit access from the passenger compartment into the trunk.
- 1969 A steering column locking system was introduced on all U. S. domestic passenger cars, except Corvair. The design included an ignition lock, a steering lock, and/or a transmission shift lock. It was designed so that the steering lock could not inadvertently engage while the vehicle is in motion. This practice continued and similar requirements became part of the Federal Motor Vehicle Safety Standard No. 114, Theft Protection, effective January 1, 1970.

- At the same time, the steering column lock was improved over previous ignition locks. An extra cylinder was added which completely surrounded the rotating lock cylinder to allow a precise fit at the factory. The face of the lock cylinder was equipped with a steel disc as an obstacle to forcing tools. The steering column instrument panel bracket was designed to cover and obstruct access to the column mounted ignition switch terminal.
- 1970 The key code number was removed from the door lock cylinder on all passenger cars. This made it impossible to learn the ignition key code by reading the key code on the door lock since at this time, the door and ignition locks on each car had the same key coding.
- 1971 The re-introduction of inside hood release commenced.
- 1972 An engine description code was added to the VIN on passenger car models. It provided information on engine type, displacement, number of cylinders and net horsepower.
- 1972 The optional Corvette audible anti-theft alarm was made part of the vehicle's standard equipment.
- 1972 The use of the 13-digit VIN was expanded to trucks.
- 1972 The application of confidential identification numbers was expanded to all GMC produced truck models.
- 1973 The use of an engine description code in the VIN was expanded to Light Duty Trucks. (Medium and Heavy Duty Trucks continue to define only engine type in the VIN.)
- 1973 A passive electronic anti-theft alarm system producing an audio/visual alarm signal was offered as a factory-installed option on all Cadillac models.
- 1973 The side door lock retainer was modified to make it more difficult to dislodge it by piercing the door panel.
- 1973 Conventional Light Duty Trucks (Pick-ups, etc.) with automatic transmissions were equipped with the steering column locking system.
- 1974 The ignition key was separated from the door lock key on all passenger cars and all light commercial vehicles. The ignition key will not operate the compartment locks on the vehicle and the compartment key will not operate the ignition. This feature prevents obtaining the ignition key coding from any other key or locking cylinder applied to the vehicle.
- 1974 The use of a VIN derivative on the engine and transmission was expanded to conventional Light Duty Trucks.

- 1975 The availability of the passive electronic anti-theft alarm system as a factory-installed option was expanded to some Oldsmobile models.
- 1975 The optional electrical remote trunk release was interlocked with the ignition lock system on all Oldsmobile vehicles so that the trunk cannot be unlocked electrically unless the ignition switch is in the "On" position.
- 1975 The inside door locking button was re-located to the arm rest on some models.
- 1976 The inside door locking actuator was relocated to a recess in the side of the door panel on one model.
- 1977 The cable for the inside hood release was rerouted to prevent actuation through the grill or from beneath the car.
- 1977 The availability of inside hood release was expanded to some Light Duty Trucks on an optional basis.
- 1977 The ignition lock cylinder was modified to prevent the use of a lock smith type tool to extract the lock cylinder.
- 1978 The background color of the VIN plates on most passenger car models was changed from matte black to argent-gray to improve readability from outside the vehicle under varying light conditions. The remaining models will be changed as they are redesigned.
- 1978 On all of the "A" body cars (Malibu, Cutlass, Century and Lemans) the door lock cylinders were recessed to make them more difficult to grip and twist out. Additionally, changes were made internally in the door to make manipulation of the locking rods from outside the vehicle more difficult. These changes will be extended across all model lines as redesigns occur in later model years.
- 1978 Optional spoked wheel discs available on some models were provided with a unique locking features so that they can be removed only with a special wrench.
- 1978 Control of the optional electric trunk release through the ignition system was expanded to all passenger car lines that offer the option.
- 1978 The availability of the passive electronic anti-theft system was a factory-installed option was expanded to some Buick models.
- 1979 A steering column ignition lock that is much more resistant to forcible removal from the column was introduced on all passenger cars and conventional Light Duty Trucks.

- 1979 The use of the steering column locks was expanded to the remaining conventional Light Duty Trucks.
- 1979 The door lock changes initiated in 1978 were adopted on the "E" body cars (Riviera, Eldorado, and Toronado).
- 1979 The distinct rosette rivets used to mount the VIN plate to the instrument panel were exposed on the "E" body cars and conventional Light Duty Trucks and vans. Since they are distinctive in shape, making these rivets visible from outside the vehicle makes it easier to spot evidence of tampering with the VIN plate. This same change will be made as additional models are redesigned.
- 1979 The mounting location of the VIN plates on conventional Light Duty Trucks and vans was moved to the left end of the instrument panel.
- 1979 The VIN plate for the "E" body car has a muted GM logo as part of the background. This will be adopted on all car lines in succeeding model years.
- 1979 A type-style change to the confidential identification numbers as instituted in some assembly plants. This change will follow in additional plants as new tools are ordered. These changes are intended to aid in identification of partial imprints of these numbers.
- 1980 The use of the GM logo in the background of the VIN plate was expanded to most passenger cars and vans.
- 1980 The use of an inside door locking actuator recessed in the side of the door panel was initiated on domestically produced vehicles with its introduction on the "K" (Seville) and "X" (Citation, Omega, Skylark and Phoenix) bodies.
- 1980 A starter interrupt feature was added to the optional passive electronic theft deterrent system. Its availability was extended to additional Buick and Oldsmobile models.
- 1980 A pilot program of putting labels containing the VIN on six major body parts of the Cadillac "E" (Eldorado) and "K" (Seville) models was started during the model year.

Mr. SCHEUER. If the witness will yield, do you have any reaction to the statement by Mr. Williams of Ford that the 1980 cars that are being numbered as a part of their experimental program are being stolen at a rate 10 percent under the 1979 model that does not provide this numbering?

Mr. MARTIN. I don't have independent confirmation of that.

Mr. SCHEUER. He made the statement and now let's assume he is an honorable man. What is your reaction to that? Doesn't that suggest there is some kind of deterrent value to the existence of that marking system of putting the VIN's on the various parts?

Mr. MARTIN. If it is a 10-percent effect in reduction—I am sorry I did not catch it—I have not read his statement. A 10-percent reduction in the theft rate? Ten percent would certainly be a sizable reduction when we are talking about a million vehicles.

Mr. SCHEUER. I would think so.

Mr. MARTIN. I would hope that there is good statistical evidence there, that those are statistically significant numbers.

Mr. SCHEUER. Apparently it is based on FBI data and let's assume they are professional at Ford and know what they are doing.

Mr. WILLIAMS. Mr. Chairman, we indicated in our statement that the figures are based on a very small sample. And it is premature to say definitely that it is going to carry on through the rest of the year. We stated previously we needed at least 2 years to run the entire program before we could really get a true handle on the situation.

The evidence to date, through April 1980, does indicate a 10-percent reduction over the comparable 1970 time period. That is true. The actual number was only 170 or 175, 1980 Lincolns, Marks, stolen in that time period compared to the vehicles sold during that same period.

The automobile market has been distorted considerably in this period of time. We only sold in that time period approximately 60,000 vehicles compared to about 140,000 vehicles in the 1979 time period.

Mr. SCHEUER. You are still talking about a large number of vehicles and it must—

Mr. WILLIAMS. It is still premature we believe.

Mr. SCHEUER. You were the ones who picked the number of vehicles you were going to run this demonstration problem. I don't think Congress told you how many to pick.

You picked it, right? You must have felt there was some evidentiary value in the result of that test with the number of vehicles that you picked.

Now, are you telling me we ran the test, but we really did not include enough cars and your statisticians did not really have a large enough test body for the evidence that we needed?

Mr. WILLIAMS. You misunderstood me. The trend is definitely in the right direction. I am just trying to make the point clear to the committee that at this particular point in time it is too early to base any conclusion on these results. Maybe it is going to show more than 10-percent reduction or maybe no change at all, but at this time the sample size is relatively small.

We feel we need more time and as we have stated previously if the trend does continue, we would expand the program.

Mr. SCHEUER. How much does it cost you or how much did it cost you on this control group to put the VIN's on the parts other than the transmission?

Mr. WILLIAMS. With the method we are using on six components, we estimate in the neighborhood of \$3.

Mr. SCHEUER. If there is a 10-percent reduction in the theft of those cars at a cost of \$3 for all of the cars—they are not all stolen so it is not \$3 a car that is stolen—how much does it cost in terms of avoidance for cars that weren't stolen because of this test?

In other words if you had 100,000 cars—and you must have some percentage figure of cars that were stolen and therefore a reduction of 10 percent—how many cars were not stolen because of this? And can you give us a cost benefit figure if x cars were not stolen and it cost y dollars to \$3 a car for all the cars and you divided that into the number of cars that were not stolen because of the deterrent affects, how much does it cost per car that was not stolen because of the deterrent effect of this system?

Mr. WILLIAMS. I am not sure I can answer your question.

Mr. SCHEUER. Do you understand the question?

Mr. WILLIAMS. I am not sure I exactly understand it.

Mr. SCHEUER. Could you give us that in a few days if we hold the record open for you?

Mr. WILLIAMS. I know how many vehicles were stolen accordingly to NCIC data and I know how many vehicles we built.

Mr. SCHEUER. You know how many were stolen and you are telling us there was a 10-percent reduction?

Mr. WILLIAMS. From 1979.

Mr. SCHEUER. You can show the number of cars that were not stolen because of this deterrent effect.

Mr. WILLIAMS. I can.

Mr. SCHEUER. And you can multiply that by x dollars per car for identification.

Mr. WILLIAMS. The ultimate cost saving has to be to the consumer. It should be an insurance reduction of the amount at least of our cost to put this identification on the labels.

Mr. SCHEUER. I agree with you, but it seems to me that the insurance companies would be very happy to factor this into their cost, into the cost of their auto theft insurance. Would that be compelling to you if they were willing to do it?

Mr. WILLIAMS. We would like them to do that.

Mr. SCHEUER. I would like to ask somebody here why the automobile companies weren't thoroughly supportive of airbags when the insurance companies said that the cost of the airbags would be more than recovered many, many times over by the reduction in auto insurance.

I am not going to ask you to answer that because that is irrelevant, but it seems to me that even when the evidence is clear on the face that the consumer would be benefited, the industry does not necessarily respond.

The insurance companies came in unanimously supporting airbags and saying the cost of the airbags would be covered many, many times over by the reduction in insurance, still the industry seems to be very, very reluctant to move ahead with airbags. But this is not the subject of the hearings today.

But it does indicate to me that the industry does not necessarily factor reductions in insurance and benefits to the automobile owner to their decisionmaking process as to whether they want to put a particular system into the car, be it as an antitheft device or an anti-death device.

But anyway what I am asking you to do—and I would like both of you—I am not sure General Motors—have you conducted a test also?

Mr. MARTIN. We have a program we just initiated this year. But our data would not allow us to make an independent calculation.

Mr. SCHEUER. Apparently Ford has moved further ahead. And would you submit to us the data I asked for, getting the total cost for your 100,000 cars, figuring out how many thefts you have avoided because of the deterrent effect of the system, and then giving us a cost per car theft avoidance?

And we can figure with the benefits would be in terms of reduction in insurance rates. And it is obvious there would be a reduction in hassle and inconvenience and hardship to the individual. Could you give us that?

Mr. WILLIAMS. I will try, sir.

[The following information was received for the record:]

At the time of the hearing, I reported that comparable FBI theft statistics for 1979 and 1980 model vehicles (through April) indicated a 10 percent reduction in thefts and a slight improvement in recovery (based on thefts compared to vehicles sold) for the 1980 model Lincoln Continentals and Continental Mark VI's. The sample, we felt, was too small to allow any conclusion to be made about the effect of our experimental component identification program. Since the hearing, May and June theft and recovery statistics have been provided by the FBI, and show an increase in the theft and recovery rates of those models over previous months. Thus, comparable theft and recovery figures for the 1979 and 1980 model years now indicate no change in the theft or recovery rates (based on thefts to vehicles sold). Consequently, the figures do not presently demonstrate that our experimental program is of any benefit to the consumer. However, we still believe that the sample is too small to make any conclusive judgments regarding the success or failure of the experimental program.

Mr. SCHEUER. Let me ask Mr. Martin of GM what was the cost per car to you of the component markings which we just heard from Ford costs them \$3?

Mr. MARTIN. Our cost is less than \$5.

Mr. SCHEUER. It seems to be a modest cost per car. So if the system works at all, anywhere from 10 percent on up, 5 percent on up, I would think you would have a very clear cost benefit.

Mr. WILLIAMS. You have to have other people involved with the system. As Mr. Weglian mentioned earlier, the number has been on the transmission for a long time. Some people don't look at it. You have to have law enforcement looking at the numbers, being aware they are there and using them.

Mr. SCHEUER. There is no question for the deterrent effect to work some prospective car thief or the organized crime syndicates who are in this business must assume that the system of VIN's is going to give the law enforcement community the wherewithal to make apprehensions and to make things hot for them and increase the risks and to decrease the reward for organized crime involvement into auto theft on a mass basis.

You are totally correct there. But it does seem to me from all the evidence that that deterrent effect seems to be there because the crime

syndicates do not regularly bother to move in illegal commerce. The component parts that are marked—the engine and transmission—so they must feel there is a deterrent effect.

As they also stated the system is in place. The inspection system and the law enforcement system are in place now and apparently it works. So it does not seem to me there would be any additional bookkeeping, computer system, cost or even law enforcement cost assuming that right now engines and transmissions don't move in illegal commerce.

Mr. WILLIAMS. It may be the engines and transmissions are not marketable—I forget, who from Justice indicated—that it is the crash parts, the fenders and the doors that are the high moving items in a chop shop operation. It is in the retag operation where the transmission may or may not be removed from the vehicle in order to keep the identity of the vehicles consistent with the title, the paperwork that would go along with the vehicle.

The salvage yards are trying to move fenders and doors, and not transmissions. Engines and transmissions from that standpoint last a long time period.

Mr. SCHEUER. And they survive a crash is what you are saying?

Mr. WILLIAMS. Yes. There may not be the market for the engines and transmissions.

Mr. SCHEUER. I suppose the high cost of replacement of parts by the manufacturer also certainly presents the organized crime people with a high reward factor.

Mr. Martin, in your testimony you stated that Motors Insurance Corp., which is owned by GM now gives premium discounts for anti-theft devices. Mr. Charles Hannert, vice president of claims for GM, has told the congressional staff further reductions in premiums might be possible with parts identification as the numbers would reduce theft in insurance payouts.

Why do you think that Motors Insurance Corp. vigorously supports the whole numbers and VIN system?

Mr. MARTIN. They are making the judgment that this has potential and this is the reason we are pursuing it. We believe before one requires this across the board that there be a thorough evaluation of the cost and benefits.

I know that by comparison to the loss of a particular vehicle which runs into thousands of dollars for the vehicle owner, the \$5 seems like a very modest cost. And it may indeed prove to be a very modest cost. We are simply urging that alternatives such as recordkeeping regulations be examined as well because \$5 a car amounts to \$50 million a year.

And we think it appropriate before that \$50 million, which is the cost to our society, before we commit to that, that we spend a modest percentage of that determining what is the best way to go and whether or not there will really be the anticipated benefits.

Mr. SCHEUER. How do we find out whether there really will be the anticipated benefits?

Mr. MARTIN. I think several things. A continuation of observing both the Ford study and the GM study. We anticipate in a few years' time we should have statistically significant data. I think there ought to be an evaluation of the alternatives to factor into all the estimates—and indeed they must be estimates—whether or not the parts marking

when applied to all vehicles will be as effective as when it is applied to a very few vehicles.

Sometimes simply the appearance of a label on a house that indicates that the house is equipped with antitheft features—a thief will go on down the block to a house that is not so protected. So sometimes you have a uniqueness characteristic in a study of this nature.

And we are just suggesting there be proper evaluation of the pros and cons.

Mr. SCHEUER. Maybe you ought to give us a memo suggesting a design of a research demonstration program on this matter that would be critical to you. If some other things ought to be done why don't you tell us what they ought to be and maybe we can save some time?

Mr. MARTIN. We can respond to that.

[See letter dated July 15, 1980, p. 426, this hearing.]

Mr. SCHEUER. The cost of waiting several years before considering such a system is enormous. Doing nothing costs an awful lot of money. When you are talking about a \$4 billion a year loss, you are talking about \$10 billion for a couple or 2 to 2½ years. You would have to show me it is worth it to agree that we are going to spend that \$10 billion and wait 2 or 3 years before erecting some kind of disincentive system for this organized crime rather than going with what we have. I assure you that we in Congress legislate every day on the basis of a far less compelling knowledge base than we have right here. To us the information that Ford has adduced is pretty impressive. We don't generally have a perfect data base on which to go.

We just go with the best that we have. And we make judgments that are not sometimes by instinct and generally with imperfect facts, as everybody does, as every businessman does. This just may be a case where the perfect is the enemy of the good.

And the question is is the data that you have already adduced pretty good? And it is sufficient for us to make a pretty good value judgment that by God we probably have hit pay dirt here?

And if it is not a 10-percent reduction in theft, maybe it is only 8 percent or 7 percent or 6 percent or 5 percent. But anywhere in the neighborhood of 10 percent at a cost of \$3 or \$4 or \$5 a car would give a tremendous cost benefit package.

Mr. Martin, on page 3 of your testimony you refer to GM's electronic antitheft system which qualifies the owner for a 15-percent competitive insurance premium discount.

Can you tell us how much this improved system costs and what percentage of your buyers elect to take that as an option?

Mr. MARTIN. The cost of that system is approximately \$150. I believe it is selected by about 10 percent of the people who purchase cars for which that option is available.

Mr. SCHEUER. Congressman Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. Gentlemen, do you have an intercompany group that examines auto theft devices and the way to prevent auto theft? Do the companies get together and try to develop joint approaches to the problem.

Mr. WILLIAMS. Not in complying with standards. It is against anti-trust. I can't ask Dave Martin what he is doing in his 1982 Seville and compare what we are doing in our 1982 Lincoln.

Mr. GILMAN. You are not permitted to discuss that for purposes of protection for theft?

Mr. WILLIAMS. We can't do that legally.

Mr. SCHEUER. You come afoul of the antitrust laws?

Mr. WILLIAMS. Yes.

Mr. GILMAN. I am impressed with the documentation General Motors presented of what they have been trying to do over the years. It seems to me that if the experts of the various companies were able to get together they might be able to incorporate some of the best of all of the companies into better devices and better systems.

Mr. MARTIN. We think it is better that there be a variety of systems. As soon as you standardize these features, you make lives easier for the thieves.

Mr. GILMAN. I can't understand that.

Mr. MARTIN. We believe there is a great deal of benefit in competing with one another as we believe there is a great deal of benefit in competing with one another in other areas.

Mr. WILLIAMS. I would second that.

Mr. GILMAN. So we are clear, while you are advocating that the companies proceed with the experiment you still have a great deal of hesitations and reluctance about using identification numbers as a preventive for auto theft, is that correct?

Mr. MARTIN. Yes. We are reluctant to see it regulated at this time.

Mr. GILMAN. Your reluctance is based primarily on the ability to utilize this kind of system?

Mr. MARTIN. We are not confident that it is going to have a benefit. We are hopeful it certainly will but we don't really have the information that would say let's commit to this course because it is very difficult once we get a regulation to undo it.

Mr. GILMAN. What is your major objection to identification? Why do you feel it would not be helpful?

Mr. MARTIN. We are not objecting to it. We are not negative about it. If we were not relatively positive, if we were not hopeful this would be an effective concept, we would not have voluntarily taken on the course that we have.

Mr. GILMAN. What do you see as the shortcomings of the system?

Mr. MARTIN. I don't believe I am so concerned that it has a shortcoming as I am concerned that there may be alternatives that I am not personally acquainted with. And I am just asking that the alternative of recordkeeping requirements for salvage years be examined very carefully.

We are not negative about this.

Mr. GILMAN. Both of you have recommended better export controls. What are you suggesting with regard to export controls?

Mr. MARTIN. I am not an authority in that area. We just observed from the record that this does seem to be one of the avenues that makes it a high profit and low risk business. But it is my understanding that there is no requirement that you even identify the particular vehicle that you are shipping outside the country. So recordkeeping in that regard would seem to be minimal cost and perhaps a way to plug that hole.

Mr. SCHEUER. Mr. Williams.

Mr. WILLIAMS. I am not an expert but in listening to the Justice Department testimony it would seem to me that to check a VIN with NCIC on the vehicle that is going to be exported would be a reasonable thing to do and at least require the VIN to be on a manifest before the ship can leave the port so you could have some idea if it is stolen—you don't have to be concerned there are 100 Lincolns or Cadillacs going on the boat. But there are 100 specific Lincolns on that boat.

Mr. SCHEUER. Mr. Green.

Mr. GREEN. I wanted to note for the record if, in fact, there is a 10-percent saving here or 10-percent reduction in thefts and we have a \$4-billion-a-year problem you are talking of a \$400 million saving against—we hopefully get back to a 10 million car year—somewhere from \$30 million to \$50 million in annual costs. And that strikes me as a cost benefit ratio that leaves considerable room for error on that 10 percent.

Just one final question. Ms. Claybrook indicated during her testimony that for some reason the ignition locking device on the Cadillac was not as secure as on the lesser cars that GM turns out. Would you care to comment on that?

Mr. MARTIN. I believe our Cadillacs have the same column lock designs and components as our other vehicles. And you can be sure I am going to look into that when I get home. I was very surprised.

Mr. GREEN. Could you confirm that to us, that it does have the same or let us know?

Mr. MARTIN. I will.

Mr. SCHEUER. Margaret, briefly.

Ms. DURBIN. There has been speculation as to whether or not, in light of skyrocketing gas prices, there will be a shift in the types of motor vehicles being stolen; that is luxury models which are less fuel efficient, will decline as a prime theft target and smaller, more fuel efficient cars will hit the top of the list.

Have either of you or both of you seen such a shift taking place as yet?

Mr. WILLIAMS. I have done an analysis of 1979 National Automobile Theft Bureau data, the most current data available, to try and find out if indeed that shift has occurred. There does seem to be a trend away from the what we would call luxury cars, larger cars, to midsize cars.

Also, it was surprising to me, many of the imports that generally are claimed to have the most fuel efficient vehicles, although the population has increased of those particular vehicles, the theft of those vehicles has not increased in proportion to the new population.

If what you are suggesting would be true, I expected to see a dramatic shift, but I did not see that. Also, cars like our Mustang have not evolved as theft targets—the theft rate has not shifted to those cars. It seems they are shifting to our midsize cars. In 1979 a popular car stolen was the Thunderbird.

Mr. SCHEUER. We have to get a rollcall vote. You can continue answering questions. If you have any further questions, please continue. We thank you very much for your testimony and we will suspend until 12:30 and then we will take on the last three witnesses.

Mr. WILLIAMS. The Thunderbird was a midsize car. There was a shift to that particular type of car. I have not seen the complete shift to smaller cars yet. We need more data.

Ms. DURBIN. A longer period of time.

Mr. WILLIAMS. I will have data in probably another 2 months or so. I will look at it again to see if that is, in fact, happening. It seems the trend is that way but I don't have enough data to say definitely it is.

Mr. MARTIN. I don't have sufficient information to give you a good answer on that. We did take a look at our new more fuel efficient x body. We did not see a significant change, but we will continue to look at that.

Ms. DURBIN. Could you elaborate on the manufacturers' certificate of origin? Specifically, what features of that certificate prevent counterfeiting?

Mr. WILLIAMS. We can talk about that because the automotive industry worked with, as I mentioned, with officials from the American Association of Motor Vehicles Administration and the document security industry and that particular document is used industrywide among the major four manufacturers.

So I can talk about that because it was not as if we were working with only one document supplier. We talked with everybody at that time so there was not an antitrust problem. The manufacturers statement of origin used today by major manufacturers has a border that is printed on what is called intaglio printing, the same process used for money.

When you feel a new dollar bill, you can actually feel it. It takes a skilled engraver to try and counterfeit that particular method of printing. There are only a few printing suppliers that can provide that particular type of printing.

Also, you have to seek the person who would try to use sophisticated copy machines for copying a document. This MSO has features, if you would try and use sophisticated copy machines to copy that, "void" appears on the face of the manufacturer's statement of origin.

If you would try and erase a character or alter a character, it is evident on the paper that erasure has been attempted. Or if you try to bleach a character out by some acid or bleach method, it becomes very evident that attempts have been made to alter the document.

So we feel that—I am sure GM and Chrysler and AMC feel the same way—it would be very difficult for a thief using that document to try and duplicate it to fraudulently identify a vehicle.

The thing that concerns me is that the States must go to at least equivalent methods in the title documents.

Ms. DURBIN. Will it be able to track this innovation in correlation with the auto theft problem?

Mr. WILLIAMS. That is hard for me to answer because all we do is produce it. It is used by the department of motor vehicles in the States and they have indicated there had been a problem with counterfeit manufacturer's statements of origin.

That was one of the reasons for the thrust in providing a secured document for the manufacturer's statement of origin. I was at a meeting a couple of months ago at the Association of Motor Vehicle

Administrators. There were not any specific positive things said, but I think the feeling was that it was helpful. However, I would have to ask someone in the department of motor vehicles to answer that question.

Ms. DURBIN. Thank you very much.

[The following letter was received for the record:]



USG 1956

REC'D CP27 SUB.

JUL 30 1980

Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
Warren, Michigan 48090

July 15, 1980

The Honorable James H. Scheuer
U.S. House of Representatives
Washington, DC 20515

The Honorable Gus Yatron
U.S. House of Representatives
Washington DC 20515

Dear Messrs: Scheuer and Yatron:

During testimony by General Motors on June 10, 1980 at the Joint Subcommittee hearings on H.R. 4178, the "Motor Vehicle Theft Prevention Act of 1979," it was requested that we comment on the statement by the NHTSA Administrator, Joan Claybrook, that their tests had shown current General Motors ignition lock cylinders to be superior except for those used in our Cadillac products.

We have verified that the lock cylinder, its retention method and the general configuration of the housing, or cover, in which the steering column ignition lock is mounted, is the same for all GM passenger cars, including Cadillacs. As the NHTSA test report is not yet available, we are unable to comment on the reasons for any differences it might show in the security performance of our lock cylinders. When we receive the report, we will examine the configurations tested, the test method employed and the results obtained.

The present method of lock cylinder retention was introduced at the start of the 1979 model year. It is designed to make it more difficult to remove the lock cylinder by the "slam-pulling" theft method. For the 1979 and 1980 model years the steering column housings, or covers, are molded from glass fiber reinforced plastic or cast from zinc or magnesium depending on the type of column (i.e., standard, tilt, or tilt and telescoping) and the particular vehicle. These differences should not affect the theft deterrence of the design.

Our independent evaluation, using field reports from our MIC insurance subsidiary, indicates a significant reduction in the number of recovered GM vehicles that show evidence of having been stolen by "slam-pulling" the ignition lock. Unfortunately, other methods of ignition lock attack are increasing. This underscores our view that auto theft presents a "moving target," and that design changes, even if mandated, provide only a temporary barrier to the ingenuity of thieves.

At the hearing a second request was made for our recommendations as to what alternatives to parts marking should be evaluated. We believe that before we can approach a cost effective solution or solutions, the relative significance of each of several facets of the auto theft problem needs to be determined since present statistics provide no insight into the disposition of stolen vehicles and little information on the condition of recovered vehicles. The first of these facets is fraud where either the vehicle never existed or its theft was "arranged." The second is VIN switching where a clear title and VIN plate from a salvage vehicle is used to legitimize a similar stolen vehicle. The third is exporting stolen vehicles. And, the fourth is the chop shop operations where stolen vehicles are stripped of resaleable parts and the remains disposed of.

All of these illicit activities are profitable and possible for a number of reasons. First, state titling and registration agencies, financial institutions and insurance companies rarely verify that the vehicles they title, finance or insure actually exist or are the vehicles they purport to be. Second, insurance companies until recently have generally been reluctant to prosecute suspected fraud. Third, laws governing theft of vehicles, requirements for salvage titles, VIN tampering, etc., are not sufficiently severe, lack uniformity and in some jurisdictions are non-existent. Fourth, the law enforcement and criminal justice communities in many areas are faced with problems having much higher priorities than auto theft. And, fifth, present exportation requirements make it relatively easy to move stolen vehicles out of the country rapidly.

We believe that before legislation aimed at reducing auto theft is enacted there should be assurance that the public will realize benefits commensurate with costs. It, therefore, appears appropriate to us to allocate resources in two areas. First, it should be determined that an accurate and manageable data collection system to identify the magnitude of the various facets of the auto theft problem can be developed and implemented. Second, the effectiveness of some of the on-going programs should be evaluated. Among possible candidates for evaluation are programs requiring salvage yards to be licensed and to keep records, and the effects of newly enacted salvage title or VIN tampering laws. Since licensing of and record keeping by salvage yards are aimed directly at chop shop operations, an evaluation of programs currently in place in Washington and Illinois, could form a basis for comparison with parts marking.

As pointed out in testimony before your subcommittee, at least two manufacturers are attempting to evaluate, through demonstration programs, the effectiveness of parts marking as a means of reducing chop shop thefts. GM's program of marking sheet metal parts on certain Cadillac models will continue through 1981 model year production. At the end of that pilot program we will be able to answer questions about our costs and assembly line problems. The real question that needs an answer, however, is whether parts marking is an effective deterrent to chop shop thefts. Over the past 10 years theft rates of these same models have varied substantially. We have not been able to attribute such variations to anything we have or haven't done. For this reason, we believe that for the parts marking results to be considered significant, the theft rate of those vehicles should show at least a one third reduction from the 10 year average for both the 1980 and 1981 model years. Beyond that, we will need



USG 1956

 REC'D CP27 SUB
 Environmental Activities Staff
 General Motors Corporation

 JUL 30 1980
 General Motors Technical Center
 Warren, Michigan 48090

July 15, 1980

The Honorable James H. Scheuer
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Gus Yatron
 U.S. House of Representatives
 Washington DC 20515

Dear Messrs: Scheuer and Yatron:

During testimony by General Motors on June 10, 1980 at the Joint Subcommittee hearings on H.R. 4178, the "Motor Vehicle Theft Prevention Act of 1979," it was requested that we comment on the statement by the NHTSA Administrator, Joan Claybrook, that their tests had shown current General Motors ignition lock cylinders to be superior except for those used in our Cadillac products.

We have verified that the lock cylinder, its retention method and the general configuration of the housing, or cover, in which the steering column ignition lock is mounted, is the same for all GM passenger cars, including Cadillacs. As the NHTSA test report is not yet available, we are unable to comment on the reasons for any differences it might show in the security performance of our lock cylinders. When we receive the report, we will examine the configurations tested, the test method employed and the results obtained.

The present method of lock cylinder retention was introduced at the start of the 1979 model year. It is designed to make it more difficult to remove the lock cylinder by the "slam-pulling" theft method. For the 1979 and 1980 model years the steering column housings, or covers, are molded from glass fiber reinforced plastic or cast from zinc or magnesium depending on the type of column (i.e., standard, tilt, or tilt and telescoping) and the particular vehicle. These differences should not affect the theft deterrence of the design.

Our independent evaluation, using field reports from our MIC insurance subsidiary, indicates a significant reduction in the number of recovered GM vehicles that show evidence of having been stolen by "slam-pulling" the ignition lock. Unfortunately, other methods of ignition lock attack are increasing. This underscores our view that auto theft presents a "moving target," and that design changes, even if mandated, provide only a temporary barrier to the ingenuity of thieves.

At the hearing a second request was made for our recommendations as to what alternatives to parts marking should be evaluated. We believe that before we can approach a cost effective solution or solutions, the relative significance of each of several facets of the auto theft problem needs to be determined since present statistics provide no insight into the disposition of stolen vehicles and little information on the condition of recovered vehicles. The first of these facets is fraud where either the vehicle never existed or its theft was "arranged." The second is VIN switching where a clear title and VIN plate from a salvage vehicle is used to legitimize a similar stolen vehicle. The third is exporting stolen vehicles. And, the fourth is the chop shop operations where stolen vehicles are stripped of resaleable parts and the remains disposed of.

All of these illicit activities are profitable and possible for a number of reasons. First, state titling and registration agencies, financial institutions and insurance companies rarely verify that the vehicles they title, finance or insure actually exist or are the vehicles they purport to be. Second, insurance companies until recently have generally been reluctant to prosecute suspected fraud. Third, laws governing theft of vehicles, requirements for salvage titles, VIN tampering, etc., are not sufficiently severe, lack uniformity and in some jurisdictions are non-existent. Fourth, the law enforcement and criminal justice communities in many areas are faced with problems having much higher priorities than auto theft. And, fifth, present exportation requirements make it relatively easy to move stolen vehicles out of the country rapidly.

We believe that before legislation aimed at reducing auto theft is enacted there should be assurance that the public will realize benefits commensurate with costs. It, therefore, appears appropriate to us to allocate resources in two areas. First, it should be determined that an accurate and manageable data collection system to identify the magnitude of the various facets of the auto theft problem can be developed and implemented. Second, the effectiveness of some of the on-going programs should be evaluated. Among possible candidates for evaluation are programs requiring salvage yards to be licensed and to keep records, and the effects of newly enacted salvage title or VIN tampering laws. Since licensing of and record keeping by salvage yards are aimed directly at chop shop operations, an evaluation of programs currently in place in Washington and Illinois, could form a basis for comparison with parts marking.

As pointed out in testimony before your subcommittee, at least two manufacturers are attempting to evaluate, through demonstration programs, the effectiveness of parts marking as a means of reducing chop shop thefts. GM's program of marking sheet metal parts on certain Cadillac models will continue through 1981 model year production. At the end of that pilot program we will be able to answer questions about our costs and assembly line problems. The real question that needs an answer, however, is whether parts marking is an effective deterrent to chop shop thefts. Over the past 10 years theft rates of these same models have varied substantially. We have not been able to attribute such variations to anything we have or haven't done. For this reason, we believe that for the parts marking results to be considered significant, the theft rate of those vehicles should show at least a one third reduction from the 10 year average for both the 1980 and 1981 model years. Beyond that, we will need

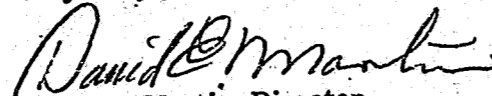
to determine if such a reduction is a short term effect, or a long term prospect.

The claim has been made that the marking of our engines and transmissions over the past 12 years has caused thieves to dispose of those parts rather than sell them. However, we believe that engines and transmissions are harder to handle than sheet metal parts, and since they are less likely to be damaged in collisions, their demand is smaller. For example, if an engine is damaged in a collision to the point where it must be replaced, the vehicle is almost certainly a total loss. Thus, we believe that the reason for disposing of marked engines and transmissions is largely that no sizable market for them exists.

Finally, even if we experience a significant reduction in the theft rates of marked Cadillacs, there would be no basis to conclude that similar reductions should be expected if we marked other vehicles. Several factors contribute to this conclusion. First, the extent of the chop shop problem nationally has not been identified. Second, the sample size of vehicles being marked is small compared to the industry's model year production. And third, "desirability" cannot be quantified. By "desirability" we mean the reason(s) why theft rates for even similar vehicles vary widely. As an example, the Cadillac Eldorado, Buick Riviera and Oldsmobile Toronado are all similarly appointed GM "E" body cars, yet the theft rate of the Eldorado is significantly higher than either of the others.

While we recognize the seriousness of the auto theft problem, we are convinced that unless there is a unified effort by all concerned to close loopholes, increase the risks associated with auto theft, and educate the public, there will be no substantial long term reduction in auto theft through legislative action aimed at regulating the physical security of the vehicle.

Very truly yours,


David E. Martin, Director
Automotive Safety Engineering

BJR/jmp

[Brief recess.]

Mr. SCHEUER. We will come to order.

We will now hear from Mr. Donn Knight, vice president of Geico, Government Employees Insurance Co., on behalf of the National Association of Independent Insurers, and we will ask Mr. Russell F. McKinnon and Mr. Ted Johnson to come up to the table. Mr. Russell F. McKinnon represents the Automotive Dismantlers & Recyclers of America, and Mr. Ted Johnson the Coalition to Halt Automotive Theft.

Mr. Knight, your testimony will be printed in full in the record, so why don't you chat informally with us, hitting the high spots and making any reference to anything you have heard this morning that you want.

**STATEMENT OF MERRILL D. KNIGHT III, VICE PRESIDENT,
GOVERNMENT EMPLOYEES INSURANCE CO. (GEICO), ON BEHALF
OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS**

Mr. KNIGHT. I apologize for my voice.

First, Mr. Chairman, I would like to underscore that I am conveying to you this morning the endorsement not only of the National Association of Independent Insurers but also of the Alliance of American Insurers and the American Insurance Association and State Farm Insurance Co. In other words, we are conveying the endorsement of all three major insurance trade associations plus State Farm which is an unaffiliated company but does insure the largest number of automobiles in the United States.

Mr. SCHEUER. Is there any major segment of the insurance industry that you do not represent, and who oppose this proposed legislation?

Mr. KNIGHT. Not to my knowledge.

Mr. SCHEUER. So you have the whole gamut of the insurance industry behind you?

Mr. KNIGHT. I believe so.

Mr. SCHEUER. Very good.

Mr. KNIGHT. The statistics which are included in my statement [see p. 436] clearly show that the thefts are up, recovery is down, dollar losses are up. Premiums are up as a consequence of increased vehicle theft, fewer recoveries of those stolen, and higher dollar losses.

The insurance consumer will pay \$2 billion in premiums for vehicle theft coverage in 1980.

Countrywide, vehicle theft is the largest single factor in the cost of comprehensive coverage and accounts for approximately 50 to 60 percent of the comprehensive coverage premium.

We believe that the marking of component parts with the VIN—vehicle identification number—is a vital step.

We believe the requirement for the Secretary of Transportation to develop security devices is another very important step to meeting this kind of loss. We are prepared to discuss that.

I would also like to draw attention again to the safety factor because NHTSA has testified that more stolen vehicles are up to 200 percent likely to be involved in a loss than vehicles that are not stolen.

Mr. SCHEUER. In what kind of loss?

Mr. KNIGHT. Accidents. I think from my own experience there is more severity to those losses; they are operating more recklessly, at higher speeds and the injuries are greater and suffering is more.

Mr. SCHEUER. Do you have a feeling that the cost effectiveness of this \$3 to \$5 expenditure per car in putting on the VIN's is reasonably justified by the experience with which you are familiar?

Mr. KNIGHT. Mr. Chairman, if they are seeing 10 percent savings on the first model year, which is not even complete yet, those savings are going to certainly multiply over the next 2 to 3 or 4 years when the parts are still in demand.

I think there is no question but what it is cost beneficial. I have a gentleman on my staff who has worked in the automobile theft field and in law enforcement for 25 years. He estimates this will reduce the chop-shop operation by 70 percent when it is fully effective and fully enforced.

Mr. SCHEUER. Maybe you would be prepared to give us a little memo in writing in the next week or 10 days, if we keep the record open on that subject.

Mr. KNIGHT. I will be glad to. Some of that is in the statement I filed.

Mr. SCHEUER. If there is any additional information, it would be helpful.

[See letter dated June 17, 1980, p. 433, this hearing.]

Mr. SCHEUER. I would also say this; you know now there is a consensus that the cost per car of putting in the VIN's is \$3 to \$5. You can take as an assumption a 10-percent reduction in theft for the cars that are known, the car models that are known to have the VIN's on them. If this were elaborated across the whole system, if this legislation gets passed, could you tell us then what the reduction would be in auto vehicle theft insurance rates and just from that alone what the cost/benefit would be for that \$3 to \$5?

Mr. KNIGHT. I would think it would be paid many times over every year by reduction in insurance costs. I can't believe you wouldn't have more than a \$5 reduction in auto theft insurance costs per year, but I don't want to be speculating in the absence of hard knowledge.

Mr. SCHEUER. Maybe you could give us an estimate of what the insurance savings would be, both nationally and total, and to the individual car owner as a result of that extra \$3 to \$5 investment per car by the owner.

Mr. KNIGHT. We will be glad to try to do that.

[See letter dated June 17, 1980, p. 433, this hearing.]

Mr. KNIGHT. The make and model rating practices which most companies are adopting today will reflect any improvement in the theft experience and the rates will be adjusted accordingly.

Mr. SCHEUER. They have speculated that as a result of the VIN for this particular model that they are already experiencing something like a 10-percent reduction in auto theft for that model.

Would you extrapolate that, or you could take that one little closed experiment—if the insurance companies looked at that experiment, how much would they reduce in auto theft insurance rates for cars so equipped, assuming that they could expect a 10-percent reduction in theft? And then take that and compare it with the original capital,

the increased original capital cost of \$3 to \$5, and I think you would come out with some interesting statistics.

You could make your own cost/benefit analysis.

Mr. KNIGHT. We will make every effort to do that.

[See letter dated June 17, 1980, p. 433, this hearing.]

Mr. SCHEUER. We appreciate that.

Congressman Green?

Mr. GREEN. Along the same lines again, you point to 70 percent reduction in chop-shop operations. What percentage of auto thefts would you ascribe to chop shops?

Mr. KNIGHT. I think we are estimating in the vicinity of 40 percent of the thefts today are the result of chop shops.

Mr. GREEN. So you are talking about a reduction of 28 percent in overall thefts if you could achieve a 70-percent reduction in chop shops?

Mr. KNIGHT. Yes, sir.

Mr. GREEN. That is all, Mr. Chairman.

Mr. SCHEUER. Mr. Knight, the subcommittee has heard that insurance fraud related to vehicle theft is increasing. Can you tell us something about the steps that have been taken by the insurance industry to assure that such schemes as insuring a phantom car are going to be made more difficult, more expensive, and more risky?

Mr. KNIGHT. The National Automobile Theft Bureau has been in operation for 60 or 70 years. Of course, with the advent of computers it has become much more effective in recent years. We are required, as a member of NATB, to report not only all stolen vehicles but also all total losses as a result of a collision loss where we sell the salvage.

The VIN is entered into the NATB computer for late-model cars, so if someone tries to claim that VIN for a stolen vehicle at a later date, the NATB can match it up and identify it as a car that has already been totally destroyed, and we can proceed from there.

Mr. SCHEUER. Would you say the insurance industry is getting a handle on automobile insurance fraud and making it tougher, more risky, more expensive?

Mr. KNIGHT. As a generalization, I think yes. Every day I become convinced there is more of it than we had guessed before, and we have to intensify our effort.

Mr. SCHEUER. Where is it? How does it show up? In what form other than insuring the phantom car, for example?

Mr. KNIGHT. The phantom car, of course, results in theft claims, but there are staged accidents, again using paper cars sometimes, or cars that have been acquired just for that purpose. Additional claims are made by nonexistent passengers. It seems to be a very broad spectrum that this kind of thing covers.

Mr. SCHEUER. For our purposes, we are primarily interested in theft-related claims. Are there any other techniques that are used other than insuring the phantom car designed for theft and then a fraudulent claim coming in?

Mr. KNIGHT. There may be the legitimate car, fully insured, properly insured, that the policyholder simply can't keep up his payments on, and he abandons the car and reports it stolen or he hits a tree coming home at night and leaves it there and calls us the next morning and says it was stolen.

Or he may attempt to dispose of the car through some sort of a fence who is operating, we believe, probably in connection with the chop shops, but I think the phantom car is the more frequent type of fraudulent theft.

Mr. SCHEUER. How would you suggest we address the problem of the phantom car, we in Congress?

Mr. KNIGHT. I think the phantom car problem is more likely to be solved by uniform salvage title laws than any other piece of legislation.

Mr. SCHEUER. On page 3 of your testimony you endorse the issuance of standards requiring improved locking devices for automobiles. Now, presumably this would raise by a modest amount the retail price of cars, and presumably it would also decrease car theft.

Can we reasonably expect the insurance company to give reduced rates for cars that have this type of improved security systems?

Mr. KNIGHT. There are already some rating plans filed with the States which provide for those discounts, sir.

Mr. SCHEUER. Are there any provisions for reduced rates for after-market devices?

Mr. KNIGHT. Yes, sir; I believe these rating plans do include after-market devices.

Mr. SCHEUER. Could you give us statistics on that—how much reduction is, in the next 10 or 12 days, for the record?

Mr. KNIGHT. I will be glad to.

[The following letter and attachments were received for the record:]

National Association  of Independent Insurers

499 SOUTH CAPITOL ST., S.W., SUITE 401, WASHINGTON, D. C. 20003

Arthur C. Mertz, President

202/484-2350

REC'D CP&F SUB.
JUN 19 1980
Charles A. Taylor, III
Legislative Counsel

June 17, 1980

Honorable James H. Scheuer, Chairman
Consumer Protection and Finance Subcommittee
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I am enclosing the responses to several questions posed to our witness — Donn Knight, Vice President of GEICO — at the hearings on the Motor Vehicle Theft Prevention Act held June 10.

Please let me know if I can be of further assistance to you in your consideration of this important legislation.

Sincerely yours,

Charles A. Taylor, III
Charles A. Taylor
Legislative Counsel

Encl.

1. We estimate that if auto manufacturers were to mark major component parts with identifying numbers, the "chop shop" process of stealing, disassembling and reselling automobiles would be reduced by as much as 70%. (Primary source: Thomas J. Horrigan, Security Claims Investigator, GEICO, who was a police officer for twenty-five years with the Washington, D.C. Metropolitan Police Department, including thirteen years in the Criminal Investigations Division, Auto Theft Unit. He is Executive Secretary and past President of the International Association of Auto Theft Investigators, a member of the International Association of Chiefs of Police Auto Theft Committee, instructs state and municipal law enforcement officers countrywide on auto theft investigation, and is author of Basic Vehicle Theft Investigation.)
2. Given a \$3-5 cost for manufacturers to mark major component parts with identifying numbers and a resultant 10% reduction in auto thefts, we would anticipate, at the very least, a 10% reduction in the theft portion of the comprehensive premium. With the annual theft portion at \$2 billion in 1980, that would mean a \$200 million premium savings to the American consumer. (The real savings would be felt in many other areas of the \$4 billion cost of vehicle theft, e.g., societal and law enforcement cost reductions.)
3. Several rating plans already take into account installation of anti-theft devices. Adoption of such plans is on an individual company basis. ISO's program is attached as an example.

6. Vehicles Equipped With Anti-Theft Devices *

COMPREHENSIVE COVERAGE ONLY

To qualify for a discount on Comprehensive Coverage, the vehicle must be equipped with (a) a hood lock which can only be released from inside the vehicle, and (b) a device meeting the criteria of either paragraph 1. or 2. below. If a vehicle is equipped with more than one qualifying device, only the single highest discount shall apply.

Refer to Company for required evidence of installation of anti-theft devices meeting the following criteria prior to granting a discount.

1. Alarm ONLY and Active Disabling Devices

A 5% discount on Comprehensive Coverage shall be afforded on vehicles equipped with (a) alarm only devices which sound an audible alarm that can be heard at a distance of at least 300 feet for a minimum of three minutes, or (b) active disabling devices which disable the vehicle by making the fuel, ignition or starting system inoperative. A disabling device is categorized as active if a separate manual step is required to engage the device.

2. Passive Disabling Devices

A 15% discount on Comprehensive Coverage shall be afforded on vehicles equipped with passive disabling devices which disable the vehicle by making the fuel, ignition or starting system inoperative. A disabling device is categorized as passive if a separate manual step is NOT required to engage the device.

Mr. SCHEUER. Margaret?

Ms. DURBIN. You may have covered this to some extent. I wanted to point out that the Justice Department earlier targeted three problem areas of insurance procedures. They cited preinsurance inspection of the vehicle, salvage procedures and claims processing.

Are there efforts underway in these areas?

Mr. KNIGHT. Efforts are underway in the last two areas. I would say in general nearly every company, every major company, is improving its efforts along those lines.

The insurance inspection question has not been—there is no uniform viewpoint in the industry on that. To the extent that an inspection can be done—as was suggested this morning—based on a profile of a likely fraudulent policyholder, we have no problem with that. That is a discretionary thing.

We have great problems with the cost to the consumer of a mandatory law.

Mr. SCHEUER. Thank you, Mr. Knight. We are very appreciative. We know we have run late. You have been very cooperative.

Mr. KNIGHT. We will be glad to see the law passed, directed at the people making money out of auto theft and not just directed at those who are stealing them.

Mr. SCHEUER. You agree wholeheartedly with the rightness of our perception that the VINS in effect would reduce the incentive for the organized crime rings?

Mr. KNIGHT. Yes.

Mr. SCHEUER. Thank you very much.

[Mr. Knight's prepared statement follows:]

Statement
of the
National Association of Independent Insurers
to
Consumer Protection and Finance Subcommittee
of the
Committee on Interstate and Foreign Commerce
and the
Inter-American Affairs Subcommittee
of the
Foreign Affairs Committee
U. S. House of Representatives
Washington, D.C.
on
H. R. 4178, The Motor Vehicle Theft Prevention Act
June 10, 1980
by
M. D. Knight, III
Vice President
Government Employees Insurance Company
and
Chairman, NAII Auto Physical Damage Committee

Mr. Chairman, Members of the Subcommittees: The National Association of Independent Insurers (NAII) supports H.R. 4178, the Motor Vehicle Theft Prevention Act, as a means of reducing auto theft, which last year cost Americans \$4 billion. The insurance industry and state governments have, for years, led the fight against vehicle theft. But the recent alarming increase in thefts, coupled with the interstate nature of the crime, suggests that federal legislation is also necessary. I am pleased to tell you that The Alliance of American Insurers, the American Insurance Association, and State Farm Insurance Company join with us in endorsing this legislation.

I am Donn Knight, Vice President of Government Employees Insurance Company (GEICO), the fifth largest automobile stock insurance company in the country. NAII, of which GEICO is a member, is a voluntary national trade association of more than 460 insurers, representing a true cross-section of the automobile, casualty and fire insurance business in America. NAII's members provide more than one-half of all auto insurance coverage written in the country.

While many may simply shrug off the \$4 billion annual cost of motor vehicle theft, thinking, "it doesn't matter, insurance companies will pick up the tab" - it is actually the public that pays.

THEFTS UP

From 1967 to 1978, auto theft increased 36%, and in 1979 alone, the increase soared by 11%.

RECOVERIES DOWN

In 1960, 92% of all vehicles stolen were recovered. But in 1979, only 40% were recovered. The recovery rate has decreased so dramatically, in part, because resale of stolen parts is now a major reason for vehicle theft.

DOLLAR LOSSES UP

From 1977 to 1978, the dollar loss due to vehicle theft increased 20%. In 1979, the average insured theft loss was more than \$2,000, and, altogether, the public paid about \$4 billion for vehicle theft.

PREMIUMS UP

As a consequence of increased vehicle theft, fewer recoveries of those stolen vehicles, and higher dollar losses, insurance consumers will pay \$2 billion in premiums for vehicle theft coverage in 1980. Countrywide, vehicle theft is the largest single factor in the cost of that comprehensive coverage, and accounts for approximately 50-60% of the comprehensive premium.

The financial burden imposed upon the public by vehicle theft is not limited to increased insurance premiums. Taxpayers also pay the annual \$1 billion related law enforcement costs. So you can see, vehicle theft is not a "victimless crime." The insuring public and, in fact, all of our citizens pay for it. If vehicle theft could be significantly reduced, and insurers' theft loss costs thereby decreased, those savings could be passed along to the insuring public.

Although the drastic escalation of vehicle theft is recent, the insurance industry's concern about the problem is not. Nearly 70 years ago, the industry created the National Auto Theft Bureau (NATB), a non-profit organization funded by the insurance industry. NATB collects theft data from insurers and other sources, investigates fraud, and helps train law enforcement personnel. Members report stolen vehicles and late model salvage vehicles to the NATB. NATB maintains computer records of this data to assist law enforcement in tracing stolen vehicles and fraudulently used VINs. In this manner, member insurers reported over 210,000 stolen vehicles to the NATB in 1978 and, as a result, more than 55% of those reported stolen vehicles were recovered. And insurance company theft reporting activity was up 15% in 1979.

In addition, insurers are working to combat auto theft by their participation in and financial support of the Insurance Crime Prevention Institute (ICPI), state Anti-Car Theft (ACT) committees and the Coalition to Halt Automotive Theft (CHAT). The industry also has initiated and aggressively encouraged citizen involvement campaigns and company internal security programs.

But all this state and industry activity has not been enough. Vehicle theft is still too easy, too lucrative, and of too low a risk. NAII believes that effective implementation and enforcement of H.R. 4178 could result in greater protection of vehicles from theft, and help reduce the market for stolen parts.

First, the bill provides for the Secretary of Transportation to require improved locking devices for ignition, doors, trunk and hood. Time is the auto thief's biggest enemy, and improved locking devices increase both the difficulty of entry and the odds of getting caught in the act.

Second, the Secretary of Transportation would be empowered to require the marking of key component parts with vehicle identification numbers (VINs). We estimate that if auto manufacturers were to mark major component parts with identifying numbers, the "chop shop" process of stealing, disassembling and reselling automobiles would be reduced by as much as 70%. And we understand that to so mark component parts would cost a mere \$5 per vehicle.

Because many valuable stolen parts are not presently numbered, they cannot be identified by police and evidence of the crime is therefore nearly impossible to obtain. Thieves and their accomplices are well aware of this critical law enforcement gap and deal in these unidentifiable stolen parts with impunity. They know they can't get caught because it can't be proved that the unnumbered parts they're stealing, warehousing and selling are stolen.

Third, the bill provides strict penalties and forfeiture provisions for tampering with vehicle identification numbers and trafficking in stolen vehicles or parts.

Law enforcement officials must be given the tools provided by this bill to successfully apprehend and prosecute those who profit from auto theft.

Moreover, the probable reduction of vehicle thefts that would result from effective implementation and enforcement of this bill could lead to greater highway safety, since the National Highway Traffic Safety Administration (NHTSA) estimates the accident rate for stolen vehicles is as much as 200% greater than for other vehicles.

Finally, we believe this bill would provide the most effective countermeasure to the highly mobile criminal activities of auto thieves whereby they simply move their operation across state lines as new laws are passed and enforcement toughens in their state.

Thank you for the opportunity to express our support of H.R. 4178.

Mr. SCHEUER. We will now hear from Mr. Russell McKinnon, and then Mr. Johnson. We have a rollcall vote on now. We don't know how long we will be, because those bells mean there are several 5-minute votes after the 15-minute vote. She will tell you and then you will know it will take us about 15 minutes to come back from the vote, and just add on 5 minutes for every vote after that.

[Brief recess.]

Mr. SCHEUER. We will hear now from Mr. Russell McKinnon, of the Automotive Dismantlers & Recyclers of America.

Your prepared testimony will be printed in the record [see p. 446], so you might want to proceed by chatting informally with us and I am sure we will ask you some questions when you are finished.

STATEMENTS OF RUSSELL F. MCKINNON, EXECUTIVE VICE PRESIDENT, AUTOMOTIVE DISMANTLERS & RECYCLERS OF AMERICA, ACCOMPANIED BY JEFF WERNER, CHAIRMAN, MOTOR VEHICLE THEFT PREVENTION COMMITTEE, ADRA; AND THEODORE W. JOHNSON, EXECUTIVE DIRECTOR, COALITION TO HALT AUTOMOBILE THEFT

Mr. MCKINNON. My name is Russell F. McKinnon and I am the executive vice president of the Automotive Dismantlers & Recyclers of America, ADRA, located in Washington, D.C.

I have with me today Jeff Warner, who is vice president of Academy Auto Parts in Miami, Fla. Jeff is the chairman of our motor vehicle theft prevention committee and Jeff may be able to amplify some of the responses we would have.

Basically, ADRA has been involved since 1974 in pursuing a solution to the auto theft problem in the United States. The main reason for this is that our legitimate small businesses cannot compete against people who deal in stolen parts.

Since 1974 we have worked with the Justice Department, the Department of Transportation, the Interagency Committee on Auto Theft Prevention and others.

Our industry represents about 5,000 companies employing over 100,000 people. According to a 1972 report, we sold over \$5 billion a year in used auto parts and related items, making us the 16th largest industry in the country.

I also am pleased to report that I am chairman of the Coalition to Halt Automotive Theft and I am very pleased to note that as members of our coalition we have been able to solicit and gain the membership of the Honorable Edward King of Massachusetts, the Governor of Massachusetts, and also the Consumer Federation of America, which I think indicates the degree that consumers in the United States are concerned about this problem.

Ted Johnson will speak for the coalition, but I wanted to point out the pleasure we have had in gaining these two groups as members of our coalition.

One of the problems we are facing is that used auto parts are increasing in value and make it more lucrative for the chop-shop operations to deal in stolen parts. The average car is selling for something in the

neighborhood of \$8,000 this year—\$8,000 per copy—and some cars are selling up around \$20,000 apiece.

For instance, when you take these cars apart, the front-end assembly could be worth from \$2,000 on up, therefore it is quite lucrative.

As you are aware, the theft of stolen vehicles was up 10 percent in 1979. We are quite aware of the fact 38 percent of all the cars stolen are stripped for parts.

Mr. SCHEUER. Forty-two percent are sold in this country and a few percent of that goes overseas, I take it?

Mr. MCKINNON. Yes, sir; that is what we believe.

Mr. SCHEUER. About 40 percent ends up in a chop shop?

Mr. MCKINNON. Yes, sir, according to statistics from the Justice Department and crime reports.

A major concern is that only 1 percent of those involved in stealing automobiles are ever convicted. Basically, the result is that punishment does not deter the crime. It is a high profit business and the rewards are quite great for those who deal in stolen parts.

We would also like to point out that we are in somewhat disagreement with the previous witness from Ford Motor Co.; engines and transmissions are sold quite often in our industry—one of the top two or three items in our industry. Chop-shop operations tend not to deal in these parts because the parts are numbered.

There is no concrete evidence to this fact, probably because witnesses are difficult to come by, but those witnesses who did testify in the past, especially before the hearings in the Senate Permanent Subcommittee on Investigations, did specifically testify that those parts that had numbers were the first to be disposed of, even at a great loss. Even though those engines might sell for \$800 or \$1,000, they would still be disposed of because of the identifiability of the product.

Mr. SCHEUER. Because of what?

Mr. MCKINNON. Because the engine itself would be identifiable and traceable back to its source.

We have seen, and it is our belief, that there are a number of industries that are involved in auto theft and the solutions to auto theft. There is no question that our industry is somewhat involved and that there are parts moving through chop-shop operations and the salvage industry, but also the manufacturers are involved, in the sense that they could be a major part of the solution and they have parts stolen from their shiploads and trainloads of cars that are moving to new car dealerships.

In addition, citizens are paying tremendous costs, something in the neighborhood of \$4 billion a year.

ADRA, in seeking a solution for auto theft, worked with "60 Minutes" and we were very happy to see a show produced in March 1978 on the subject of chop shops. CBS Nightly News, in January 1978, also produced a show on chop shops. ADRA was able to get substantial coverage of the auto theft problem by this.

We also worked with various States around the country, attempting to seek solutions for auto theft problems in those specific States.

We also worked with the Justice Department and the Department of Transportation, as we previously mentioned.

In March 1978, we were able to hold the first conference that brought together people from law enforcement and motor vehicle adminis-

trations, Customs Service, National Auto Theft Bureau, congressional aides, auto theft investigators, manufacturers, our association, and the scrap processors, among others.

Mr. SCHEUER. Would you tell us what your recommendations are, what your conclusions are, after meeting with all those groups and studying the matter?

Mr. MCKINNON. We fully support the legislation and would urge its passage, and we strongly support the inclusion of title II in the bill, and that it not be watered down.

Mr. SCHEUER. You feel the VIN's on the major parts that are sold in illegal commerce would establish a deterrent and that there would be a significant reduction of car thefts as a result of the deterrent factor that the VIN's would provide?

Mr. MCKINNON. Absolutely, sir, and we feel the testimony of the witnesses involved in both stealing cars and law enforcement people who testified at the hearings in December confirm that.

Mr. SCHEUER. Could you elaborate a little on the testimony we have already heard about the export of stolen cars and stolen parts from Miami?

Mr. MCKINNON. Let me turn that question over to Jeff Werner, since he is from that area.

Mr. WERNER. I believe that the figures that were given—the average may be 50 cars a day—possibly is low, because we feel there are a lot of cars being bought at salvage auctions for export purposes. For whatever, they go out of the city of Miami to the ports because customs agents do not have any power whatsoever. All they do is check for documentation, which document could be a handwritten bill of sale, which I could hand you. Titles are not required in foreign countries.

We were in the market of bringing some antique cars into the United States. When I called the tag agency in Miami to find out how to register them, all they require is a bill of sale, which would mean the same would hold true for anyone—anybody could make up a notarized bill of sale, send the car to South America.

In my business alone, we export several types of used automobile parts including parts for relatively new Dodge Darts, Aspens, Volares, and because these parts are for cars that are relatively new—the cars get there somehow—we believe that these new cars are getting there in an illegal manner, and one of the local TV stations—

Mr. SCHEUER. Are getting where?

Mr. WERNER. To my knowledge, South America. Venezuela, in particular, because I do a lot of business in Venezuela. There are a lot of industries that do a lot of Latin American trade. Jamaica stopped the import of cars but there are many countries that do not ban any type of import of automobiles, and I think South America is one of the major areas cars are slipped to out of Miami.

Mr. SCHEUER. Please proceed.

Mr. MCKINNON. I think the last point we would like to make is that this bill would be a substantial curb on auto theft chop-shop operations and that it would be a great aid to the citizens of this country in hoping to curb a \$4-billion-a-year fraud.

Mr. SCHEUER. Why would it provide a substantial curb?

Mr. MCKINNON. Because we feel it would make it very difficult for chop-shop operations to continue in business and, two, it would reduce the marketability of parts that thieves are currently passing through the salvage industry.

Mr. SCHEUER. How do you know that? Where do you get your information from, and what is your belief founded on?

Mr. MCKINNON. Mainly that engines and transmissions are not being sold on the marketplace.

Mr. SCHEUER. You just heard the Ford representative—were you here when he testified?

Mr. MCKINNON. Yes, sir.

Mr. SCHEUER. He was saying with 100,000 cars their experience has been over 6 months that that was a 10-percent reduction in thefts. He did not find that very convincing and he apparently felt they needed a lot more data than that.

Do you find that data convincing? Does it fit in with general knowledge you have as a very wise and experienced practitioner in the field?

Mr. MCKINNON. I am not so sure I am so wise and experienced, but I think 10 percent is a significant impact. I am sure he is worried about the statistical base he is working from, but 10 percent of \$4 billion is \$400 million. If he is talking about \$5 per car at the maximum that is only \$50 million.

The cost/benefit ratio there is quite significant right off the top. If he can come anywhere close to 10 percent reduction—

Mr. SCHEUER. How much does a car owner pay for auto car theft insurance annually?

Mr. MCKINNON. I would not have that information.

Mr. JOHNSON. It varies on the part of the country. It varies widely. I don't mean to be passing the buck, but that is not my area of expertise.

Mr. SCHEUER. Is it at least \$100 a year?

Mr. JOHNSON. On average I would guess, \$60 a year.

Mr. SCHEUER. Even if there is a 10-percent reduction in losses, it seems to me that part of that would be reflected in reduction of premiums. Maybe half of it would. And if you reduce premiums \$3 a year, according to Ford you would cover the cost of that serial process every year. It only cost them \$3. General Motors may be up to \$5. Ford said \$3. So if only half of the savings to the insurance company were passed on to the consumer, the consumer would have that paid for every year.

Mr. MCKINNON. I agree. Based on GEICO's statistics, they would come up with greater savings.

Mr. SCHEUER. What I said was wrong. Half the savings would be in the hundreds of millions of dollars or in the billions of dollars. If it were \$4 billion, you would save \$400 million.

Mr. MCKINNON. That is at 10 percent.

Mr. SCHEUER. They would save \$400 million. That would be a pretty hefty hunk of what we are paying for auto theft insurance.

I am going to wait very eagerly for the GEICO figures. I can't believe they are not going to show a very significant cost/benefit relationship between expending \$3 or \$4 or \$5 per car and cutting insurance theft 10 percent.

Congressman Green?

Mr. GREEN. I have no questions.

Mr. MCKINNON. I think one point we would like to make regarding the theft of automobiles today—in the marketplace we are seeing a change away from stealing the large gas-guzzlers-type car and we are seeing more Monte Carlos, Firebirds and Grand Prix stolen than other types of vehicles, and it is mainly because the consumer is using those cars more than the larger cars, and the demand is now for parts in those areas, as opposed to your Lincoln Continental and Cadillac Seville, et cetera.

Mr. SCHEUER. Margaret?

Ms. DURBIN. The Justice Department pointed out in its testimony that, as a result of growing chop-shop problems, the legitimate salvage vehicle industry in some geographical areas is teetering on the edge of destruction because it is confronted with growing control of its activity by the criminal elements.

Could you comment on that statement?

Mr. MCKINNON. This was very true in the State of Michigan prior to about a year ago, when the State of Michigan acted to curb auto theft problems in that State. It was almost impossible for our people to buy late-model salvage, the reason being—this was especially true where people would come in for the purpose of buying cars for the salvage switch type of operation—they would bid not just the \$2,000 that was quoted here earlier—they would bid as high as \$3,000 for what we would consider a basket case. Such a car has no usable parts. The only thing of value in that car is the vehicle identification numbers, No. 1, and 2, the title that goes with that basket case.

So, in this case the State acted through the automotive recyclers of Michigan to curb this problem.

Ms. DURBIN. Are there other geographic areas you would care to mention?

Mr. WERNER. Maybe I can answer that a little better, because I am in the business.

In Florida in particular, we have experienced several problems mainly because the only way one can purchase an automobile is through a salvage pool, through an insurance company or through private individuals.

There are yards that we know for a fact that purchase at none of these, yet they have more merchandise than the biggest yards, and yet I myself have 50 acres and I am one of the largest legitimate dealers in Florida. This man can outsell me every day of the week. We have a list we won't buy from. Yet we still see doors, for instance, that come in with no locks on them, the reason being that a lock can be traced, the number would show up eventually from General Motors or from Ford. They have an identifying number. If you bought a front clip section, which is a front end of a car, you would never get a fuel section because it has a motor vehicle number on it. You could never buy a frame section from these people because it has an identifying number. I see an awful lot of transmissions and motors, which is a big business, because the cars now are becoming lighter weight and they almost self-destruct. Motors and transmissions, especially on older cars for people who want to keep their cars running, are a big seller; but you won't find these items in chop shops because they

have numbers and nine times out of ten they will dump them or give them away for next to nothing to get rid of the evidence.

Mr. SCHEUER. That was very interesting.

[Testimony resumes on p. 475.]

[Mr. McKinnon's prepared statement with attached proposed amendments follow:]

TESTIMONY OF

Russell F. McKinnon

Executive Vice President
Automotive Dismantlers and Recyclers of America

Chairman of the Coalition to Halt Automotive Theft (CHAT)

PRESENTED TO:

The Subcommittee on Consumer Protection
and Finance of the House Interstate and Foreign Commerce Committee

and

The Subcommittee on Inter-American Affairs of
the House Foreign Affairs Committee

Washington, D.C.

June 10, 1980

MY NAME IS RUSSELL F. MCKINNON, AND I AM THE EXECUTIVE VICE PRESIDENT OF THE AUTOMOTIVE DISMANTLERS AND RECYCLERS OF AMERICA (ADRA), LOCATED IN WASHINGTON, D.C. I AM A NATIVE OF MASSACHUSETTS, A GRADUATE OF THE COLLEGE OF THE HOLY CROSS, AND A FORMER NAVAL LIEUTENANT WITH SERVICE IN VIET NAM. I HAVE SERVED AS THE EXECUTIVE VICE PRESIDENT OF ADRA SINCE AUGUST OF 1977.

I AM ALSO CURRENTLY SERVING AS THE NATIONAL CHAIRMAN OF THE COALITION TO HALT AUTOMOTIVE THEFT (CHAT). THIS COALITION HAS BEEN ORGANIZED TO COMBAT AUTO AND TRUCK THEFT AND SPECIFICALLY ADVOCATES THE PASSAGE OF FEDERAL LEGISLATION NOW PENDING BEFORE THE U.S. CONGRESS, THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979. THE COALITION IS PLEASED TO NOTE THAT THE FOLLOWING ARE ACTIVE OR AFFILIATE MEMBERS OF CHAT:

ACADEMY AUTO PARTS
AMERICAN INSURANCE ASSOCIATION
AUTOMOTIVE DISMANTLERS AND RECYCLERS OF AMERICA
AUTOMOTIVE SERVICE COUNCILS
CHESTERFIELD AUTO PARTS COMPANY
COMMERCIAL UNION ASSURANCE COMPANY
CONSUMER FEDERATION OF AMERICA
GEICO
GREATER CLEVELAND CRIME PREVENTION COMMITTEE
INSTITUTE OF SCRAP IRON AND STEEL
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
HONORABLE EDWARD J. KING, GOVERNOR OF MASSACHUSETTS
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

NATIONWIDE INSURANCE COMPANIES

NEW YORK/NEW JERSEY ANTI-CAR THEFT COMMITTEE

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

INTERNATIONAL ASSOCIATION OF AUTO THEFT INVESTIGATORS, AND

WASHINGTON METROPOLITAN AUTO BODY ASSOCIATION,

WASHINGTON, D.C.

FINALLY, THE NATIONAL AUTO THEFT BUREAU IS ACTING AS AN ADVISOR TO THE COALITION.

I AM PLEASED TO HAVE THIS OPPORTUNITY TO ADDRESS THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE OF THE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, AND THE SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS OF THE HOUSE FOREIGN AFFAIRS COMMITTEE. THE ALARMING INCREASE IN THE INCIDENCE OF VEHICLE THEFT IS A MAJOR PROBLEM FOR THE MOTORING PUBLIC AND IS OF GREAT CONCERN TO THE AUTOMOTIVE DISMANTLING AND RECYCLING INDUSTRY. OUR INDUSTRY HAS BEEN GREATLY CONCERNED WITH THE AUTO THEFT PROBLEM IN THE UNITED STATES SINCE 1974, AND SINCE THAT TIME, HAS WORKED CLOSELY WITH AGENCIES OF THE FEDERAL GOVERNMENT, INCLUDING THE INTERAGENCY COMMITTEE ON AUTOMOTIVE THEFT PREVENTION, SEVERAL STATES OF THE UNITED STATES, AND OTHER INTERESTED PARTIES IN DEVELOPING SOLUTIONS TO THE AUTO THEFT PROBLEM. OUR INDUSTRY STRONGLY SUPPORTS LAW ENFORCEMENT EFFORTS AND LEGISLATIVE EFFORTS, AT THE STATE AND FEDERAL LEVEL, TO IMPLEMENT EFFECTIVE AUTO THEFT PREVENTION MEASURES.

THE AUTOMOTIVE DISMANTLERS AND RECYCLERS OF AMERICA IS A NATIONAL TRADE ASSOCIATION COMPOSED OF SMALL BUSINESSES, MANY OF WHICH ARE FAMILY-OWNED AND OPERATED. ACCORDING TO A 1972 U.S. DEPARTMENT OF COMMERCE SURVEY, IT IS ESTIMATED THAT THERE ARE OVER 15,000 AUTO DIS-

MANTLERS IN THE AUTO SALVAGE BUSINESS, EMPLOYING OVER 100,000 PEOPLE. IT WAS ESTIMATED THAT THE INDUSTRY DOES OVER FIVE BILLION DOLLARS IN SALES EACH YEAR, MAKING IT THE SIXTEENTH LARGEST INDUSTRY IN THE COUNTRY. FURTHER, OUR ASSOCIATION FEELS THAT THESE FIGURES HAVE INCREASED SIGNIFICANTLY SINCE THIS STUDY WAS PUBLISHED IN 1972.

OUR INDUSTRY PROVIDES A VALUABLE SERVICE TO THE MOTORING PUBLIC AND TO THE PUBLIC IN GENERAL. THE MEMBERS OF THE INDUSTRY ARE IN THE BUSINESS OF BUYING MOTOR VEHICLES THAT ARE NO LONGER FIT FOR TRANSPORTATION, DISMANTLING THESE VEHICLES, AND MAKING THEIR COMPONENT PARTS AVAILABLE FOR THE REPAIR OF OTHER VEHICLES. MOST OF THE VEHICLES WE DISMANTLE ARE WRECKED OR DAMAGED OR OTHERWISE RENDERED INOPERATIVE. THEY ARE PURCHASED FROM INSURANCE COMPANIES OR PRIVATE OWNERS AS SALVAGE VEHICLES. MANY OF THE VEHICLES, WHILE DAMAGED, DO CONTAIN UNDAMAGED, CHOICE USABLE PARTS. THESE PARTS ARE SOLD FOR THE REPAIR OF VEHICLES DAMAGED IN ACCIDENTS OR FOR THE REPLACEMENT OF PARTS WORN OUT BY USE. THOSE PORTIONS OF SALVAGE VEHICLES NOT SUITABLE FOR SALE AS USED PARTS ARE SOLD AS "CORE PARTS" FOR PART REBUILDING PURPOSES OR THEY ARE CONSIGNED TO SCRAP PROCESSORS.

THE AGE OF VEHICLES WHICH ARE DISMANTLED RANGES FROM THOSE JUST OFF THE SHOWROOM FLOOR TO THOSE THAT ARE SEVERAL YEARS OLD. HOWEVER, OUR PRIMARY ACTIVITY IS IN VEHICLES THAT ARE LESS THAN SIX YEARS OLD.

MANY OF THE PARTS WE ARE ABLE TO SALVAGE FOR SALE CANNOT BE DUPLICATED BY THE ORIGINAL MANUFACTURER AND, IN MOST CASES, WE ARE ABLE TO SAVE THE BUYER CONSIDERABLE WAITING TIME OVER WHAT WOULD HAVE BEEN REQUIRED FOR A NEW PART TO BE SHIPPED AND ASSEMBLED. MORE IMPORTANTLY,

WE ARE ABLE TO PROVIDE DEPENDABLE, USED PARTS TO THE INSURANCE INDUSTRY, REPAIR SHOPS AND THE INDIVIDUAL CONSUMER.

OUR INDUSTRY THUS PROVIDES INSURANCE COMPANIES WITH A REASONABLE MEANS OF DISPOSING OF SALVAGE VEHICLES, A SOURCE OF INCOME FOR THIS SALVAGE, AND A METHOD OF REPAIRING DAMAGED VEHICLES THAT SAVES A CONSIDERABLE AMOUNT OF TIME AND EXPENSE, WHEN COMPARED WITH NEW REPLACEMENT PARTS. THE INDUSTRY ALSO SERVES AS A MEANS FOR INDIVIDUALS TO DISPOSE OF UNWANTED VEHICLES, AND HELPS LOCAL GOVERNMENTS WITH ABANDONED VEHICLE PROGRAMS.

IN ADDITION, RECYCLERS ARE ALSO PROUD OF THE CONTRIBUTION WE MAKE TOWARD THE CONSERVATION OF ENERGY THROUGH RECYCLING USED PARTS WITHOUT CONSUMPTION OF SIGNIFICANT ADDITIONAL ENERGY. OUR PROCESS OF MANUFACTURING IS TO REMOVE THE PART, TEST IT OR CLEAN IT AS NECESSARY, AND SUPPLY IT TO THE USER. THESE USED AUTO AND TRUCK PARTS SAVE CONSUMERS DOLLARS SINCE THEY ARE USUALLY ONE THIRD TO ONE HALF LESS THAN NEW PARTS - AN EXCELLENT MEANS OF COMBATTING INFLATION. TODAY, AS THE COST OF NEW CARS RISES, MORE AND MORE PEOPLE HOLD ON TO THEIR VEHICLES, THE VALUE OF USED AUTOMOTIVE PARTS CONTINUES TO RISE.

THIS, IN CAPSULE, IS HOW OUR INDUSTRY SERVES THE NATION.

MOTOR VEHICLE THEFT

MR. CHAIRMAN, A MAJOR CONCERN OF OUR INDUSTRY IS MOTOR VEHICLE THEFT AND THE TRAFFICKING IN STOLEN OR "HOT" MOTOR VEHICLE PARTS. AUTO THEFT AND THE DISMANTLING OF STOLEN VEHICLES FOR COMPONENT PARTS AND THE DISTRIBUTION AND SALES OF STOLEN PARTS FOR REPAIR PURPOSES HAVE REACHED CRISIS PROPORTIONS. AUTO THEFT IS EXTREMELY COSTLY TO THE DRIVING PUBLIC

AND TO THE LEGITIMATE SALVAGE DEALER WHO FINDS IT DIFFICULT TO COMPETE IN THE OPEN MARKET WITH THE THIEF WHO HAS LITTLE OVERHEAD AND WHO OPERATES RELATIVELY FREE FROM THE FEAR OF PROSECUTION.

THE PRICE OF A NEW AUTOMOBILE HAS TAKEN A DRAMATIC JUMP IN THE LAST FIVE YEARS. THE AVERAGE PRICE FOR A 1980 AUTOMOBILE IS IN THE AREA OF \$8,000. SOME TOP OF THE LINE VEHICLES NOW SELL FOR WELL OVER \$20,000. SIMILARLY, THERE HAS BEEN A CORRESPONDING RISE IN THE PRICE OF NEW PARTS. THE PRICES OF THESE NEW PARTS HAVE RISEN SO THAT A USED DOOR FROM A LATE MODEL VEHICLE WILL SELL FOR \$300 OR MORE. A LATE MODEL ENGINE MIGHT BRING ANYWHERE FROM \$800 TO \$1,000 AND HIGHER. A FRONT END ASSEMBLY WHICH INCLUDES: THE FENDERS, HOOD, GRILL AND BUMPER, AS A UNIT, MAY BRING \$1,500 TO \$2,000 AND HIGHER. THESE COMPONENTS FROM LATE MODEL AUTOMOBILES ARE NOW WORTH SUBSTANTIAL AMOUNTS OF MONEY, AND THEREFORE ARE HIGH PROFIT ITEMS TO POTENTIAL THIEVES.

ACCORDING TO RECENT TESTIMONY BEFORE THE U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, AUTO THEFT NOW REPRESENTS A \$4 BILLION A YEAR CRIMINAL ACTIVITY FOR WHICH THE AMERICAN PUBLIC PAYS A SUBSTANTIAL PRICE. THESE TOTALS REPRESENT LOSSES OF \$3 BILLION IN INSURANCE CLAIMS AND ANOTHER BILLION DOLLARS A YEAR SPENT IN THE CRIMINAL JUSTICE SYSTEM.

ACCORDING TO THE NATIONAL AUTO THEFT BUREAU, ABOUT ONE MILLION VEHICLES ARE STOLEN EACH YEAR, OR ONE VEHICLE EVERY 33 SECONDS. REGRETABLELY, THE PROBLEM IS ESCALATING, AND ACCORDING TO THE F.B.I. UNIFORM CRIME REPORTS, FOR THE YEAR 1979, THE RATE OF MOTOR VEHICLE THEFT WAS UP NATIONALLY 10%. AND, THESE THEFTS ARE NOT JUST AUTOMOBILES, BUT INCLUDE: VANS, PICKUPS, TRACTOR TRAILER TRUCKS, BUSES, FOUR WHEEL DRIVE VEHICLES, FARM EQUIPMENT AND CONSTRUCTION EQUIPMENT.

MORE IMPORTANTLY, THE RECOVERY RATE OF THESE VEHICLES IS DECREASING. IN 1967, 86% OF ALL STOLEN VEHICLES WERE RECOVERED, WHILE IN 1978, ONLY 61% WERE RECOVERED. THIS IS A MAJOR INDICATOR THAT STOLEN VEHICLES ARE NO LONGER BEING TAKEN BY JOY RIDERS, BUT THAT AUTO THEFT IS INCREASINGLY A CRIME COMMITTED BY PROFESSIONALS. FOR THE YEAR 1978, THE NATIONAL AUTO THEFT BUREAU ESTIMATED THAT 38% OF ALL STOLEN VEHICLES WERE STRIPPED FOR PARTS. IN NEW YORK CITY, POLICE OFFICIALS ESTIMATED THAT IN 1976, AT LEAST 55% OF THE STOLEN VEHICLES IN THAT CITY WERE STOLEN FOR THEIR PARTS. YET, IN SPITE OF THESE FACTS AND THE CONTINUED GROWTH OF THE PROBLEM, ON A NATIONAL BASIS, ONLY 15% OF AUTO THEFTS END IN ARREST OF THE OFFENDER, AND THE RE-ARREST RATE FOR CAR THEFT IS 75%, ACCORDING TO THE NATIONAL AUTO THEFT BUREAU. FURTHER, ACCORDING TO THE F.B.I., ONLY 1% OF THOSE ARRESTED ARE CONVICTED. OBVIOUSLY, THE PROFITS ARE HIGH AND THE RISK IS LOW; AND THE PUNISHMENT DOES NOT DETER THE CRIME.

ADRA MOTOR VEHICLE THEFT PREVENTION EFFORTS

OUR INDUSTRY IS DEEPLY CONCERNED ABOUT FINDING SOLUTIONS TO THESE PROBLEMS. SINCE 1974, OUR MOTOR VEHICLE ANTI-THEFT COMMITTEE HAS WORKED WITH INTERESTED PARTIES IN AN EFFORT TO CURTAIL VEHICLE THEFTS. IN THAT REGARD, ADRA HAS CONSISTENTLY PROPOSED SIX MAJOR THEFT PREVENTION RECOMMENDATIONS. THESE INCLUDE:

1. VEHICLE MANUFACTURERS BE REQUIRED TO PLACE IDENTITY (V.I.N.'S) ON THREE ADDITIONAL MAJOR COMPONENTS: FRONT END ASSEMBLIES, DOORS, AND REAR BODY SECTIONS.
2. A MAJOR PENALTY BE PRESCRIBED FOR THE REMOVAL OR DEFACEMENT OF V.I.N.'S WITH INTENT TO CONCEAL IDENTITY.
3. EACH STATE BE REQUIRED TO INSTITUTE A PROGRAM OF TITLE SURRENDER AND ISSUANCE OF A SALVAGE CERTIFICATE ON ALL LATE MODEL SALVAGE MOTOR VEHICLES. UNIFORMITY BETWEEN STATES IS IMPERATIVE.

4. EACH STATE BE REQUIRED TO LICENSE AUTOMOTIVE RECYCLERS AND INSTITUTE THE NECESSARY REGULATIONS WHICH WILL ALLOW A COMPLETE AUDIT TRAIL. AGAIN, UNIFORMITY IS IMPORTANT.
5. EACH STATE BE REQUIRED TO PROVIDE EFFECTIVE ENFORCEMENT PROCEDURES. WE RECOMMEND THAT A PROGRAM OF FEDERAL FUNDING BE ENACTED TO ENCOURAGE THE STATES TO IMPLEMENT THIS MANDATE.
6. IT IS MADE A FEDERAL CRIME TO STEAL A LATE MODEL MOTOR VEHICLE, AND APPROPRIATE PENALTIES BE PRESCRIBED.

OUR INDUSTRY BELIEVES THAT THERE ARE SEVERAL PROBLEMS THAT NEED TO BE RESOLVED IF AUTO THEFT IS TO BE CURBED. FIRST, WE RECOGNIZE THAT APPROXIMATELY 38% OF ALL STOLEN VEHICLES ARE STRIPPED FOR PARTS AND THAT THEY ARE MARKETED THROUGH THE SALVAGE INDUSTRY. TRAFFIC IN STOLEN PARTS CONSISTS MAINLY OF: FRONT-END ASSEMBLIES (FENDERS, HOOD, GRILL AND THE BUMPER) AND ALSO DOORS AS COMPLETE ASSEMBLIES. THERE IS SOME TRAFFIC IN REAR BODY SECTIONS (QUARTER PANELS, DECK LID, AND FLOOR). THE OTHER MAJOR COMPONENT PARTS ARE THE ENGINE AND THE TRANSMISSION. ON AMERICAN MADE VEHICLES, THE ENGINES AND TRANSMISSIONS CARRY VEHICLE IDENTIFICATION NUMBERS (V.I.N.'S) AND BECAUSE THEY ARE READILY IDENTIFIABLE, THEY ARE USUALLY SCRAPPED BY THIEVES AS SOON AS POSSIBLE. THE RISK IN SELLING THESE ITEMS IS OFTEN TOO GREAT. THERE IS A GREAT DEMAND FOR THE FIRST TWO MAJOR COMPONENTS CITED: FRONT-END ASSEMBLIES AND DOORS. AS PREVIOUSLY STATED, THE FRONT-END ASSEMBLY OFTEN RUNS \$1,500 OR MORE AND DOORS CAN SELL FOR SEVERAL HUNDRED DOLLARS.

IT SHOULD BE NOTED THAT IN MANY CASES OUR INDUSTRY BECOMES THE MEANS FOR MOVING THE PARTS TO THE CONSUMER. HOWEVER, INSURANCE COMPANIES AND REPAIR SHOPS ARE THE ULTIMATE PURCHASERS OF THESE STOLEN PARTS.

EVEN THE MANUFACTURERS OF NEW CARS ARE HURT BY THE PROCESS WHEN NEW AUTOMOBILES ARE STOLEN FOR PARTS PRIOR TO EVER GETTING TO THE SHOWROOM FLOOR. FOR THESE REASONS, THE INSURANCE INDUSTRY AND THE REPAIR INDUSTRY HAS GIVEN A GREAT DEAL OF SUPPORT TOWARDS HALTING AUTO THEFT. BUT A MAJOR PROBLEM REMAINS WHEN ATTEMPTING TO IDENTIFY STOLEN PARTS ONCE THEY HAVE LEFT THE "CHOP SHOP." FRONT-END ASSEMBLIES AND DOORS LACK A PERMANENT IDENTIFICATION NUMBER, THUS, ONCE SEPARATED FROM THE VEHICLE, THESE PARTS ARE ALMOST IMPOSSIBLE TO IDENTIFY. FOR THIS REASON, LEGITIMATE AUTO DISMANTLERS AND RECYCLERS, INSURANCE COMPANIES AND REPAIR SHOPS CAN UNKNOWINGLY HANDLE STOLEN PARTS. MARKING MAJOR COMPONENT PARTS WOULD REDUCE THE "MARKETABILITY" OF THESE PARTS.

A SECOND MAJOR PROBLEM IS THE PRACTICE OF SWITCHING THE VEHICLE IDENTIFICATION NUMBERS (V.I.N.'S) TO AN IDENTICAL STOLEN VEHICLE. THE RESULT IS A STOLEN VEHICLE WITH A TITLE AND MATCHING V.I.N. AT VERY LITTLE COST. THE ISSUANCE OF A SALVAGE CERTIFICATE IN EXCHANGE FOR THE TITLE PRIOR TO SELLING THE SALVAGE ELIMINATES THIS PROBLEM IF THE PROCEDURE IS FOLLOWED. OWNERS OF SALVAGE VEHICLES COULD ALSO BE REQUIRED TO EXCHANGE THE TITLE FOR A SALVAGE CERTIFICATE, AT THE TIME OF SETTLEMENT OF THE CLAIM WHERE THE OWNER RETAINS THE SALVAGE. THE OBJECTIVE IS TO ELIMINATE THE "BLACK MARKET" IN TITLES. IN NEW MEXICO, SALVAGE CERTIFICATES ARE NOT USED, BUT DISMANTLERS MUST GIVE FIVE WORKING DAYS NOTICE TO STATE OFFICIALS PRIOR TO DISMANTLING A VEHICLE. WHATEVER THE METHOD THAT IS USED, THE PROCESS MUST BE RAPID SINCE A TOTAL LOSS VEHICLE HAS GREATEST VALUE THE DAY AFTER THE ACCIDENT. THE LONGER THE PROCESS TAKES, THE GREATER THE TEMPTATION TO SKIP THE PROCEDURE.

THERE IS ANOTHER PROBLEM THAT IS RELATED TO THIS SITUATION THAT INVOLVES "REBUILT" OR "RECONSTRUCTED" VEHICLES. IF A SALVAGE CERTIFICATE IS ISSUED AND A VEHICLE IS "REBUILT," THEN A TITLE WILL BE ISSUED. HOWEVER, PRIOR TO THE ISSUANCE OF THE TITLE THE VEHICLE MUST BE INSPECTED AND APPROVED. WHETHER THIS INSPECTOR SHOULD BE A LAW ENFORCEMENT OFFICER OF A LICENSED DEALER WOULD DEPEND ON THE DEGREE OF THE PROBLEM IN A STATE. IN ANY CASE, THE PERSONS INSPECTING THE VEHICLE MUST BE HELD ACCOUNTABLE FOR THEIR ACTIONS. IT MUST BE KEPT IN MIND THAT THE DEALER IN STOLEN VEHICLES AND STOLEN PARTS IS MAKING SEVERAL HUNDREDS OF THOUSANDS OF DOLLARS A YEAR AND FOR THAT TYPE OF MONEY, THEY MAY BE WILLING TO TAKE THE RISK OF FRAUDULENTLY REPRESENTING THE VALIDITY OF OWNERSHIP AND ORIGIN OF THE REPLACEMENT PARTS. A TRAINED INSPECTOR MAY BE THE ONLY RECOURSE.

ANOTHER AREA FOR SERIOUS CONSIDERATION IS THE SCRAPPING PROCESS. AUTO DISMANTLERS, AFTER SELLING THE USED PARTS AND THE REBUILDABLE PARTS FROM A VEHICLE, WILL OFTEN FLATTEN THE REMAINING HULK FOR TRANSPORTATION TO A LOCAL SCRAP PROCESSOR. USUALLY 16 VEHICLES FLATTENED TO ABOUT 14 INCHES HIGH WILL BE LOADED ON A FLAT BED SEMI-TRAILER AND SHIPPED SEVERAL MILES TO THE PROCESSOR.

IN DRAFTING LEGISLATION AND REGULATION, THIS LEGITIMATE MEANS OF DOING BUSINESS MUST BE KEPT IN MIND. IN A FLATTENED CONDITION, THESE HULKS DO NOT RESEMBLE VEHICLES AND THE VEHICLE IDENTIFICATION NUMBERS CANNOT BE IDENTIFIED. FURTHER, IT SHOULD BE REMEMBERED THAT SCRAP PROCESSORS ARE IN BUSINESS FOR THE PURPOSE OF REDUCING VEHICLES INTO METALLIC PIECES. IN THIS PROCESS, THE VEHICLE AND THE VEHICLE IDENTIFICATION NUMBER ARE DESTROYED. LAWS AND REGULATIONS MUST ALLOW FOR THIS PROCESS.

IT HAS ALSO BEEN SUGGESTED THAT AUTO DISMANTLERS MIGHT BE HELD RESPONSIBLE FOR MARKING MAJOR COMPONENT PARTS OF THE VEHICLE RATHER THAN ALLOW THE MANUFACTURERS OF VEHICLES TO MARK THESE PARTS. THIS SUGGESTION FAILS TO TAKE INTO CONSIDERATION THAT "CHOP SHOPS" COULD EASILY TAKE ADVANTAGE OF SUCH A SYSTEM AND THEREFORE CIRCUMVENT THE PURPOSE OF MARKING PARTS.

FINALLY, IT HAS ALSO BEEN SUGGESTED AT TIMES THAT VEHICLE IDENTIFICATION NUMBERS SHOULD BE REMOVED AND SHOULD BE SENT TO STATE AUTHORITIES. MOST LAW ENFORCEMENT AUTHORITIES NOW AGREE THAT SUCH A PRACTICE "LEGITIMIZES" THE VERY OPERATIONS OF "CHOP SHOPS." SWITCHING V.I.N.'S IS A COMMON PRACTICE AMONG "CHOP SHOPS," AND THIEVES DO NOT WANT TO BE CAUGHT WITH PARTS BEARING IDENTIFICATION NUMBERS. ALLOWING THE ALTERING OR TAMPERING OF A V.I.N. WOULD ONLY MAKE IT EASIER FOR THE THIEF.

IN ATTEMPTING TO COMBAT AUTO THEFT, ADRA HAS CONSISTENTLY SOUGHT THE IMPLEMENTATION OF THE SIX PREVIOUSLY STATED RECOMMENDATIONS AND WE HAVE SET FORTH FOUR GOALS. FIRST, WE HAVE ATTEMPTED TO MAKE THE AMERICAN PUBLIC MORE AWARE OF THE PROBLEM OF AUTO THEFT. TO THIS END, WE WORKED CLOSELY WITH CBS IN THE PRODUCTION OF A SEGMENT FOR THE SHOW "SIXTY MINUTES" THAT WAS FIRST AIRED IN MARCH 1978. IN ADDITION, WE WORKED WITH NBC NEWS IN THE PRODUCTION OF A SEGMENT FOR THE NBC NIGHTLY NEWS AIRED IN JANUARY 1978. THROUGH THE EFFORTS OF ADRA AND THE COALITION TO HALT AUTOMOTIVE THEFT AND OTHERS, NATIONAL COVERAGE WAS GIVEN TO THE AUTO THEFT PROBLEM DURING THE DECEMBER 1979 HEARINGS OF THE U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS.

SECOND, ADRA HAS WORKED ACTIVELY WITH THE LEGISLATURES AND ADMINISTRATIVE AGENCIES OF SEVERAL STATES, INCLUDING: ALABAMA, CALIFORNIA,

COLORADO, ILLINOIS, LOUISIANA, MICHIGAN, NEW YORK, OHIO, OKLAHOMA, TEXAS, VIRGINIA, AND MASSACHUSETTS. WE HAVE ALSO PARTICIPATED IN THE EFFORTS OF THE NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS AND ORDINANCES REGARDING A SERIES OF AMENDMENTS TO THE UNIFORM VEHICLE CODE RELATING TO MOTOR VEHICLE THEFT PREVENTION.

THIRD, WE HAVE WORKED CLOSELY WITH FEDERAL REGULATORY AUTHORITIES INCLUDING THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, THE U.S. DEPARTMENT OF JUSTICE, THE FEDERAL BUREAU OF INVESTIGATION, AND THE INTER-AGENCY COMMITTEE ON AUTO THEFT PREVENTION. OUR ASSOCIATION CO-SPONSORED WITH THE U.S. DEPARTMENT OF JUSTICE, AND THE U.S. DEPARTMENT OF TRANSPORTATION, A MEETING IN MARCH 1978 WHICH BROUGHT TOGETHER FOR THE FIRST TIME SEVERAL GROUPS INTERESTED IN MOTOR VEHICLE THEFT PREVENTION. THESE INCLUDED: FEDERAL AND LOCAL LAW ENFORCEMENT ASSOCIATIONS, FEDERAL AND STATE OFFICIALS (INCLUDING MOTOR VEHICLE ADMINISTRATORS AND CUSTOMS OFFICIALS), REPRESENTATIVES OF THE NATIONAL AUTO THEFT BUREAU, CONGRESSIONAL AIDES, AUTO THEFT INVESTIGATORS, REPRESENTATIVES FROM THE MOTOR VEHICLE MANUFACTURERS, AND REPRESENTATIVES FROM THE RECYCLING AND SCRAP PROCESSING INDUSTRIES.

FINALLY, WE HAVE WORKED WITH THE CONGRESS IN CONNECTION WITH THE PASSAGE OF THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979. WE ARE PLEASED WITH THE SPONSORSHIP OF THIS BILL BY SENATORS JOSEPH BIDEN (D-DEL.) AND CHARLES PERCY (R-ILL.) AND WITH CONGRESSMAN S. WILLIAM GREEN (R-N.Y.). THIS LEGISLATION IS NOW PENDING BEFORE THIS CONGRESS AND IF PASSED, SHOULD GO A LONG WAY TOWARDS CURBING THE INTERSTATE TRAFFIC IN STOLEN VEHICLES AND STOLEN VEHICLE PARTS.

MOTOR VEHICLE THEFT PREVENTION ACT OF 1979

THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979 AS PRESENTLY WRITTEN CALLS FOR:

1. AUTHORIZING THE SECRETARY OF TRANSPORTATION TO SET RULES REGARDING THE STARTING OF MOTOR VEHICLES AND IDENTIFYING OF MAJOR COMPONENT PARTS.
2. PENALTIES FOR ALTERING OR REMOVING MOTOR VEHICLE IDENTIFICATION NUMBERS.
3. FORFEITURE OF MOTOR VEHICLES AND THEIR PARTS WHICH HAVE HAD IDENTIFICATION NUMBERS ALTERED OR REMOVED.
4. PENALTIES FOR TRAFFICKING IN MOTOR VEHICLES OF THEIR PARTS WHICH HAVE HAD IDENTIFICATION NUMBERS ALTERED OR REMOVED.
5. PENALTIES FOR UNLAWFUL IMPORTATION OR EXPORTATION OF STOLEN SELF-PROPELLED VEHICLES, VESSELS, OR AIRCRAFT.
6. A REPORT ON THE DEVELOPMENTS IN THE AREA OF THE THEFT OF OFF-HIGHWAY VEHICLES AND THE STEPS TAKEN TO HELP PREVENT THEIR THEFT.

REGARDING POINT ONE, BOTH ADRA AND CHAT FEEL THAT IT IS MOST IMPORTANT THAT MANUFACTURERS OF MOTOR VEHICLES BE REQUIRED TO MARK MAJOR COMPONENT PARTS. THE MANUFACTURERS ARE THE ONLY LOGICAL GROUP THAT CAN MARK PARTS EFFICIENTLY AND EFFECTIVELY SO AS TO ELIMINATE FRAUD. WE STRONGLY RECOMMEND THAT THIS LEGISLATION NOT AUTHORIZE OR REQUIRE

DEALERS OF USED AUTOMOTIVE PARTS TO MARK MAJOR COMPONENT PARTS OF THE VEHICLE. SUCH A REQUIREMENT WOULD BE MOST BURDENSOME ON THE SMALL BUSINESSES THAT MAKE UP OUR INDUSTRY. FURTHER, THE ABILITY TO REGULATE AND ADMINISTER SUCH A PROGRAM WOULD BE SO CUMBERSOME AS TO EMASCULATE THE INTENT OF THE LEGISLATION.

REGARDING THE EXPORTATION OF MOTOR VEHICLES, THERE CAN BE NO QUESTION THAT THIS IS A SEVERE PROBLEM IN OUR COUNTRY, IF THE FINDINGS OF THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, THE REPORTS IN THE MEDIA AND THE REPORTS OF THE ADMINISTRATION ARE TO BE BELIEVED. IT IS ALL IMPORTANT THAT WE PREVENT FURTHER TRAFFICKING OF "HOT" PARTS AND STOLEN VEHICLES INTO THE NEIGHBORING COUNTRIES OF CANADA AND MEXICO.

FINALLY, AND MOST IMPORTANTLY, THE INTERESTS OF THE CITIZENS OF THE UNITED STATES MUST BE PROTECTED. CURRENTLY, AUTO THEFT IS COSTING AMERICANS SOME \$4 BILLION A YEAR. THESE COSTS ARE BEING BORNE BY EACH INDIVIDUAL THAT INSURES A MOTOR VEHICLE. THE COST FOR AUTO THEFT CAN REPRESENT ANYWHERE FROM 20% OR MORE OF AN INDIVIDUAL'S INSURANCE PREMIUM. SOMETHING MUST BE DONE TO HELP OUR CITIZENS IN THIS REGARD. PASSAGE OF THE MOTOR VEHICLE THEFT ACT WILL CURB AUTO THEFT AND SHOULD HELP HOLD DOWN FUTURE INSURANCE PREMIUMS.

THE AUTOMOTIVE DISMANTLERS AND RECYCLERS OF AMERICA AND THE COALITION TO HALT AUTOMOTIVE THEFT STRONGLY URGE THIS COMMITTEE TO REVIEW THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979 AND TO SUPPORT ITS PASSAGE INTO LAW, THEREBY HELPING TO STEM THE GROWTH OF AUTO THEFT. AUTO THEFT DOES NOT STOP AT STATE BORDERS BUT IS TRULY A NATIONAL CRIME. THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979 IS A MINIMAL BILL THAT IS A STEP IN THE RIGHT DIRECTION. WE URGE ITS PASSAGE.

THANK YOU, MR. CHAIRMAN, AND WITH THIS TESTIMONY WE ARE SUBMITTING,
FOR THE RECORD, SUGGESTED AMENDMENTS TO THE MOTOR VEHICLE THEFT PRE-
VENTION ACT AS APPROVED BY THE COALITION TO HALT AUTOMOTIVE THEFT AND
THE AUTOMOTIVE DISMANTLERS AND RECYCLERS OF AMERICA.

AMENDMENTS

PROPOSED BY THE COALITION TO HALT AUTOMOTIVE THEFT
TO THE MOTOR VEHICLE THEFT PREVENTION ACT OF 1979 S.1214 AND H.R.4178

TITLE II

Section 202 (b) (4) be renumbered as (b)(5) and new subsection

(b) (4) be added to read as follows:

Before issuing any final rule on major component identification,
the Secretary of Transportation shall fully review the results
of any pilot project on component part identification insti-
tuted by any motor vehicle manufacturer.

Include in Title II, as Section 204 of the bill:

Unless the Secretary of Transportation and the Attorney General jointly certify to the Congress in the final report required under Section 502 of this Act that this title has been effective in curbing thefts of motor vehicles and motor vehicle parts, all authority given to the Secretary under this title shall expire at the submission of such final report to the Congress.

TITLE II,

Section 202(a):

In exercising the authority given to the Secretary of Transportation under Section 103(j) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) as added by Section 201 of this Act, the Secretary shall consult closely with the Attorney General, the International Association of Chiefs of Police, the International Association of Auto Theft Investigators, the National Automobile Theft Bureau, the American Association of Motor Vehicle Administrators, the automobile insurance industry and other groups and individuals interested in or affected by the motor vehicle theft problem.

PROPOSED AMENDMENTS TO TITLE III OF S. 1214,
"MOTOR VEHICLE THEFT PREVENTION ACT OF 1979"

§510. Altering or removing motor vehicle identification numbers.

"(a) Whoever knowingly removes, obliterates, tampers with, or alters any identification number for any motor vehicle or part thereof required under regulations issued by the Secretary of Transportation shall be fined not more than \$5,000, imprisoned not more than five years, or both.

(b) Subsection (a) above shall not apply to a scrap processor or demolisher when such person loads, unloads, crushes, flattens, destroys, grinds up, handles or otherwise reduces a motor vehicle or motor vehicle part into metallic scrap for purposes of recycling such metallic content provided such person complies with appropriate state laws, if any, concerning the disposition of such motor vehicle or motor vehicle part.

(c) Subsection (a) above shall not apply to a person acting under authority of the Secretary of Transportation or under the authority of state law when such person restores or replaces any such identification number for a motor vehicle or motor vehicle part.

(d) For purposes of this section, the term-

(1) 'scrap processor' means any person, firm or corporation engaged in the business of buying motor vehicles or motor vehicle parts to process into scrap metal for remelting purposes, who, from a fixed location, utilizes machinery and equipment for processing and manufacturing ferrous or nonferrous metallic scrap into prepared grades, and whose principal product is metallic scrap for such purposes; and

(2) 'demolisher' means any person, firm or corporation whose business is to crush, flatten or otherwise reduce a motor vehicle or motor vehicle part to a condition where it can no longer be considered a motor vehicle or motor vehicle part."

(e) For purposes of sections 510, 511, and 2319 of this title the term 'motor vehicle' has the meaning given to it in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391).

Proposed Amendments to Title III of S.1214,
"Motor Vehicle Theft Prevention Act of 1979"

S511. Forfeiture of motor vehicles and their parts which have had identification numbers altered or removed.

"(a) PROPERTY SUBJECT TO FORFEITURE --Any motor vehicle or motor vehicle part required to have an identification number pursuant to regulations issued by the Secretary of Transportation which has had such numbers removed, obliterated, tampered with, or altered shall be subject to seizure and forfeiture to the United States unless--

- (1) such motor vehicle or motor vehicle part has been attached to a motor vehicle owned by an innocent purchaser of such part;
- (2) such motor vehicle or motor vehicle part has a replacement identification number which is authorized by the Secretary of Transportation or is in conformity with the applicable law of the State where such motor vehicle or motor vehicle part is located;
- (3) such motor vehicle or motor vehicle part had its identification number removed, obliterated, tampered with, or altered by collision or fire involving damage to the part of the motor vehicle containing such a number;
- (4) such motor vehicle or motor vehicle part had its identification number required pursuant to regulations of the Secretary of Transportation removed, obliterated, tampered with, or altered by conduct in accordance with Section 510(b) of this title; or
- (5) such motor vehicle or motor vehicle part is in the possession or control of a scrap processor, as defined in Section 510 of this title, unless such scrap processor possessed knowledge

that such number had been removed, obliterated, tampered with, or altered otherwise than by the process of loading, unloading, crushing, flattening, destroying, grinding up, handling, or otherwise reducing such motor vehicle or motor vehicle part into metallic scrap for processing.

[Faint, mostly illegible text, possibly bleed-through from the reverse side of the page]

Proposed Amendments to Title III of S.1214,
"Motor Vehicle Theft Prevention Act of 1979"

S2319. Trafficking in motor vehicles or their parts which have had identification numbers altered or removed

"(a) Whoever buys, receives, possesses, or obtains control of, with intent to sell, transfer, distribute, dispense, or otherwise dispose of, any motor vehicle or motor vehicle part, knowing that an identification number required pursuant to regulations issued by the Secretary of Transportation has been removed, obliterated, tampered with, or altered, shall be fined not more than \$25,000, imprisoned not more than ten years, or both.

(b) This section shall not apply to:

(1) a motor vehicle or motor vehicle part which has a replacement identification number which is authorized by the Secretary of Transportation or is in conformity with the applicable law of the state where such motor vehicle part is located;

(2) a motor vehicle or motor vehicle part whose identification number required pursuant to regulations issued by the Secretary of Transportation was removed, obliterated, tampered with, or altered as a result of damage caused by a collision or fire to such part of the motor vehicle containing such a number;

(3) a motor vehicle or motor vehicle part which had its identification number required pursuant to regulations of the Secretary of Transportation removed, obliterated, tampered with, or altered by conduct in accordance with Section 510(b) of this title; or

(4) a scrap processor, as defined in section 510 of this title, when the scrap processor bought, received, possessed, or obtained control of, with the intent to sell, transfer, distribute,

dispense or otherwise dispose of by processing or manufacturing into prepared grades of metallic scrap, (i) a motor vehicle which has been crushed, flattened, destroyed, ground up, handled, or otherwise reduced to a condition where it could no longer be considered a motor vehicle or (ii) a motor vehicle part, provided such scrap processor did not possess knowledge that such motor vehicle or motor vehicle part was stolen, or had had its identification number, required pursuant to regulations issued by the Secretary of Transportation, removed, obliterated, tampered with, or altered other than by the process of loading, unloading, crushing, flattening, destroying, grinding up, handling, or otherwise reducing such motor vehicle or motor vehicle part into metallic scrap for processing.

(c) The table of sections for chapter 113 of title 18, United States Code, is amended by adding at the end thereof the following:

'2319. Trafficking in motor vehicles or their parts which have had identification numbers altered or removed."

It is also proposed that the legislative history of the Motor Vehicle Theft Prevention Act clearly reflect the fact that major component parts discussed in the bill should be limited to no more than ten component parts, for example those listed in the U.S. Department of Justice's "Talking Paper II - Component Parts Revisited," Section (E) (2) (i.e., the engine; the transmission; each door allowing entrance or egress to the passenger compartment; the hood; the radiator core support of the front end assembly; each front fender; the deck lid; tailgate, or hatchback (whichever is present); the truck floor pan; the the frame, or in the case of a unitized body, the supporting structure which serves as the frame; and one additional confidential location selected each year by the manufacturer with notification to law enforcement of the exact location). The Coalition to Halt Automotive Theft hold the position that component parts so listed are the only major component parts that should be effected by the bill, and that notification of the confidential location of the VIN should be made to the Attorney General for dissemination to law enforcement. (It is understood that trucks and motorcycles would have different major component parts.)

Reasons for Proposed Amendments to Title III, Section 510

Three new subsections are added to section 510.

Subsection (b) states that the provisions of subsection (a) making it a crime to knowingly remove, obliterate, tamper with, or alter an identification number do not apply to a scrap processor or demolisher when during their normal business operations they reduce motor vehicles and parts to metallic content. The provision, however, requires such persons to comply with appropriate state laws, if any, concerning the disposition of such materials. This provision reorganizes the value to society of the recycling of such materials. Moreover, it recognizes that the identification numbers of such vehicles and parts will be destroyed during such legal recycling activity and that no criminal penalties should be attached to such business endeavors.

Subsection (c) makes certain there is no criminal wrongdoing involved when an authorized individual replaces or restores an identification number for a motor vehicle or part. Nothing contained in this subsection, however, permits any such person to remove any such identification number if he does not replace it with another acceptable identification number.

Subsection (d), defines a "scrap processor" and a "demolisher". Both definitions are patterned upon a recent statute in the State of Virginia. The term "demolisher" is intended to describe a function in the recycling process which, under different statutory frameworks in the various states, could be legally performed by a dismantler, mobile crusher, transporter, etc.

Subsection (e) incorporates by reference the definition of "motor vehicle" set forth in the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391). In that definition motor vehicle means "any vehicle driven or drawn by mechanical power manufactured primarily for use in public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails". This provision was added to clearly show that sections 510, 511, and 2319 deal with "road" vehicles and to ensure uniformity of coverage between all three sections. Consequently, trailers would now also be covered under section 2319.

Reasons for Proposed Amendments to Title III, Section 511

Three new paragraphs are added to section 511(a) and paragraph (a)(2) is changed to read where "located" instead of where "seized".

Paragraph (3) ensures that any motor vehicle part whose identification number was damaged as a result of an accident would not be subject to seizure. Basically, these parts are "junk" and have value only for their metallic content.

Paragraph (4) removes from the possibility of seizure any motor vehicle or part whose identification number was removed or damaged during the process in which it was lawfully reduced to its metallic content.

Paragraph (5) removes from the possibility of seizure under this section any motor vehicle or part which is in the inventory of a scrap processor and whose identification number has been removed or falsified unless it can be shown the scrap processor knew the vehicle or part had its identification number removed or altered other than by the normal recycling process. This paragraph reflects the valid concerns of the scrap processor that he buys such parts purely for their metallic content and not for resale as a used part. Moreover, he often buys parts by the truck load by weight and has little knowledge of the individual items making up such a load. Where, however, guilty knowledge can be established, this provision affords no protection to illegal activities.

Reasons for Proposed Amendments to Title III, Section 2319

This amendment adds a new subsection (b) to section 2319.

It parallels the four exceptions to seizure created in paragraphs 2-5 of section 511(a) and makes them applicable to section 2319 for the same reasons. Moreover, paragraph (5) would not give the scrap processor any protection if it can be shown he knew the motor vehicle or part to be stolen.

Mr. SCHEUER. We will now go on to Mr. Ted Johnson of the Coalition to Halt Automotive Theft.

I don't know what the relationship between you chaps is. You are president and chairman?

Mr. MCKINNON. I am chairman of the coalition. Ted is the executive director. I testified for the Automotive Dismantlers and Ted will testify for the coalition.

I would be happy to support Ted in any of his testimony.

Mr. SCHEUER. You haven't heard him yet.

STATEMENT OF THEODORE JOHNSON

Mr. JOHNSON. Let me first correct or make sure I did not leave the wrong impression. The \$60 figure I quoted you was a guess or estimate of the comprehensive premium.

Theft, depending on the locality of the country, could account for a huge proportion of that comprehensive premium as it would in New York.

Mr. SCHEUER. Are you talking about \$60 a year for a comprehensive policy?

Mr. JOHNSON. The comprehensive coverage of your policy covering theft, damage by winds, glass damage, someone breaking your aerial off, things like that. It does not include liability coverage or collision coverage or anything like that. It is called comprehensive and it is that portion of the premium that the theft claim is drawn from, but that would not account for the whole \$60.

I want to thank you, Mr. Chairman, for conducting a hearing today that I believe is establishing a very commendable record on this subject. You and your colleagues have worked hard and long and it is apparent. I want to thank you for that.

Mr. SCHEUER. I want to make it clear Congressman Green is the lead sponsor of this bill.

Mr. JOHNSON. We are much indebted to Congressman Green, not only for sponsoring the bill but also more than that, the efforts he has undertaken in support of it.

Our goal is to see this bill enacted in this present session of Congress. It is important and it is urgent. I believe that the record that is established today would enable you as a committee to proceed to consideration of this bill.

Mr. SCHEUER. Let's forget about what has happened. We want to have you help us establish a record.

What have you got to say?

Mr. JOHNSON. I would like to point out, you have heard ample testimony from a number of sources, that the vehicle identification numbering will be a significant deterrent to professional auto theft.

I would also like to point out that in addition to serving that deterrent function—

Mr. SCHEUER. Do you have any further light to shed on that? You heard the insurance companies. You heard the representative from Ford and General Motors question their own data and question the lessons to be drawn from their own period of 6 months testing with 100,000 cars.

They don't really have confidence in the figures that their own tests have adduced.

Now, what do you have to give us in terms of hard data or field experience that would buoy up our sense of confidence that we are on the right track?

Mr. JOHNSON. First, there is the experience which Mr. Werner and Mr. McKinnon just gave you regarding engines and transmissions which presently are numbered. Second, there is the experience that has been documented by the Permanent Senate Investigation Subcommittee—which you might want to include by reference in your own record. These hearings repeatedly heard persons who had been convicted of auto theft crimes, the operators of chop shops, and law enforcement personnel testify that the numbering of crash parts, key component parts, would serve as a major disincentive to the commission of the crime in the first place.

Another point I think needs to be stressed is, in addition to doing that, it will also give law enforcement tools that it presently does not have to prosecute the criminal. Right now auto theft is considered by the criminal as a pretty safe crime. Not only is it lucrative but there is also little chance of prosecution, or being caught or going to jail.

The numbering will enable law enforcement to identify a part as stolen, trace it through the person who trafficked in it, trace it back to the chop shop, trace it back to the person who stole the car, and finally back to an original owner, with evidence that will stand up in court.

Right now in a court of law, a law enforcement officer can know in his bones that the part was stolen, but the owner of the car from which the part was chopped can't identify it.

Would you be able to identify your right front fender in a court of law as having come from your car? And if a defense attorney said, "Are you sure it did not come from another car of the same make, year, color and model?" could you answer affirmatively?

Mr. SCHEUER. My right front fender has a unique pattern of dents and gashes from the high risk experience it has been through under my tutelage.

Mr. JOHNSON. Many of us have the same circumstances, and still would not be able to identify the part conclusively. Numbering the part provides law enforcement with that tool. This bill also gives them the authority to seize parts, in effect, denying the criminal of the proceeds of his crime.

I will be happy to answer any questions you have.

[Testimony resumes on p. 483.]

[Mr. Johnson's prepared statement follows:]

COALITION TO HALT AUTOMOTIVE THEFT



786 National Press Building
Washington, D.C. 20045
202/638-3890

Members and Affiliates:

Academy Auto Parts
American Insurance Association
Automotive Dismantlers and
Recyclers of America
Automotive Service Councils, Inc.
Chesterfield Auto Parts Company
Commercial Union Assurance Company
Government Employees Insurance
Company
Greater Cleveland Crime
Prevention Committee
International Association of
Auto Theft Investigators
International Association of
Chiefs of Police
National Association of
Independent Insurers
Nationwide Insurance Companies
New York/New Jersey Anti-Car
Theft Committee
State Farm Mutual Automobile
Insurance Company
Washington Metropolitan Auto
Body Association

Advisors:

National Auto Theft Bureau

H. R. 4178

The Motor Vehicle Theft Prevention Act

Testimony of

THEODORE W. JOHNSON

EXECUTIVE DIRECTOR

COALITION TO HALT AUTOMOTIVE THEFT

before the

United States House of Representatives

Subcommittee on Consumer Protection and Finance

of the Interstate and Foreign Commerce Committee

and the

Subcommittee on Inter-American Affairs

of the Foreign Affairs Committee

Washington, D.C.

Tuesday, June 10, 1980

Good morning Chairman Scheuer, Chairman Yatron and members of the Subcommittees. We very much appreciate this opportunity to appear before you today.

My name is Theodore W. Johnson. I am the Executive Director of the Coalition to Halt Automotive Theft. This organization was formed last fall for the sole purpose of supporting the enactment of H.R. 4178, the Motor Vehicle Theft Prevention Act. Our goal is to see this bill enacted in the present session of Congress. Accordingly, we urge you to consider the bill in the near future and to report it promptly and favorably from these Subcommittees.

The Coalition to Halt Automotive Theft has served as the focal point for the efforts of a variety of organizations, corporations and individuals that believe this bill will stem the growing problem of motor vehicle theft in our nation. The affiliates of the Coalition are drawn from three principal groups: the automotive services industry, the insurance industry and associations of law enforcement professionals. Others, including consumer groups and public officials, also participate.

The following presently are active members and affiliates: Academy Auto Parts, American Insurance Association, Automotive Dismantlers and Recyclers of America, Automotive Service Councils, Inc., Chesterfield Auto Parts Company, Commercial Union Assurance Company, Consumer Federation of America, Government Employees Insurance Company, Greater Cleveland Crime Prevention Committee, Institute of Scrap Iron and Steel, International Association of Auto Theft Investigators, International Association of Chiefs of Police, The Honorable Edward J. King, Governor of the Commonwealth of Massachusetts, National Association of Independent Insurers, Nationwide

Insurance Companies, New York/New Jersey Anti-Car Theft Committee, State Farm Mutual Automobile Insurance Company and Washington Metropolitan Auto Body Association. The National Automobile Theft Bureau serves as an advisor to the Coalition.

The Coalition to Halt Automotive Theft is convinced there is an urgent need for this legislation to be enacted at the earliest possible time. And, I believe, the public generally joins in echoing this sentiment. Auto theft is an important consumer concern. The media attention given last week to the field hearing in New York City of these Subcommittees shows the high level of interest in a workable solution to the problem of motor vehicle theft.

People are looking for relief from inflation, relief from paying ever increasing prices for goods and services. Auto theft contributes to that inflation and is reflected in the insurance premium paid by every motorist. The Motor Vehicle Theft Prevention Act provides the means to reduce auto theft and to relieve some of the pressure that produces the present insurance premium spiral.

Citizens harbor a mood of scepticism about their government. They wonder if it actually is doing anything that is relevant to their personal lives and that provides them with any personal benefit. This bill has relevance and benefit to the people of this country. And, more importantly, there is no other way that benefit can be provided.

Let me stress this point, because it would be easy to consider this bill another attempt to regulate the automobile industry at a time when it is already burdened with federal regulation. Such a view is mistaken because it ignores the fact that motor vehicle theft

is a crime. This bill has one, primary purpose and that is to strengthen the ability of law enforcement to attack effectively an extremely costly and growing criminal problem. This problem has been fully documented in hearings by the Senate Permanent Subcommittee on Investigations. I recommend that its findings be incorporated into the record of these hearings.

The one indisputable fact that emerges is that law enforcement presently lacks adequate tools and authority to attack this problem effectively. This bill provides a remedy-- new tools and expanded authority are made available to law enforcement officials to attack the crime of auto theft in a major assault. This bill is directly aimed at cracking down on the major auto theft operations, especially those with links to organized crime.

Wisely, the bill does this in two related ways: first, it provides the tools law enforcement authorities need to identify, arrest, and successfully prosecute and punish the criminal. Second, and just as important, it strikes at the crime itself by diminishing its profitability to the criminal and, therefore, the incentive to commit the crime in the first place.

The permanent numbering of major component automotive parts and the stringent penalties for altering or removing the identification number will work to put the car thief and chop shop operator out of business. It will, in effect, dry up the market for stolen parts, just as the current numbering of engines and transmissions has already made those parts worthless to the thief. In fact, these presently numbered parts-- the most valuable in the vehicle-- are more than worthless to the thief. They are a liability because they can tie him clearly to a crime.

In this regard, I would note that the true value of numbering key component parts is not simply to enable law enforcement officials to identify a part as stolen. Instead, it is to give them the ability to track that part back to the stolen vehicle from which it was removed and to provide conclusive evidence of the crime that will stand up in court. This will make it possible to obtain convictions of all who were involved in the crime-- the person distributing or selling the part, the person who chopped it from the original vehicle and the thief who stole the car in the first place.

At present, without such numbering of parts, there most often is no conclusive evidence of the crime and a sharply diminished ability to obtain conviction. Why? If you will, Mr. Chairman, imagine if you would be able to identify your right front fender after it had been chopped from your car. Could you swear in court with certainty that it did not belong to some other car of the same make, model, year and color?

The possibility of tampering with the vehicle identification number does not diminish the impact of this legislation. First of all, there is little incentive for such tampering to occur. The parts that presently are numbered-- the valuable engine and transmission-- are routinely and quickly discarded by the chop shop operator. The risk of possession of an identifiable part is too great and the cost in human labor of removing one number and replacing with another is too high. It is also impossible to perform a forgery that cannot be detected, at least by sophisticated means. But, even if such tampering should occur, the criminal sanctions of the bill apply to those who alter the Vehicle Identification Number as well as those who possess parts with altered numbers.

Finally, I stress that this bill is not intended to increase the burdens on any element of the motor vehicle community except the criminal element. The true objectives of the Motor Vehicle Theft Prevention Act are to diminish the profitability of motor vehicle theft, strengthen criminal penalties, provide new tools and expanded authority to law enforcement and to make motor vehicles more impervious to theft. We believe that this bill addresses those objectives forthrightly and in a strong, aggressive fashion.

We offer some amendments to H.R. 4178 which the Coalition proposes principally to remove some unintended ambiguities with the bill's language. We will be happy to discuss these with you or with staff if you wish. The amendments are largely technical in nature.

The Coalition to Halt Automotive Theft urges your prompt and favorable action on the Motor Vehicle Theft Prevention Act of 1979.

I will be happy to answer any questions you have. Thank you for the opportunity to present testimony today.

Mr. SCHEUER. The subcommittees heard from various witnesses, Mr. Johnson, regarding locking and other security devices for cars. Do you believe that NHTSA should be enabled by us to require the manufacturers to develop more sophisticated locking systems, assuming such systems were found to be cost beneficial?

Mr. JOHNSON. Yes. We are really talking about two types of problems, professional theft and amateur theft. We have concentrated, I think deliberately, on the professional crime. The amateur crime is still occurring. Generally the amateur is primarily interested in obtaining ready transportation, whereas the professional is looking for parts or retagged vehicles that he can market.

There is a big difference, and because the problems are different they demand different solutions.

Numbering, frankly, would not be much of a deterrent to the joy-rider.

Mr. SCHEUER. Because he is not going to sell the car?

Mr. JOHNSON. What he is going to do with it is either crash it into a tree to get rid of it or abandon it. That car usually can be identified by a license number. It does not need a vehicle identification number for law enforcement to identify it and trace it.

This is very different from the professional crime where the number is the only means law enforcement has to trace the vehicle or its parts.

Mr. SCHEUER. You said he will abandon, or crash it into a tree to get rid of it?

Mr. JOHNSON. When he is done with it.

Mr. SCHEUER. How does he do that, with him inside it?

Mr. JOHNSON. Not necessarily.

Mr. SCHEUER. That is a rural crime, I take it?

Mr. JOHNSON. It can be. He most often abandons it. I have seen statistics that show a large number of recovered vehicles that have been damaged, and it appears deliberately, rather than just a result of reckless driving. But on the other side of the coin, while theft devices will prevent the amateur criminal, they can also slow down the professional. Whether or not it will prevent the professional entirely from stealing a vehicle is another question. So the answer to your question is, we need both.

We need both the numbering of key component parts and more security on the vehicle. It appears to me that until there is some action and some role played here by NHTSA in this area that the manufacturers will not of their own accord come up with sufficient and secure enough antitheft devices for cars.

Mr. SCHEUER. Do you know of any efforts that are being undertaken by the individual States to require the installation of VIN's?

Mr. JOHNSON. Some States have had legislation introduced. Ohio and New York come to my mind quickly. But those bills have frankly not gone anywhere because there has been the recognition that one State trying to do this kind of thing is at an extreme disadvantage.

My view is that the place for that to be done is right here.

Mr. SCHEUER. What position do manufacturers take on State legislation?

Mr. JOHNSON. I do not have knowledge in that area.

Mr. MCKINNON. There is a move to defeat those efforts in Ohio and Illinois. The New York experience I don't know.

Mr. SCHEUER. What reasons do they give?

Mr. MCKINNON. I don't know what their testimony was, but I am sure it could be made available to the committee.

Mr. SCHEUER. What are the States?

Mr. MCKINNON. Illinois, Ohio, and the State of New York. Also to share an experience with you, in the State of Virginia one of our cochairmen of our motor vehicle theft committee last year from that State attempted to have the same thing done through the Department of Motor Vehicles in the State of Virginia. The Department of Motor Vehicles in Virginia was very reluctant to take on the manufacturers in this issue.

Mr. GREEN. On the question of securing the car better than it now is, do you see that that is likely to be cost effective? I had the impression you are talking of higher cost there then when you are talking about VIN's?

Mr. JOHNSON. That remains to be seen. I have been contacted by independent engineers, vendors, and designers who claim that their products, if installed in a vehicle on a mass basis, would cost no more than \$10 per car. Some of these, at least based on their descriptions, could be highly effective.

I have not seen them operate nor do I have the technical knowledge to judge whether their claims are valid or not, but I would like to believe that cost would be possible.

Mr. GREEN. Earlier the automobile manufacturers' representatives raised the question of whether it would be possible to establish performance standards for these security devices. Do you have any views on that? Has your group looked into that?

Mr. JOHNSON. We have not. I am not really capable of judging whether that criticism is valid or not. It does seem to me that, at least on the basis of logic, some kind of performance standard could be devised. For me to describe it is something of which I am not capable.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. SCHEUER. Margaret?

Ms. DURBIN. You recommend that the legislative history of the bill state that the major component parts for the purpose of this bill be limited to no more than 10 component parts. You then cite a list of examples. Why have you made this recommendation?

Mr. JOHNSON. Because there has been concern voiced to the coalition and to various organizations that are involved with the coalition. To put the concern in its bluntest form, a number of groups fear the regulatory authority of the U.S. Government and feel that there is need for some constraint, some limit on that authority. I have had people contact me in vehement opposition to this bill because they wrongly believe it is going to require the numbering of carburetors.

Mr. SCHEUER. Require what?

Mr. JOHNSON. The numbering of carburetors. They just do not understand the intent of the bill. Many are in the automotive service industry.

Mr. SCHEUER. The after market people?

Mr. JOHNSON. Or body shop people, auto repair people. They fear they are going to have a lot of burdens as a result of this bill.

In my view, this bill will create no burden for anyone other than the criminal element.

Mr. SCHEUER. The only burden requiring serializing and identifying, stamping the VIN on the carburetor, it seems to me, would be on the manufacturer.

Mr. JOHNSON. If its cost is \$3 to \$5 a vehicle, that is not much of a burden.

Mr. SCHEUER. Their estimate would include the carburetor?

Mr. JOHNSON. No one is seriously talking about including the carburetor. That was the reason we suggested including a list of parts in the legislative history. The coalition would be reluctant to see the actual parts itemized in the legislation itself. Legislative history provides a means to state the likely parts to be selected for identification, but the actual decision is up to the Secretary of Transportation, if he is given this authority.

Ms. DURBIN. Could you explain why you would be reluctant to include a specific listing in the statute?

Mr. JOHNSON. I don't think that is appropriate. As a matter of principle, I don't think it is appropriate legislation and, second, I don't think that the coalition could make such a recommendation to you as to what those parts should be.

I think it requires more study by the people promulgating the rules.

Mr. WERNER. I believe—not only to strengthen what Mr. Johnson said, but also on the main 10 component parts, those are the ones that are most salable. People don't buy stolen carburetors. It is just not feasible.

When you talk about 10 major component parts—the chop-shop operations are looking at front clips, doors, rear ends, rear body sections, motors, transmissions, and frames, and I think that is where the 10 are.

Ms. DURBIN. That's just it. There seems to be some agreement as to what the parts are, doesn't there?

Mr. WERNER. I believe that is where it came from. Instead of going into a major numbering of items of everything, I believe it you limit it to the 10 basic items that are needed the most by the chop-shop operations, those are what fall under that category and that is why we establish our position.

Mr. MCKINNON. If I might add to that, part of the reason why the coalition and members of the coalition are not interested in having the items listed in the legislation is because the design of the automobile is changing and it is changing rapidly. If you think of the automobile today or what it was 5 years ago, what it might be in 1985, especially if it is electric powered—the engine will not be an engine as we know it today, and perhaps the most valuable item in the cars will be the batteries.

It might be 2,000 pounds of batteries in the vehicle, the power source, so the need to mark those parts might vary every 5 years or so.

Therefore, I think it would be perhaps unwise to put in legislation what the parts should be. The regulatory process could handle it better.

Mr. SCHEUER. You are suggesting the battery for the electric car would be a great deal more valuable than the battery for the internal combustion engine, and while it might not be worth it to mark a \$30 or \$40 battery today, the battery in the electric car might be worth many times that, and it would be worth marking because it would be sold in this illegal commerce?

Mr. McKINNON. That is one possibility. What the car will look like in 1985 or 1990 is anybody's guess right now.

Mr. SCHEUER. We could put language in the committee report just expressing the consensus that at least for the present that it would be disabling for NHTSA to limit the items that would be marked to the 10 that you have suggested, and we could name them in the committee report for the guidance of NHTSA?

Mr. McKINNON. That is what the coalition had in mind as a solution to the problem: strictly provide guidance to people years down the road.

Mr. SCHEUER. We thank you very much for your very illuminating testimony.

Are you prepared now to support what he just said?

Mr. McKINNON. I will try.

Mr. SCHEUER. We thank you for your patience and tolerance.

The committee stands adjourned until Thursday at 10 o'clock in this same room.

[Whereupon, at 2:05 p.m., the hearing was adjourned, to reconvene at 10 a.m. on Thursday, June 12, 1980.]

MOTOR VEHICLE THEFT PREVENTION ACT

THURSDAY, JUNE 12, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, AND THE SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS, COMMITTEE ON FOREIGN AFFAIRS,

Washington, D.C.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. James H. Scheuer, chairman, Subcommittee on Consumer Protection and Finance, and Hon. Gus Yatron, chairman, Subcommittee on Inter-American Affairs, presiding jointly.

Mr. YATRON. Good morning. The subcommittees will come to order.

The Subcommittee on Inter-American Affairs and the Subcommittee on Consumer Protection and Finance are meeting in a joint hearing to examine the widespread problems of exported stolen vehicles and auto parts through "chop shop" operations.

I am happy to join with my colleague from New York, Mr. Scheuer, chairman of the Subcommittee on Consumer Protection and Finance, in holding these hearings. Nationwide, it is estimated that American consumers lose over \$4 billion annually from this illegal activity.

Along our border regions, professional car thieves and chop shop operators enjoy a lucrative business and minimal risk at the expense of the American consumer. It is our hope that H.R. 4178, the Motor Vehicle Theft Prevention Act, will help to curtail this activity and assist American law enforcement officials in their efforts.

Today our witnesses are: Barry Matheson, special prosecutor with the Canadian Department of Justice; Chief William Rodriguez, chief of police, El Paso Police Department; and Lt. Luis Barba, Auto-Theft Bureau, El Paso Police Department.

At this point, I would like to recognize my cochairman for any opening remarks he may have. Mr. Scheuer.

Mr. SCHEUER. Thank you, Mr. Chairman. We have had several interesting days of hearings that I think make a good case for the fact that marketing of component parts will have a deterrent effect on auto theft. We have had estimates from Ford in a small research and demonstration program they carried out for the last 6 months which seem to indicate where they are marking parts other than transmission and engines there is something like a 10-percent reduction in auto thefts which, when you assume it costs in the neighborhood of \$3 to \$5 a car for marking these other parts, you save 10 percent of the cars that would have been stolen from being stolen. You have an extraordinary cost-benefit situation there.

We seemed to have made a good case for that and I am interested in finding out whether the experts in the international trafficking of stolen cars and stolen parts feel their marking of component parts in addition to engines and transmissions will help reduce the international flow of parts and cars.

So, with that I look forward to the hearings, Mr. Chairman.

Mr. YATRON. Thank you, Chairman Scheuer. And at this point I would like to call on Congressman S. William Green, of New York, one of the prime sponsors of H.R. 4178.

Mr. GREEN. Thank you, Mr. Chairman. I just want to thank you for arranging for the witnesses for today's hearing. Although in the previous 2 days of hearings the question of international transmission either of whole cars or parts has been touched on, we have not gone into it as deeply up until now as we have the domestic problem. I am looking forward to the testimony we will be getting from today's witnesses to give us a better picture of the international problem.

Mr. YATRON. Thank you, Mr. Green. Mr. Preyer, would you care to make any comment at this time?

Mr. PREYER. No, thank you, Mr. Chairman. I am happy to join you and Mr. Scheuer in these hearings today.

Mr. YATRON. Mr. Matheson, if you would like to proceed with your statement, we can then begin with questions.

**STATEMENT OF BARRY MATHESON, SPECIAL PROSECUTOR,
CANADIAN DEPARTMENT OF JUSTICE**

Mr. MATHESON. I am Barry Matheson from St. Catharines, Ontario, Canada. I am a private practitioner in the city with 10 other lawyers. However, for the last 10 years I have been retained by the Federal Government of Canada to prosecute cases on an individual basis under the Food and Drug Act, Narcotic Control Act, Income Tax Act and the Customs Act.

I have also been appointed by the Solicitor General of Canada as a designated agent to make applications to the supreme or county courts to intercept private communications.

I wish to make it clear that I speak only on my own behalf and not for the Department of Justice, as I am a private practitioner.

Approximately from the late 1960's until about 1976, there was a serious problem of the importing of car parts into Canada—these parts would either be undervalued or, in fact, stolen.

In those years, the Canadian dollar was at a premium with respect to the American dollar and, therefore, it was cheaper to buy in the United States. The situation has changed and the reverse is happening.

The problem of the improper importing of car parts has eased slightly because of the difference in the Canadian dollar. The problem of stolen parts or cars still exists, and is of concern to the legal authorities and also reputable dealers who find their legitimate market undercut.

In my jurisdiction, there have been several cases of a fairly lengthy and costly nature, which ended in acquittals due to the fact that the Provincial crown attorneys were unable to establish that the car parts had been stolen.

These individuals and their companies remained in business. I was brought into the picture due to the fact that a Provincial wiretap authorization indicated that Federal statutes might have been infringed.

As a result of that review, an application was made for a Federal interception. Some several months later, sufficient evidence was obtained to lay charges and seize documents.

With the cooperation of the authorities, documents were obtained which, when compared with the wiretaps, indicated an undervaluation of the car parts, which were mainly front-end clips imported into Canada.

The cost of the investigation and the approach to the trial date was expensive. At the courtroom door, the matter was resolved and a plea of guilty was entered.

It would appear that car models change slowly but the value for the parts increases. By this I mean that a front end of a 1976 New Yorker would be almost identical to a 1975 New Yorker, but if claimed at the earlier year for customs' purposes would be assessed duty at a lower amount.

Attached to this address is a partial transcript of a wiretap authorization and the list of actual document which show the undervaluation. All documents and transcripts are scheduled A which would show that undervaluation.

If you would look at the transcript at the back of schedule A, page 1 through 3, and if you would also look at schedule A, page 5, I believe we can establish how this operation worked.

Basically this is a telephone communication from a citizen of the United States to Mr. Gdanski. Mr. Gdanski was one of the owners of Homer Salvage & Auto Wreckers Limited. This call took place on the 15th of November, 1978.

Mr. GDANSKI. Home Auto Wreckers.

ANSWERED. Joe?

Mr. GDANSKI. Yeah.

AMERICAN. It's Ralph.

Mr. GDANSKI. Hi, Ralphie.

AMERICAN. All right I need some prices from you.

Mr. GDANSKI. Uh huh.

AMERICAN. Ya got a minute?

Mr. GDANSKI. Yeah.

AMERICAN. Seventy-six New Yorker.

Mr. GDANSKI. OK. Just a sec. I gonna look that up in a minute, okay, now I'm look, look at some of the other prices we put through here. Huh, seventy-six New Yorker.

AMERICAN. Make it a four.

Mr. SCHEUER. What does that mean, make it a four?

Mr. MATHESON. Going back to 1974 New Yorker. The American was a little more knowledgeable about the model changes because—he goes on—

Mr. GDANSKI. Pardon?

AMERICAN. It could be a four.

Mr. GDANSKI. Now when did they start that type of a front? Five? Maybe make it a five.

AMERICAN. Make it a five.

If you look at the invoice from the American, there is a 1974 Chrysler front end assessed at \$350 which is what is quoted in the transcript later on.

Mr. SCHEUER. When they talk about a 1977 Camaro, "make it a four". Does that mean \$400?

Mr. MATHESON. No, that is 1974. The transcripts will go all the way through, if you compared this schedule—I don't think it is necessary to go through the whole transcript—but if you compare that transcript with the schedule A page 5 you will see that they record specifically the cars that are referred to in these transcripts. They also give the prices that they agree upon for purposes of customs and it amounts to \$350 for the 1975 Chrysler which is, in fact, a 1977.

Then you go to the top left-hand corner of the schedule and you will see the actual price paid by Mr. Gdanski which instead of being the \$2,975 which was claimed at Canadian Customs, the actual price paid was \$5,750. It was an undervaluation.

If you look at page 4 of the schedule you will see that on the bottom left-hand corner American bank draft for \$5,750. The check is made out to \$6,845 which is, in fact, the exchange on the, or the premium on the American dollar.

Those were seized in the records of Mr. Gdanski. He fortunately, from the crown's point of view, was able to keep all his records together which would show his complicity in this crime.

I don't believe it is necessary, unless you want to, to read through all the transcripts.

Mr. YATRON. I don't think it is necessary. It will be part of the record [see p. 494]. Mr. Matheson, I would like to respectfully request that we take a 10- or 15-minute recess. We have a vote on the floor.

We will return shortly.

[Brief recess.]

Mr. YATRON. The subcommittee will resume the hearing.

At this point, due to the sensitive nature of some of the testimony to be presented today, the Chair would like to move that at some point in the hearing we will go into executive session and under the rule a rollcall is automatic. We would like to keep the roll open so that additional members will be able to respond.

At this time, I would like to ask the clerk to read the roll.

Mr. FRIEDMAN. Mr. Yatron.

Mr. YATRON. Aye.

Mr. FRIEDMAN. Mr. Fascell.

Mr. FASCELL. Aye.

Mr. FRIEDMAN. Mr. Lagomarsino.

Mr. LAGOMARSINO. Aye.

Mr. YATRON. The roll will be kept open. We have three members at this point.

Mr. Matheson, if you would like to proceed with your testimony.

Mr. MATHESON. Down on the transcripts or a portion of them, as you can see, I have deleted the name of the American who was a party to the crime as he and his company remain unindicted, coconspirators in Canada.

Also attached is a schedule which was prepared by the Royal Canadian Mounted Police as schedule B which shows the value lost to the Canada Customs.

If you will look under paragraph I, the value not declared at Canadian Customs from the period of July 29, 1976, to November 16, 1978, the value not declared in Canadian Customs was \$53,103. I believe

this committee should take into account that this was a schedule prepared under my direction for purposes of going into court.

These were the items that I felt we could prove beyond a reasonable doubt. There were other transactions between this company and Homer Salvage & Auto Wreckers, but the value lost was \$53,103. The revenue on that would be \$13,806 as you can see under schedule B.

Mr. YATRON. Mr. Matheson, if you would suspend, I would like to call on my cochairman, Mr. Scheuer, to take a roll of his subcommittee.

Mr. SCHEUER. I move under rule 11 that we go into executive session because of the possibility that there may be some sensitive information in these hearings, Mr. Devine.

Mr. DEVINE. I note my presence and I am in agreement with the motion.

Mr. SCHEUER. It is so ordered.

Mr. YATRON. Mr. Matheson, you may proceed.

Mr. MATHESON. Mr. Joe Gdanski and Homer Salvage & Auto Wreckers Limited are now before the civil Federal court facing civil assessments in the amount of roughly \$53,103.27; although the original revenue lost to Canada Customs was \$13,806.75.

We used the Canadian Customs Act to attempt to stop the importation of these items into Canada because other statutes that would be more appropriate such as the Criminal Code proved not to be useful.

During the investigation there were some video tapes taken particularly with respect to the importation of the items referred to in schedule A of the communication of the November 15, 1978, with the American citizen and Mr. Joe Gdanski. There is audio and voice tape that is here and if Nancy could play it.

If I could stand on that side because there is a lot of repetition.

Mr. YATRON. While you are doing this, we have two additional members who walked in and the roll is open for the Subcommittee on Inter-American Affairs. If the clerk will call the other names on the roll.

Mr. FRIEDMAN. Mr. Gilman.

Mr. GILMAN. Aye.

Mr. FRIEDMAN. Mr. Guyer.

Mr. GUYER. Aye.

Mr. YATRON. Five members having voted, a quorum is present. We will move into executive session at the appropriate time.

I would like to also have in the record that Mr. Devine from Ohio was an FBI agent having been stationed in New York City during the early 1940's. He has had extensive background in investigating stolen car cases.

[Tape being shown.]

Mr. MATHESON. This was a tape taken as a result of interception of November 15, 1978. It will show the front-end clips referred to in the transcript as they leave the New York Thruway and exit through your part of Lewistown and enter through our part of Queenstown in the Province of Ontario.

During the showing there will be a number of areas where I will ask Nancy to move the tape forward because it is repetitious. They were waiting for various individuals to show up which would be of no consequence as far as this subcommittee is concerned. It was for purposes of proof in a court of law.

He was supposed to phone from that booth. He never did. That is why we have a picture of the phone booth.

These are the tollgates from New York Thruway. It is late at night, or early in the morning I should say. The pictures were taken sometimes from a moving vehicle so we don't have the truck's approach.

Mr. GUYER. You have those trucks spotted?

Mr. MATHESON. Yes, the truck was following on the New York Thruway.

Mr. GILMAN. Is there a great deal of trade of that nature moving across the border?

Mr. MATHESON. I will have some figures for the subcommittee later. It is a substantial amount.

This is the truck.

Mr. SCHEUER. They didn't make any attempt to hide it?

Mr. MATHESON. No, sir. They were delivering them but they were undervaluing them. It was our belief the parts were stolen so their cost base was slightly less. They just paid their toll at the New York Thruway. These were taken from an unmarked cruiser.

They are on the highway approaching Lewistown in New York State.

They are now at the Canada Customs clearing. They are not yet legally into Canada. The officer, Stan Krysa, took these pictures. That is one of the drivers. That is the Canada Customs Office. Those are the drivers and his assistant. There will be a closeup of the front-end clips shortly.

Mr. SCHEUER. These are the truck drivers?

Mr. MATHESON. Yes.

Mr. GUYER. If they were tipped off, they would not have any inspectionary knowledge, would they?

Mr. MATHESON. The drivers?

Mr. GUYER. Yes.

Mr. MATHESON. The drivers did.

Mr. GUYER. The Customs people wouldn't know any different. They were not told.

Mr. MATHESON. No. That is one of the problems. Those are the front-end clips at the front and I believe the picture goes to the back. We can play the whole tape. But there will be a lot of pictures like this. They are waiting for individuals to arrive.

If we go to a fast forward, we will get the same.

Mr. YATRON. Is that a New York license on the transport truck?

Mr. MATHESON. Rhode Island license. During this period of time they were communicating with Mr. Gdanski.

Mr. GUYER. Isn't it true most of these parts have no markings on them?

Mr. MATHESON. That's correct. There is a picture of the—hopefully they show all the parts. There is the front end now. Previous to this prosecution which I conducted, there had been a 3- to 4-week trial by the Provincial crown attorney, your district attorney, which ended in failure due to the fact they were unable to establish that the parts had been stolen.

The reason that they were unable to do that was that the chop shop in Rhode Island—here is a description.

Mr. Chairman, do you wish to see more of this? Basically it would be repetitious.

Mr. YATRON. I think we have the general idea.

Mr. MATHESON. The next portion of the tape would be entering Canada. That was for evidentiary purposes. That vehicle was then followed to Homer Salvage & Auto Wreckers Limited in St. Catharines and investigations of the vehicles were again established by officers.

If you will note from the transcripts, you will see some of the parts were allegedly damaged. None of those parts in the observations of the officers appeared to be damaged. While some appeared to be 1975, 1976 vehicles, they also appeared not to have ever been on the road which would indicate that there was a determined effort to, in this case, for purposes of Canada Customs, undervalue.

If I may go on. If one takes into account the possibility what the situation would be if the car parts were illegally obtained, and the fact that there were five other American auto dealers, the loss of Federal revenue to the Canadian Government would be exceedingly high.

Basically what I am saying is that the cost of detection is high and, in most cases, higher than the revenue recovered. Also one must take into account that due to the cost and complicated manner of obtaining a conviction, a number of prosecutions are not proceeded with.

If all of the parts and replacement parts of automobiles were marked by an appropriate identification number, the problem of detection and prosecution would be greatly resolved. If these items were stamped then it would be relatively easy to establish if a theft had taken place and the individual in possession would have to have a very good explanation and would not be able to rely on the crown's difficulty or inability to properly identify the item alleged to have been stolen.

When I say crown I believe you should refer to the district attorney here.

It is my belief that crimes of this nature are better controlled by detection rather than punishment, which is usually a financial penalty. Or, as one crown official said, a license to steal.

Right now, an individual can bring front-end clips across the border into Canada, even if they are stolen or undervalued, with impunity. One cannot expect a customs officer to be able to correctly identify a model change of only 2 or 3 years—and since it is almost impossible to prove theft.

To give an amount of the loss of revenue caused by these operations would be impossible; needless to say, the size of the problem is immense.

I have some figures which are best estimates for later on.

The crown attorneys and prosecutors now must rely too great an extent on luck in the detection of this type of crime—certainly that is no way to operate.

I feel that both Governments, Canadian and American, would and should cooperate in order to suppress this type of crime.

Thank you, Mr. Chairman.

[The attachments to Mr. Matheson's prepared statement follow.]

SCHEDULE A--Page 1

DATE OF COMMUNICATION: 15 November, 1978
 TIME OF COMMUNICATION: 0917 hours
 PLACE OF COMMUNICATION: 32-34 Cushman Road
 Homer Salvage and Auto
 Wrecking Ltd.
 PARTIES TO THE COMMUNICATION: X to
 Joe GDANSKI

GDANSKI Homer Auto Wreckers.
 X Joe?
 GDANSKI Yeah.
 X It's Ralph.
 GDANSKI (sounds like) Hi Ralphie.
 X Alright, I need some prices from you.
 GDANSKI Uh huh.
 X Ya got a minute?
 GDANSKI Yeah.
 X Seventy six New Yorker.
 GDANSKI O.K., just a sec, I gonna look that up
 in a minute, o.k., now I'm, look, look
 at some of the other prices we put stu
 through here. Huh, seventy six New
 Yorker.
 X Make it a four.
 GDANSKI Pardon?
 X It could be a four.
 GDANSKI Now when did they start that type of
 a front? Five? Maybe make it a five.
 X Make it a five.
 GDANSKI Yeah.
 X Alright, how much money?
 GDANSKI Oh, seventy five, three and a half.
 X Alright, ah, seventy seven Camero,
 we'll make it a four.
 GDANSKI Yeah, that would be no problem.

SCHEDULE A--Page 2

GDANSKI Alright, how much money?
 X Ah, seventy four car, two seventy five.
 GDANSKI That's in prime anyway, eight Cougar,
 make it a seven.
 X Yeah.
 GDANSKI That's in prime.
 X In what?
 GDANSKI That's in primer.
 X Uh, huh. Seventy seven, ah, ah,
 seventy seven Cougar, four.
 GDANSKI Even.
 X Yeah, I'm just looking. I brought in a
 Monte Carlo, yeah, that should be
 alright.
 GDANSKI Alright.
 X Because its primed right.
 GDANSKI Yup, ah, six T-Bird, make it a three.
 X Yeah.
 GDANSKI How much money?
 X For three, ah, three and a half.
 GDANSKI Alright, six Toro, one headlight is
 missing, rad's missing, full primer
 on the front of the hood.
 X Eh, better put, like a, let's see,
 what will we mark seventy.
 GDANSKI Gotta go five cause of the square
 lights.
 X Yeah, put five, less a rad and damage.
 GDANSKI Buck seventy five.
 X Pardon?
 GDANSKI Hundred and seventy five dollars.
 X Naw, you have to go, for heavy stuff
 you have stick up the, put it for abou
 three.
 GDANSKI Seventy seven Impala, we'll leave that
 at seven.
 X Huh, huh.

SCHEDULE A--Page 3

GDANSKI

That's got a new hood and a new fender on it.

X

Alright seventy seven, a new, I had one come through here, seventy seven, seventy seven Chevy, four and a half.

GDANSKI

O.K. Seventy six Mark, you can make it a three.

X

Yeah, four and a half.

GDANSKI

Alright, now this has got the grill busted and two parking lights busted.

X

That's alright, keep it at three and a half.

GDANSKI

Ya wanna put it damaged.

X

Yeah, put it damaged at ah, put it damaged at four then.

GDANSKI

Damaged at four.

X

Yeah.

GDANSKI

Alright, seventy eight Trans Am, make it a seven.

X

Seven, yeah.

GDANSKI

O.K., little dent in one fender.

X

Pardon?

GDANSKI

Small dent in one fender, not a mark on that.

X

Well you can put damaged because you got those a, spoilers damaged.

GDANSKI

Mm.

Right, there's some..

(X .. interrupts)

GDANSKI

Yup, yeah (not audible)..

X

You put damaged they just take a look and sometimes they say to point it cu sometimes they don't.

GDANSKI

O.K.

Ah, four and a half.

497

HOMER SALVAGE & AUTO WRECKERS LIMITED 32428
 R. R. No. 4, CUSHMAN ROAD
 ST. CATHARINES, ONTARIO

PAID *Nov. 16 1978*

PAY TO THE ORDER OF *Dominion Bank* \$*6800.45*

IN FIGURES *6800* DOLLARS *45* CTS 100 DOLLARS

THE TORONTO-DOMINION BANK
 31 QUEEN STREET AT KING STREET
 ST. CATHARINES, ONTARIO

HOMER SALVAGE & AUTO WRECKERS LIMITED
Jean Blinski

American Bank for 45,750.00

⑆3570⑆⑈004⑆ 415 5⑈64018⑈ ⑈0000680045⑈

CONTINUED

5 OF 6

HOMER SALVAGE AND AUTO WRECKERS LTD.
Purchases from

USA

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	
ITEM NO.	DATE OF SALE	FRONT ST. AUTO INVOICE AMT	HOMER CHEQUE DATE	HOMER CHEQUE NO.	HOMER PAYMENT AMT US FUNDS	AMT OF PURCHASE IN CAN FUNDS	DATE OF IMPORTATION TO CANADA	CUSTOMS ENTRY NO.	VALUE FOR DUTY CAN \$	CUSTOMS BROKER INV NO.	HOMER CHECK# TO CUSTOMS BROKER	VALUE NOT DECLARED AT CANADA CUSTOMS	TAX 43829-1 DUTY AT 12.5%	VALUE PLUS DUTY	SALES TAX AT 12%	REVENUE LOST
1976																
1	29 JUL	1555.00	29 JUL 76	27914	745 00											
			29 JUL 76	27915	1555 00	2279.76	30 JUL 76	B042026	1521 00	QNO42026B	27960	758.76	9485	853.60	102.43	197.28
1977																
2	11 AUG	800.00					12 AUG 76	B044705	792 00	QNO43705B	28034					
	11 AUG	1550.00	11 AUG 76	27980	4100 00	4039.32	27 AUG 76	B049106	1526.75	QNO49106B	28326					
	24 AUG	2475.00	24 AUG 76	27981	4538 00	4440.14	27 AUG 76	B049105	2437.07			3730.04	460.36	4197.20	803.66	970.02
3	6 OCT	4540.00	6 OCT 76	28405	7005 00	7627.36	7 OCT 76	B060656	4485.00	QNO60656B	28923	3137.36	392.17	3529.53	423.54	815.71
4	4 NOV	3195.00	4 NOV 76	28619	8660 00	8561.27	5 NOV 76	B070931	3210.00	QNO70931B	28681					
	22 NOV	3100.00	22 NOV 76	28700	1800 00	1649.92	23 NOV 76	B073421	3038.00	QNO73421B	28760					
						10211.19			6248.00			3983.19	499.40	4458.58	535.03	1030.43
1977																
5	10 FEB	2260.00	10 FEB 77	29108	4600 00	4817.12	11 FEB 77	B097819	2303.20	QNO97819B	29228	2511.92	313.99	2829.91	339.11	693.09
6	17 MAR	3065.00	17 MAR 77	29312	6305 00	6687.08	18 MAR 77	B108749	3216.25	QNO108749B	29394	3468.83	433.60	3902.43	468.29	901.89
7	23 MAR	930.00					25 MAR 77	B000035	976.50	QNO00035B	29462					
	29 MAR	2450.00	29 MAR 77	29382	5000.00	5281.00	30 MAR 77	B001008	2956.25	QNO01008B	29478					
									3942.75			1338.25	167.28	1505.53	180.86	347.94
8	6 APR	1500.00	14 APR 77	29485	2500.00	2643.00	7 APR 77	B003534	1582.50	QNO03534B	29515	1060.50	132.56	1193.06	143.17	275.73
9	18 APR	1725.00	19 APR 77	29508	3500.00	3696.70	19 APR 77	B006315	1811.25	QNO06315B	29536	1885.43	233.68	2121.13	254.54	490.22
10	21 APR	1995.00	22 APR 77	29530	5000.00	5266.00	22 APR 77	B007839	2084.70	QNO07839B	29567	3181.22	397.65	3578.87	429.46	827.11
	24 MAY	255.00					26 MAY 77	B019682	378.00	QNO19682B	29758					
11	24 MAY	1 075.00	Photocopy Invoice		- 575.00	- 928.71	(Not Imported)									
	10 JUN	2555.00	15 JUN 77	29795	7200.00	7625.92	13 JUN 77	B023708	2699.53	QNO23708B	29848					
						6698.81			3073.53			3625.28	453.16	4078.44	489.41	942.57
12	27 JUN	3230.00	28 JUN 77	29857	5000.00	5328.50	28 JUN 77	B030899	3425.20	QNO30899B	29909	1904.70	238.09	2142.79	257.13	495.22
	6 JUL	2660.00	7 JUL 77	29894	3847.45	6207.65	7 JUL 77	B033711	2819.60	QNO33711B	29942					
13	6 JUL	1560.00	10 AUG 77	30023	3500.00	3784.20	7 JUL 77	B033711	1943.10	QNO33711B	29942					
						9591.85			4764.70			5227.15	653.39	5680.54	705.66	1399.05
	21 SEP	3225.00	14 SEP 77	30181	3000.00	3228.60	21 SEP 77	B054387	3820.63	QNO54387B	30367					
14			21 SEP 77	30228	2000.00	2192.40						1900.37	237.54	2137.91	256.54	494.08
						5421.00										
15	21 DEC	1830.00	16 DEC 77	30745	4000.00	4404.80	22 DEC 77	B082106	2025.75	QNO82106B	30835	2379.05	297.58	2676.43	321.17	618.55
1978																
16	14 FEB	3850.00	31 JAN 78	30950	2500.00	2776.75	15 FEB 78	B093178	4278.50	QNO93178B	31070					
			14 FEB 78	31022	3000.00	3344.10						1847.35	230.91	2078.27	249.39	480.30
						6120.85										
17	3 APR	2730.00	3 APR 78	31274	3000.00	3418.10	4 APR 78	B002045	3084.50	QNO02045B	31337	334.20	41.77	375.97	45.12	85.09
18	24 APR	2975.00	24 APR 78	31390	5853.00	6551.79	2 MAY 78	B011122	3520.88	QNO11122B	31499	3030.91	378.88	3409.77	409.17	788.03
19	8 JUN	3060.00	8 JUN 78	31835	4925.00	5583.25	9 JUN 78	B023490	3427.00	QNO23490B	31703	2138.25	267.28	2405.53	288.66	555.94
20	27 JUN	1890.00	26 JUN 78	31725	3350.00	3733.78	30 JUN 78	B030907	2136.00	QNO30907B	31764	1637.78	204.72	1842.50	221.10	425.82
21	1 AUG	650.00	31 JUL 78	31909	1300.00	1487.46	4 AUG 78	B040477	735.00	QNO40477B	31937	752.46	94.05	846.51	101.58	195.65
22	16 NOV	2975.00	16 NOV 78	32428	5750.00	6800.45	22 NOV 78	B072373	3511.00	QNO72373B	32343	3288.45	411.18	3700.63	444.07	855.29
		86459500			8115270.45	8122555.31			169452.04			553105.27	66637.87		87180.89	313606.75

SCHEDULE B

Mr. YATRON. Thank you, Mr. Matheson, for an excellent statement and presentation.

Are the parts' devaluation operations always conducted with stolen parts or are some of the parts which are devalued legitimate?

Mr. MATHESON. I would have to say that the parts that we saw coming into Canada—we were under the impression they had been stolen. We were unable to establish that fact. The reason we used the Canadian customs approach was we had no other statute. If we could have established that the parts were in fact stolen, we would have been able to proceed under the theft charges of the criminal code.

We were unable to do so. It would be very difficult to say whether they were stolen or underevaluated. It would be a guess. I would assume if people are going to cheat the revenue on that stage that they would have no compunction to steal automobiles. From the tapes we had on this case with Mr. Gdanski, he would phone down to the operator in the States and say that he wanted to have say a 1976 front-end Camaro.

The individual would say he did not have same. Two days later, the 1976 Camaro front end would be available for sale. They certainly did not indicate on the tapes they had gone out and stolen them. But a logical inference I think could be drawn from that.

Mr. YATRON. Are these parts' devaluation and chop-shop operations separate problems?

Mr. MATHESON. I would say yes. The chop shops, as I understand the meaning of the term, would be an illegal operation. The devaluation, of course, is in effect on the Canada customs. So, to that extent, one is dealing with stolen parts and another one is dealing with devaluation of revenue from the Federal Government.

Mr. YATRON. Would identifying parts with VIN deter both chop shops and parts devaluation operations?

Mr. MATHESON. Definitely. There is no question in my mind that we are now dealing with people that are relatively prominent in the social and economic scheme both on this side and on the American side of the border.

If there was the fear of detection, the high risk of detection early on, they would not do so, in my opinion. They would go into other fields where the detection rate would be much lower. The more VIN numbers you can put on a vehicle I think, the better it would be, both for Canada and for the United States.

I also speak as a private citizen. I cannot bind the Federal Government in any way.

Mr. YATRON. Can you tell us the extent of the problem and any estimates of losses incurred by the Canadian Government or the U.S. Government?

Mr. MATHESON. As you saw in my opening remarks, I indicated that it would be impossible to say, but you have a very persuasive individual on your staff. In the case that you have just seen, the one with Joe Gdanski, in the previous trial I am led to believe he was talking of overpaying the American, not in this, the case of the Rhode Island one, but in another American—\$800,000.

Now, that is one individual. I received information last night that in three shops in the Canadian Niagara Peninsula in Hamilton, there were at the time of investigation \$1 million owing from those three

shops to Americans in the Toronto area share for stolen parts—stolen or underevaluated.

Mr. SCHEUER. Parts or cars?

Mr. MATHESON. They are all parts.

In the Toronto area, there was an estimate placed on one shop alone of three-quarters of a million dollars. The officer was unable to definitely state that figure because they were able to clear out most of the parts before the officers arrived at the scene.

It is difficult to estimate in the Province of Quebec. We don't have the figures although there is a tremendous degree of cooperation between the two provinces. If you take into account the figures of the Niagra Peninsula in Toronto and transpose that to the Dominion of Canada as a whole, the amount of parts improperly in Canada either from devaluation or being stolen would be in the neighborhood of approximately \$20 million.

But it is difficult to establish that. There is also the fact of the turnover. We are not able to estimate what the turnover in stolen parts is.

Another way of looking at the situation is that in Ontario last year—Ontario is one of the Provinces of Canada—there were approximately 30,000 automobiles stolen of which there was a recovery rate of 27,000 vehicles. Three thousand vehicles were completely lost.

The figure that the Ontario Provincial police use for a stolen car not recovered is \$5,000 as an average. Therefore, last year there were \$10 million worth of cars lost. That does not take into account the cost incurred by the cars stolen and later recovered. There obviously would be a loss there.

In the Province of Quebec last year I am led to believe there were 50,000 cars stolen of which there was a recovery rate of 44,000 vehicles or a net loss of 6,000 cars. Therefore, there was a loss in the Province of Quebec of \$30 million not taking into account the loss and inconvenience of the cars stolen and returned.

Needless to say those are guestimates and estimates. I notice in your bill that I had a chance to read last night you refer to \$4 billion. A rule of thumb is that you could take 10 percent of that and it would be fairly close to the Canadian scene.

We always seem to do everything one-tenth of the Americans. It is needless to say it is an horrendous amount. The cost to the insurers and the individual car owners is very high.

Again, I wish to say those are the figures supplied to me under the best estimate that I have available.

Mr. YATRON. Thank you, Mr. Matheson.

Chairman Scheuer.

Mr. SCHEUER. Your testimony has been extraordinarily interesting to us, Mr. Matheson. A number of my questions have already been asked by Chairman Yatron. Has the Canadian Government made any attempt to require auto manufacturers to mark component parts in Canadian manufactured assembled cars?

Mr. MATHESON. Under section 312 of the Criminal Code of Canada it is an offense to obliterate and remove vehicle identification numbers. To my knowledge, vehicle identification numbers are required on cars manufactured in Canada.

Mr. SCHEUER. On all major component parts?

Mr. MATHESON. Basically, Mr. Chairman, we follow the American auto manufacturers. They are required to, I understand, now to place two vehicle numbers on the vehicles. In Canada it would be identical because with the auto pact there are vehicles moving across the border manufactured in Canada, sold in the States and vice versa.

If we did not have that degree of cooperation—

Mr. SCHEUER. Let me say right now we are required to put the VIN on the engine and the transmission. And we find, because the VIN is on the engine and transmission, even though they are high value parts, when a car is stolen and sent to the chop shop they don't send those parts into the illegal commerce because of the high risk, exactly as you described it.

They send the other parts. So, I take it you are just where we are and you have not moved into applying the VIN to the other parts other than engines and transmissions.

Mr. MATHESON. That is my understanding.

Mr. SCHEUER. If we moved into the other component parts along the lines of this bill, do you think your Government would follow suit and require it for autos manufactured in Canada and sold in the United States?

Mr. MATHESON. I am here as a private citizen.

Mr. SCHEUER. Your judgment.

Mr. MATHESON. Yes, it would be the only practical solution we would have because then you would have to have two manufacturers units, one for Canadian cars making V-8's, large cars, and another one for the American market and that would not be—from a practical point of view—it would not be possible. There would be, I assume, a degree of cooperation.

Mr. SCHEUER. Now, is there any mechanism for Canadian law enforcement officials to have access—in other words to plug into the NCIC, National Crime Information Center, as well as the NATB, National Automobile Theft Bureau, computer systems?

Mr. MATHESON. I don't want to get into the technical aspect of it. I can say this, that as a prosecutor on a number of these customs charges, we have been able to have complete cooperation with all American police enforcement agencies, and so forth. There has been no problem.

Mr. SCHEUER. Does RCMP, Royal Canadian Mounted Police, plug into our computer system, the two I described? NCIC and NATB?

Mr. MATHESON. I can't answer that.

Mr. SCHEUER. Can you push a button and get a printout out on stolen cars so you can identify whether, let's say, an engine or transmission that you picked up has been stolen? Can you access our computers?

Mr. MATHESON. I can't answer that specifically. All I can say is the Royal Canadian Mounted Police have close liaison with the FBI and if the FBI is able to get that information, I believe we would be able to get it as well. But we certainly don't have a computer printout in Canada.

Mr. SCHEUER. If you could access our system, you could have a computer printout instantaneously.

Mr. MATHESON. There is a tremendous degree of cooperation, yes.
Mr. SCHEUER. Thank you very much. I think your testimony is extremely interesting.

Mr. YATRON. Thank you.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. Mr. Matheson, have there been any estimates besides your own of the extensiveness of the border trafficking between the United States and Canada? Do you know whether your Justice Department or other appropriate department has made some estimates of the extensiveness of the traffic?

Mr. MATHESON. The information I supplied came from a senior officer in the Province of Ontario. It was not my information. It is a very senior officer that gave me that information. With respect to the all over picture I have never been able to obtain from the Federal Government an estimate as to the extent. I don't like giving estimates on the value of the parts that are stolen because that is all they are. They are estimates or guesses. It is a serious problem. The Federal Government certainly would not want to go on the line as to the extent.

Mr. GILMAN. You estimated for us the amount of parts going across the border. Do you have any estimate of the number of stolen vehicles crossing the border?

Mr. MATHESON. I would say the number of stolen vehicles would be fairly low. Presumably they would have to be driven across or taken on flat beds. If it contains parts that could be identified they would not come across. It is easier to come across with an allegedly broken down front end and undervalue it.

Mr. GILMAN. Were you the special prosecutor for all of Ontario?

Mr. MATHESON. No, I am the special prosecutor in the Niagara Peninsula on a case-by-case basis. I am not the standing Crown. I got involved because I was the designated agent under the protection of privacy section under the criminal code. I also have had 10 to 12 years experience in prosecutions. I can accept or I can reject any case. I am in private practice.

Mr. GILMAN. Would you be able to obtain for our committee any statistical information from your Federal Government with regard to the number of stolen vehicles recovered and the extensiveness of the traffic crossing the border?

Mr. MATHESON. I will make my best effort, Mr. Gilman. I know the officer I talked to last night has tried. Possibly another attempt would get that information and I will try.

Mr. GILMAN. Mr. Chairman, I would like to request if that information is available, Mr. Matheson could furnish it to us and it would be made a part of the record at this point.

Mr. YATRON. Without objection.

[The information requested was not available to the subcommittee at the time of printing.]

Mr. GILMAN. You recommended that detection is preferable to punishment and that there is a great deal more that should be done at the border. What specifically do you recommend?

Mr. MATHESON. I specifically would recommend many more vehicle identification numbers on all parts.

Mr. GILMAN. Besides the identification numbers?

Mr. MATHESON. I think if you got the vehicle identification numbers, you would have the problem licked.

Mr. GILMAN. Apparently then we are going to have to pursue the communication problem too of making certain you have access to our identification numbering and you are not certain whether you have that access?

Mr. MATHESON. That's correct. I believe I could say the Federal Government is interested in suppressing this crime and if a valid technique is to be used to dissuade people from getting into this field, there would be no problem.

Mr. GILMAN. So with identification number and access, do you think that could correct pretty much the problems we have today?

Mr. MATHESON. It would certainly get the organized individuals out of the field. They would go into other areas.

Mr. GILMAN. No further questions. Thank you, Mr. Chairman.

Mr. YATRON. Thank you, Mr. Gilman. Mr. Green.

Mr. GREEN. No questions.

Mr. YATRON. Mr. Guyer.

Mr. GUYER. Thank you, Mr. Chairman. I am sorry I missed some of your testimony. I think you have opened the window here on something that we need to follow up on rather than you. For example, I don't know if the committee would have any idea how many stolen cars and trucks there are in our country. But I know it runs close to a million a year. In fact, someone said we have more cars stolen than Russia has entirely in their country.

But what I would be interested in would be the breakdown. For example, this is something we should look into, even though it is not international in scope, how many cars that are stolen are not stripped down? What percentage? We would need to know that. If we had better information from the shops as to how they operate—anybody can steal a car, it is the most successful thing there is and the carowners help.

It is so simple, children can do it. So that is no problem. The problem as I understand it is immediate getaway—drive into a truck, the truck takes you to a shop, and in half an hour it can be stripped down and repainted and resold.

In those cases they are not trying to sell parts. They are trying to just simply sell cars. It makes it very simple as you pointed out. By the minimal numbers of identification marks on a car, outside of a motor and here and there, there is just nothing to identify them. But I have a feeling in America, there are two separate operations.

One is the theft and reselling of cars and the other is the stripdown and selling of parts. It would probably help us a great deal and help you if we could get some information through the FBI and also through some of our city police authorities as to the number of thefts, the recovery of thefts, what happens to the cars when they are stolen.

This would be very helpful to me.

Mr. MATHESON. Mr. Guyer, as I indicated, in Ontario there were 30,000 vehicles stolen of which 27,000 were recovered. There was a net loss of 3,000. We can either assume they ended up in the St. Lawrence River, in Lake Ontario, or they were stripped down.

Mr. GUYER. I have a feeling our recovery rate is not as good as yours.

Mr. SCHEUER. Nowhere nearly as good.

Mr. GUYER. I am certain it is not. Perhaps we can learn more from you than you learned from us. But since you have opened the door of this big problem, I would hope that maybe our committee could make a more intensive study and look into some of the figures of the operations that I am sure are available of the stripping down of cars and the reselling of cars. And also we could join hands, as you suggested here, with the cooperation of the automobile companies.

They certainly would have no big problem when they come off the assembly line of marking the parts. It would not take a lot of money to do that and it would help us in law enforcement and recovery. I think your testimony is very valuable and it gives us—even though it is in a regional area—it gives us a good showcase and sample of a prototype of what we can see across our country.

I thank the chairman.

Mr. YATRON. Thank you very much. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I think the witness has very adequately documented the case that there is a problem in terms of parts moving across our northern border into Canada and I have no further questions.

Mr. YATRON. Thank you, Mr. Green. Mr. Matheson, I want to thank you very much for appearing here today. We do have some additional questions, but in the interest of time we would like to submit them to you in writing for your response.

[The following questions and responses were received for the record:]

Questions submitted in writing by the Honorable Gus Yatron, Chairman, Subcommittee on Inter-American Affairs to Mr. Barry H. Matheson and responses thereto.....

1. Do Canadian Customs officers inspect all parts shipments from the United States?

Canadian Customs officers do not inspect all parts from the United States until it is during a zero hour when a full inspection is taking place, but even with a full inspection, it is very difficult to ascertain the exact year of the automobile part due to the slow change of the various model years.

2. What do they inspect parts for?

If the parts are inspected, it is to ascertain that they coincide with the bill of lading and that the correct duty is applicable.

3. How is the value of auto parts determined, and by whom?

A schedule is prepared and in the normal course of events, the value is accepted by Customs Officers. If there is a discrepancy, the Officers have the power to increase the value, but it would have to be on market value.

4. Is the cooperation between United States and Canadian law enforcement officers extensive enough that Canadian customs officers would be aware of vehicles stolen in the United States or having a listing of Vehicle Identification Numbers for stolen cars?

There is a good working relationship between the Police Force in the United States and in Canada: and if a car is picked up in Canada, and it is believed not to have duty paid on it or is stolen, certainly the Vehicle Identification Numbers could be checked with the American authorities which is done fairly extensively, however, if the vehicle is cannabilized, it may not be possible to check with any degree of certainty, as to where that particular car had in fact been stolen.

5. Mr. Matheson, in your experiences as a prosecutor, have you come to recognize if chop shop or devaluation operations in the United States and Canada are individual operations or organized rings?

It would be difficult to say with any degree of certainty that organized crime in the sense of the Mafia, are involved, however, from my experience and in talking with other Officers, the degree of sophistication and knowledge with which the "chop shops" are organized would indicate to me that it is a fairly sophisticated operation.

6. To your knowledge, is Canada planning any steps similar to the parts marking initiative?

I am now ascertaining from the Canadian authorities if there are any steps being taken to further identify automobile parts and as soon as I have this answer, I will advise.

7. Can you give us an estimate of what the cost is to investigate and prosecute this case?

With respect to the Gdanski trial, if one takes into account the previous trial on the charge of possession of stolen automobile parts, which trial lasted some two weeks, the direct expense to the Crown for Police Officers and the prosecution, I would estimate that the costs would be \$250,000. Out trial, which ended in a plea of guilty at the court room door under the Customs Act, probably cost in the neighborhood of \$100,000.

8. Why are the costs of detection so high for this type of crime?

The cost of detection is so high in that extensive work must be done with the various records, not only at Customs and the recipient in Canada of the automobile parts, but also documentation must be obtained in the United States and if there was not the cooperation of the various authorities in the United States, it would be most difficult to obtain that evidence and even with that cooperation, the amount of time involved is fairly extensive, and therefore the costs rise.

9. You state that without the wiretap, you doubt if charges could have been brought. What information led you to authorize the wiretap?

.....Was this information developed through intensive investigation, or by luck?

With respect to the Gdanski matter, this was one of the first times that an authorization was obtained for this type of crime, The manner in which it arose was a result of a remark I made to several of the Officers who I personally knew on the previous charge of possession of stolen goods, where I said to them that what they really needed was to proceed under the Customs Act where there is a "reverse onus". I said it in an off-the-cuff manner without any expectation that I would be taken up on this. When the acquittal of Mr. Gdanski was obtained, various Officers of the Ontario Provincial Police, the Niagara Regional Police and the Royal Canadian Mounted Police asked if they could discuss the matter with me. I discussed the matter with them, reviewed some of the other evidence that they had obtained and indicated to them that on the basis of that evidence, they had sufficient grounds to obtain an authorization to intercept private communications. As a result, an application was made, an Order obtained, and the evidence sufficient to convict was on the tapes. As a result of the success of that trial, other successful interceptions were made of other individuals and convictions obtained. Under the circumstances, I would suggest that as far as the obtaining of a conviction was concerned, it was as a result of an off-the-cuff remark by myself, but there was extensive evidence obtained which was sufficient for a conviction of possession of stolen automobile parts but of the lack to identify.

10. Would you care to comment on the impact of H.R. 4178 on chop shop operations?

I have reviewed H.R. 4178 and I feel that the major component from a deterrent point of view would in fact be the identifications of the various parts by the Vehicle Identification Numbers. This type of crime is committed by individuals who have an extensive amount of money tied up in buildings, equipment, etc. This means that they would be relatively prominent in the community, and if they felt that the Police would be able to identify the stolen parts by the VIN numbers and therefore obtain convictions, they would in most cases, not deal in stolen car parts because of the risks to them in addition to their convictions, would have an adverse affect on their business.

I would suggest the inclusion of a reverse onus section in the event of obliteration of the VIN numbers, i.e. if the VIN number is obliterated, then it would be up to the owner or possessor of the vehicle or its part, to establish that he had no knowledge of who the number was in fact obliterated by. In addition, upon conviction under this section of your Act, possibly the removal of the license could be made automatic or at least put

to suspension pending a review by the licensing authorities. Section 312 of the Canadian Criminal Code, has what I referred to as having a reverse onus section, and I enclose a copy of this section for your perusal.

11. Could you tell us approximately what the value difference is between a 1975 New Yorker front end and a 1976 front end?

With respect to the difference between a 1975 New Yorker front end and a 1976 New Yorker front end, assuming they were both in good conditions, the difference would be in the neighborhood of \$500, but it would vary due to market circumstances.

An instrument is "suitable" within the meaning of this section provided any reasonable person would assume or believe that it was capable, adequate or suitable for the purpose notwithstanding there is evidence that in fact the instruments could not break into the device: *R. v. GARLAND AND CLOWE* (1978), 41 C.C.C. (2d) 346, 3 C.R. (3d) 206 (Nfld. Dist. Ct.).

Expert evidence merely to the effect that the instrument was suitable for picking locks is not evidence that it was within the specific category of instruments suitable for breaking into a coin-operated device: *Re MACKIE and THE QUEEN* (1978), 43 C.C.C. (2d) 269, 4 C.R. (3d) 263 (Ont. H.C.J.).

SELLING, ETC., AUTOMOBILE MASTER KEY—Terms and conditions of licence—Record to be kept—Failure to comply with ss. (3)—"Automobile master key".

311. (1) Every one who

(a) sells, offers for sale or advertises in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province, or

(b) purchases or has in his possession in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) A licence issued by the Attorney General of a province as described in paragraph (1)(a) or (b) may contain such terms and conditions relating to the sale, offering for sale, advertising, purchasing or having in possession of an automobile master key as the Attorney General of that province may prescribe.

(3) Every one who sells an automobile master key

(a) shall keep a record of the transaction showing the name and address of the purchaser and particulars of the licence issued to the purchaser as described in paragraph (1)(b), and

(b) shall produce such record for inspection at the request of a peace officer.

(4) Every one who fails to comply with subsection (3) is guilty of an offence punishable on summary conviction.

(5) For the purposes of this section, "automobile master key" includes a key, pick, rocker key or other instrument designed or adapted to operate the ignition or other switches or locks of a series of motor vehicles. 1968-69, c. 38, s. 19.

Having in Possession

POSSESSION OF PROPERTY OBTAINED BY CRIME — Obliterated vehicle identification number — "Vehicle identification number" defined.

312. (1) Every one commits an offence who has in his possession

Section 312—continued

any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

(2) In proceedings in respect of an offence under subsection (1), evidence that a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated or a part of a motor vehicle being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated is, in the absence of any evidence to the contrary, proof that the motor vehicle or part, as the case may be, was obtained, and that such person had the motor vehicle or part, as the case may be, in his possession knowing that it was obtained,

(a) by the commission in Canada of an offence punishable by indictment; or

(b) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

(3) For the purposes of subsection (2), "vehicle identification number" means any number or other mark placed upon a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles. 1972, c. 13, s. 27; 1974-75-76, c. 93, s. 29.

Subsec. (1). In *TREMBLAY v. THE QUEEN*, [1970] 4 C.C.C. 120, 10 D.L.R. (3d) 346 (S.C.C.), the Court (5:0), *per* Fauteux, J., as he then was, in a possession conviction appeal where stolen bonds were received by the accused the day after their theft and where at trial his explanation was a denial that he had even thought that the bonds were stolen and that he had participated for a fee in their sale in order to assist an unknown person to evade federal income taxes, delivered at pp. 350-1 a complete statement on the character of the explanation needed to rebut the presumption arising from recent possession:

"The Judge must invite the jury to consider, whether, in the light of all the circumstances of the case, the explanation given by the accused could be true, and the directions which he must then give them must make clear to them (i) the obligation they have to acquit the accused, if they are of the view that the explanation given by him could be true, even though they are not convinced that it is, and (ii) the right, but not the obligation, which they have, when relying upon the presumption arising out of recent possession, to convict the accused if they do not believe the explanation given by him, or find it unreasonable to believe."

In *R. v. GRAHAM* (1972), 7 C.C.C. (2d) 93, [1974] S.C.R. 206 (7:0), the Court while unanimous in restoring the accused's conviction divided on the question of the doctrine of recent possession. Ritchie, J. (Martland, Judson and Pigeon, JJ., concurring), held as follows: (1) in relying on the presumption of guilt flowing from the possession of goods recently stolen the Crown does not have the burden of proving that no explanation has been given prior to trial or that if such explanation is given it could not reasonably be true; (2) if an unsworn statement is introduced and the accused also testifies the explanation which might reasonably be true refers to the sworn testimony; (3) if the Crown chooses to introduce a statement by the accused it becomes evidence for or against him and if such declaration is capable of being construed as an explanation which might reasonably be true the accused is entitled to all the advantages of it; (4) explanatory statements made by an accused upon his first being found "in possession" constitute part of the *res gestae* and are necessarily admissible in any description of the circumstances under which the crime was committed; (5) but, a statement which is not made contemporaneously with the offence but after time for due consideration, in this case after two hours from the time of arrest, is not admissible at the instance of the defence. Spence, J., would not allow the Crown to rely on the presumption by simply proving the theft and recent possession and leave to the accused the task of giving in evidence any explanation which he gave at the time of the offence or shortly thereafter as this would force him into the witness box. Laskin, J. (Hall, J., concurring), held that the "presumption" of guilty knowledge arising from possession of goods recently stolen is merely an "inference" which "may" not "must" be drawn. It is a question of law whether the possession was recent. It is also a question of law whether the out of Court explanation was contemporaneous. If it was contemporaneous the accused may elicit it in cross-examination if the Crown, while still seeking to rely on the inference, chooses not to introduce the explanation, or the defence may lead it during the accused's own evidence.

In *R. v. NEWTON* (1976), 28 C.C.C. (2d) 286, 34 C.R.N.S. 161 (S.C.C.) (9:0), at trial for break, enter and theft the Judge on the evidence relating as to whether or not there was an explanation refused to charge the jury with respect to the doctrine of recent possession. The majority in the Court of Appeal ((1975), 21 C.C.C. (2d) 550, [1975] 2 W.W.R. 404) found him in error but dismissed the Crown appeal on the ground that such instruction would violate s. 4(5) of the Canada Evidence Act. On appeal it had been conceded by the respondent that there was evidence before the jury that he was in possession of recently stolen goods. Ritchie, J. (Martland and de Grandpré, JJ. concurring); was of the opinion that the trial Judge erred in thinking that it was incumbent upon the Crown to call evidence of no explanation before it could rely on this rule of evidence and further that the majority of the Court of Appeal erred in believing that the charge on this rule, particularly where no explanation was given, would amount to a comment on the accused's failure to testify. Pigeon, J. (Martland, Judson, Spence and Beetz JJ. concurring), while agreeing with Ritchie, J., further observed that since there was no evidence of an explanation the rule could have been put to the jury on the limited

Section 312—continued

basis that where it has been established that the accused was in possession of recently stolen goods this evidence standing alone raises a *prima facie* case upon which they are entitled to bring in a verdict of guilty. Dickson, J. (Laskin, C.J.C. concurring), also agreed that the trial Judge erred, there being no duty on the Crown to lead negative evidence in those circumstances, and held that "I should think it would be better to continue what I have understood to be the practice in this matter. If the accused has offered an explanation to the police, it is open to his counsel, if the accused does not wish to testify, to cross-examine the police witnesses for the purpose of bringing forth evidence of the explanation." His Lordship also expressed the view with reference to the question of violation of s. 4(5) of the Canada Evidence Act that any reference to explanation in the minds of the jury would only be in connection with the time when the accused was found in possession of the stolen goods.

Where it was the theory of the Crown that the accused was the actual thief and the Crown did not rely on the doctrine of recent possession the trial Judge is not in error in failing to direct the jury on the doctrine: *HEWSON v. THE QUEEN* (1978), 42 C.C.C. (2d) 507, 89 D.L.R. (3d) 573, [1978] 2 S.C.R. 111 (5:4).

Where an accused is found in possession of goods proved to have been recently stolen the Judge or the jury, as the case may be, may infer not only that he had possession of goods knowing them to have been stolen but that he participated in whatever offence was committed by which the goods were stolen. It is for the Judge or the jury to decide having regard to all the circumstances whether the presumption arising from the recent possession of stolen goods supports a charge of theft or break and enter or robbery as the case may be or merely possession of stolen goods. This permissible inference, however, may be rebutted or displaced by evidence of innocent possession. Where the trier of fact rejects the accused's explanation, he is left with no explanation at all and he must then decide whether, applying the presumption, the circumstances are consistent not only with possession of stolen goods but also with such possession having been obtained by the accused by the commission of the offence by which the goods were obtained: *R. v. NICKERSON* (1977), 37 C.C.C. (2d) 337 (N.S.S.C. App. Div.).

Evidence of the accused's fingerprint upon a recently stolen item warrants a finding of possession and the application of the doctrine of recent possession: *R. v. BOWES* (1974), 21 C.C.C. (2d) 367, 9 N.B.R. (2d) 675 (S.C. App. Div.).

In *R. v. O'KEEFE* (1958), 121 C.C.C. 273, 28 C.R. 184 (Ont. C.A.) it was held (2:1) that in a charge of break and enter and commit theft therein where the Crown, in relying upon the doctrine of recent possession, led evidence of the accused's fingerprints being placed upon some of the stolen items within ten days of their disappearance, it established evidence from which an inference could have been drawn that he had possession in law.

It is incumbent on the Crown to prove that the goods were in fact obtained by the commission of an indictable offence. An admission by the

accused merely that she knew the goods were stolen cannot supply that proof as it is pure hearsay: *R. v. O'NEILL* (1976), 31 C.C.C. (2d) 259 (Ont. C.A.).

On the question whether there is any evidence of theft to send a case to the jury for possession of stolen goods, the burden upon the Crown does not include the negating of every conjecture to which circumstantial evidence might give rise and which might be consistent with the accused's innocence, but only requires evidence upon which a properly instructed jury might reasonably draw the inference that the goods had been stolen: *R. v. PAUL* (1975), 27 C.C.C. (2d) 1, 33 C.R.N.S. 328 (S.C.C.) (6:3).

The majority theory (6:1) in *COTE v. THE QUEEN* (1974), 18 C.C.C. (2d) 321, 26 C.R.N.S.26 (S.C.C.) that in law there is no bar to a convicted thief, who is subsequently found with the very stolen articles, being convicted of unlawful possession should be carefully considered in view of the difficulty of establishing when the thief had consummated his theft and when the offence of his unlawful possession of the same property commenced. Although there is a division of opinion the weight of the previous authorities seems to be in favour of the proposition that where possession and theft are proximate the thief cannot also be convicted of illegal possession of the same articles: *FERGUSSON v. THE QUEEN* (1961), 132 C.C.C.112, 36 C.R.271 (S.C.C.), *R. v. SIGGINS* (1960), 127 C.C.C.409, 32 C.R.306 (Ont.C.A.), *R. v. VARKONYI*, [1964] 1 C.C.C.311, 42 W.W.R.507 (Man.C.A.), *R. v. PRYCE*, [1967] 3 C.C.C.13, 50 C.R.80 (B.C.C.A.), and *R. v. HUNT*, [1968] 4 C.C.C.366, 4 C.R.N.S.386 (N.S.Co.Ct.). *Contra R. v. MacQUARRIE*, [1964] 3 C.C.C.261, 43 C.R.97 (P.E.I.S.C.), *per MacGuigan J.*, dissenting, and *R. v. McKAY*, [1968] 4 C.C.C.355, 4 C.R.N.S.380 (N.W.T.T.C.).

Where a count named the property's owner with some imprecision, but still furnished the accused with reasonable information to identify the alleged owner, there was no error fatal to conviction: *R. v. EMMONS* (1970), 1 C.C.C. (2d) 468, 13 C.R.N.S.310 (Alta.S.C.App.Div.).

A charge of possession of stolen clothes the property of a person or persons unknown was held to be valid on the ground that for either theft or possession the Crown need only prove ownership in some person or persons other than the accused: *R. v. McDOWELL*, [1970] 5 C.C.C.374, 18 C.R.N.S.193 (Ont.C.A.). Affirmed [1971] S.C.R. vi, 18 C.R.N.S.195n.

A count alleging possession of property without alleging the owner or without even in the alternative alleging ownership in a person or persons unknown is valid: *R. v. HALLIDAY* (1975), 25 C.C.C. (2d) 131, 12 N.S.R. (2d) 1 (S.C. App. Div.).

Where the indictment spells out the particulars of the actual commission of the offence punishable by indictment, from which the property originated, it is not necessary for the Crown to prove knowledge of those particulars on the part of the accused: *R. v. GOWING and JOHNSON* (1970), 2 C.C.C. (2d) 105, 12 C.R.N.S.139 (Alta. S.C. App. Div.).

Where the indictable offence is specified in the indictment as "theft" it is misdirection to instruct the jury that the offence is proven if the goods

Section 312—continued

were obtained by fraud: *R. v. BEAUDET* (1977), 34 C.C.C. (2d) 150 (Ont. C.A.).

An accused may be convicted of this offence though he is in possession of goods stolen by a juvenile who would in the ordinary course be tried in juvenile Court by way of summary conviction for theft. The phrase "an offence punishable by indictment" describes generically the class of offence that must be proven to have been committed and does not prescribe that the very offence by which the particular goods in an individual case were obtained must have been committed by someone who can be prosecuted by indictment for having committed it: *R. v. CLARK* (1977), 35 C.C.C. (2d) 319 (Ont. C.A.).

"Punishable by indictment" includes those ambivalent offences alternatively punishable by way of summary conviction: *R. v. REED* (1975), 23 C.C.C. (2d) 121 (B.C.S.C.).

Subsec. (2). The presumption does not operate to provide proof of the type of indictable offence specified in the indictment by which the vehicle left the hands of its rightful possessor: *R. v. LESLIE* (1975), 23 C.C.C. (2d) 343 (Ont. C.A.).

This subsection operates to provide proof both that a motor vehicle was illegally obtained from someone else and that the accused had that knowledge: *R. v. LEBLANC* (1974), 18 C.C.C. (2d) 125, 28 C.R.N.S.15 (Que.Sess.).

Once evidence to the contrary had been adduced the presumption does not apply and should not be mentioned to the jury since "any evidence to the contrary" means any evidence at all whether or not it would be accepted by the jury: *R. v. BEAUDET* (1977), 34 C.C.C. (2d) 150 (Ont. C.A.).

PUNISHMENT.

313. Every one who commits an offence under section 312

(a) is guilty of an indictable offence and is liable to imprisonment for ten years, where the subject-matter of the offence is a testamentary instrument or the value exceeds two hundred dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for two years, or

(ii) of an offence punishable on summary conviction, where the value of what is in his possession does not exceed two hundred dollars. 1953-54, c. 51, s. 297; 1972, c. 13, s. 28; 1974-75-76, c. 93, s. 30.

An item's retail value *prima facie* establishes its value: *R. v. BELANGER* (1972), 6 C.C.C. (2d) 210 (B.C.C.A.).

Mr. YATRON. We thank you very much for giving us the benefit of your expertise.

Mr. MATHESON. Thank you, Mr. Chairman.

Mr. YATRON. We have another rollcall. We will recess for 10 minutes and begin with the other two witnesses.

[Brief recess.]

Mr. YATRON. The subcommittees will resume the hearing.

Gentlemen, I want to welcome both of you here, Chief Rodriguez and Lieutenant Barba. I apologize for the interruptions.

We welcome you. You may proceed with your statement.

STATEMENT OF WILLIAM RODRIGUEZ, CHIEF OF POLICE, CITY OF EL PASO, TEX., ACCOMPANIED BY LT. LUIS BARBA, AUTO THEFT BUREAU, EL PASO POLICE DEPARTMENT

Chief RODRIGUEZ. I am going to give the main statement and some of the details will be answered by the lieutenant.

Mr. YATRON. Without objection.

Chief RODRIGUEZ. We are here today about the auto theft problem in the El Paso area. This problem is enhanced by the nearness of Mexico to the United States through the El Paso area which is just across the border.

The accessibility to the Mexican side of the border is through two main ports, the Bridge of the Americas and the El Paso del Norte Bridge, approximately 2 million crossings a month on these two bridges.

The problems are twofold in the crossing of stolen vehicles into Mexico. One of them is that the vehicles are driven directly across into Mexico. There is no checkpoint or stoppage of these cars going into Mexico by our authorities, the customs agents, on the U.S. side of the border. It is a straight drive into the Mexican area.

The other problem is that we get very little or no cooperation in the recovery of vehicles from the Mexican authorities. This includes the Mexican judicial police as well as other authorities in Mexico.

For example, our Mexican city police officers are involved in auto thefts. A police officer from Mexico City was arrested in a stolen vehicle in Juarez, Mexico. He was arrested by local authorities in a vehicle stolen in El Paso, Tex. He was accompanied by three other subjects, all of whom were armed. One of the subjects was a female from El Paso, a known heroin addict. The other two subjects falsely identified themselves as Federal police officers.

An El Pasoan recovered his stolen vehicle which was being used by a Juarez city police officer. He recovered it from near the Juarez City Police Station where it was parked. Papers and police uniform equipment belonging to the policeman were found inside the vehicle.

Mexico's state police officers are involved in auto thefts. They use criminals to steal the vehicles. A known auto thief was used to steal vehicles for two state policemen. He was previously arrested by them in possession of a stolen vehicle. He was not imprisoned as long as he kept stealing vehicles for them. We have documents on that.

The vehicles that are recovered are not reported stolen to our side of the border.

The vehicles are instead picked up and converted to personal and official use.

A stolen vehicle was seized from a state officer by the Registro Federal. Two stolen vehicles were seized from a state judicial commander and his assistant. A state judicial subcommander was seen driving a stolen El Paso police motorcycle. Eight vehicles from a list of sixteen were verified as stolen and were subsequently recovered from the state police.

The state police were named in a confession obtained from a subject arrested in El Paso for numerous auto thefts. They received over 60 stolen vehicles from these subjects. The deputy commander and two of his agents were found in possession of four of these vehicles.

Mexico's federal police officers are involved in auto thefts. They also use criminals to steal vehicles. This substantiated not in regard to the one that was mentioned earlier.

These people were named in a confession obtained from subjects arrested in El Paso for auto theft, not the same subjects mentioned under the state police heading.

A known narcotics trafficker is working for them in exchanging narcotics for stolen vehicles. They afford auto thieves protection. They aborted efforts of Juarez city police to raid an enclosure filled with stolen vehicles; 15 to 20 vehicles were in the enclosure. They also prevented an official of the mayor's office from inspecting this enclosure.

There are powerful objections under the name of the White Brigade that have uncontrolled powers and movement throughout Mexico, and other police agencies within the Mexican structure do not deal with these people in asking questions, as they have fear of their arrest powers in their statute within the Mexican Government. So they fear even investigating within this agency.

If this White Brigade is seen committing a crime or driving a stolen vehicle, there is a reluctance on the part of the Juarez officials to confront them for fear of being arrested themselves.

Recently, a Juarez auto theft detective was arrested by them when he failed to heed their threats. He continued to recover stolen vehicles from where they resided. He was physically beaten into confessing responsibility for stolen vehicles entering Mexico. Two other subjects arrested with him were later released, but he was sentenced to 4 years in the penitentiary.

Two Federal officers from Mexico City, Mexico, were arrested in possession of five vehicles stolen from El Paso, Tex. They were arrested by other Federal officers, DFS, in Juarez. The disposition of the subjects was never released by the authorities.

A Federal judicial commander's apprentice was found in possession of 10 sets of Ford product vehicle keys. He was questioned in El Paso when found in an area with a high auto theft rate. The keys were capable of opening and starting 20 Ford product vehicles.

Mexico's Government officials are involved in auto thefts. They sell stolen vehicles. Information was received that the son-in-law of the President of Mexico sold a vehicle stolen out of Chicago, Ill.

Mexican citizens stopped at U.S. ports of entry in stolen vehicles have documentation showing the vehicles were purchased from Government officials. They accept bribes in return for special favors.

A Mexican Army colonel was given a stolen vehicle in return for ignoring illicit activities of auto thieves. The thieves were involved in exchanging narcotics for stolen vehicles.

A medical doctor for an army installation was buying stolen vehicles. Payment was made upon delivery of the stolen vehicles to his residence in Juarez, Mexico. The vehicles were then delivered to Mexican police officers for distribution throughout Mexico.

That is the substance of my statement at this point. Some of the detailed questions should be directed at Lieutenant Barba. He has the details in most of these, and most of the information that was given to you in the statement and all the information given to you in the statement is also related in your transcripts that you have before you.

Mr. YATRON. Thank you for a very informative and interesting statement, Chief Rodriguez.

Lieutenant Barba, from information available to you, could you provide us with an estimate of how many vehicles were transported illegally across the Mexican border on an annual basis?

Lieutenant BARBA. No, sir. Those figures we do not have at all. The only figures we have would be the ones to the El Paso area in the city itself, not in the county or State of Texas but only for the city of El Paso.

Mr. YATRON. How many vehicles were stolen and transported across the Mexican border last year from El Paso?

Lieutenant BARBA. In 1979—you have to understand we are just guessing; these are all guess figures that we have—from January 1980 up until April, the end of April 1980, we conducted some form of survey on the vehicles we felt were being stolen and taken into Mexico. The way we selected this type of vehicle is from informers that we have that were working previously for these individuals that have been mentioned before.

The type of vehicles—some that were seen in Mexico itself ready for delivery into the interior of Mexico—and we came back in January of this year and started keeping statistics on this particular type of vehicles—and we came up with a figure in 1980 of 264 vehicles that we felt in the first quarter went into Mexico.

I am just talking about new cars which would be 1979 and 1980 models, possibly some four-wheel drive 1978's.

Mr. YATRON. Out of that number, how many were recovered?

Lieutenant BARBA. On newer vehicles, 1980, I would say very little. Maybe as little as 10 percent at the most. However, this way we went back to 1979, with this figure and came up as to the number of cars that possibly might have been taken to Mexico of the newer models, which at that time would have consisted of 1978 and 1979 and possibly some 1977, and it would be around 600 to 650 cars that we felt went into Mexico during 1979.

These are all guesstimates.

Mr. YATRON. Just from El Paso?

Lieutenant BARBA. Just the city of El Paso, not even the county of El Paso.

In 1979 the city of El Paso recovered 158 vehicles from Mexico. Out of that 158 vehicles I would say that 85 percent of them were older models, so we are just talking about 15 percent of the newer vehicles being recovered, so we are not tapping the area as to the survey that we conducted from January 1 to April 30 of this year to give us the other figures.

We cannot really tell how many went but that is a rough idea. Money figures—the vehicles lost ran about \$2 million.

Mr. YATRON. Have you experienced similar problems with other types of vehicles such as construction equipment, agricultural equipment, aircraft, or boats?

Lieutenant BARBA. On that we have very limited experience, the reason being most of the farm equipment and heavy-duty equipment would be reported to the specific department which handles the county of El Paso—either sheriff department or department of public safety.

We don't handle those vehicles at all. However, as far as airplanes, over the last month, everything broke loose in Juarez and El Paso and accusations were made on both sides of the border. U.S. consulate came up with three aircraft. As to who had them and all, I could not tell you.

Mr. YATRON. You have evidence the Mexican officials have been involved in the theft of automobiles but are you aware of any involvement of Mexican officials in the theft of construction or agricultural equipment or boats or aircraft?

Lieutenant BARBA. No, sir; we don't have any of those statistics at all.

Mr. YATRON. In your opinion, based on information available to you, which Mexican agencies are the most heavily involved in the theft rings?

Lieutenant BARBA. As stated before, the most heavily involved probably would be the Federal judicial police. This information comes to us from informers.

Other agencies are reluctant to confiscate vehicles that they feel are in possession of those agencies.

Mr. YATRON. Mr. Green?

Mr. GREEN. I gather from your testimony that the bulk of your auto theft problem, unlike what we have seen in the rest of the country, is not a theft for parts but a theft to get possession of the whole car?

Lieutenant BARBA. Right, sir.

Mr. GREEN. So you don't seem to have the chop-shop kinds of problem we discussed?

Lieutenant BARBA. No, sir. We have very limited operations of that nature in El Paso.

Mr. GREEN. Do you think that anything in the proposed legislation could deal with your kind of problem, where apparently there is complicity on the part of the Mexican authorities with this situation?

Lieutenant BARBA. Could you give me that one back again?

Mr. GREEN. We have been talking about vehicle identification numbers and possible hardening of the locking system on the ignition system as the two major devices—the vehicle identification number being addressed primarily to the professional thief problem, the hardening of the locking for the joyrider problem?

Lieutenant BARBA. Federal legislation would really help us if we could get some form of uniform registration throughout the country. As it is right now, it is kind of a hit-and-miss type of operation. Every State has its own different way of doing it. Consequently, when we come across vehicles from another State we don't really know what procedures they went through, and it makes it very difficult for us.

I have a couple of other suggestions: I don't know if anybody would be able to take them up.

California is an area that I feel would help us a lot. They carry the registration of the vehicle on the steering post of the vehicle itself at all times and are required by law to do so. That would help the law enforcement officer a lot, to be able to check the person that has that vehicle and corresponding with the car itself, see if he is the owner or not.

Also a suggestion that I might have, would be that would really help if it could be done, a sticker on the rear window of the car, and this they have come out with in Mexico. They do this on some of the vehicles. They have a registration sticker on the window—not registration, a license plate sticker on the window, that corresponds with the license plate itself. In this way the switching of plates cannot occur without scraping the sticker and being able to get another one that corresponds with that number.

That would really help law enforcement a lot in that area itself.

Another area that would really help a lot would be prosecution of some sort on interstate transportation of stolen vehicles. We have none at this time, either on the Federal level or local levels.

If you want me to, I will explain to you why we don't have it.

For instance, we recover a lot of stolen cars in El Paso that come back from Mexico. These are the cars that may be stolen out of El Paso and the thief is not aware the car is going to be checked after it returns from Mexico by customs officials. So it goes through NCIB or through the computer as being stolen. They call us; we pick up the people and lock them up and contact the law enforcement agencies throughout the country.

At that time they have no proof that this individual stole that car. The Federal Government will not prosecute. Here we have a perfect indication of interstate transportation. They will not prosecute. I don't know for what reasons.

Our local district attorneys cannot charge that person with a theft, but with unauthorized use—that is what we charge them with in Texas—and they would be willing to do that. However, the expense of bringing people to testify from other parts of the country for that are great.

Technically, that problem belongs to the people that had the car stolen. So they are not willing to pay for all these expenses to try that individual. Consequently, these people just get free rides throughout.

I am not talking of just one or two isolated cases; we have as many as five a week that we recover stolen vehicles in El Paso from other parts of the country, and there is no prosecution available at all.

Mr. GREEN. What sort of documentation do those people have when you catch them?

Lieutenant BARBA. These cars that are stolen from other parts of the country have none. It is just a stolen car and they are driving it, but they did not know they were going to get checked, and that is why they crossed.

Mr. GREEN. Do you feel we need stronger statutes or is it a case that the prosecutorial officials are not willing to put in the time and effort?

Lieutenant BARBA. I think probably it is a matter of money in both cases, California does. Each one feels the problem belongs to the other. Consequently, when California picks up our people, we are also not

willing to bring this guy back and money is just a problem. It is expensive to prosecute a case.

Mr. GREEN. That is all I have, Mr. Chairman.

Mr. YATRON. Thank you, Mr. Green.

Are you aware of a narcotics for stolen car exchange along the border region?

Lieutenant BARBA. Yes, sir. We do have knowledge of such incidents. Again through informers, and also from other law enforcement agencies. They have documented some cases.

Mr. YATRON. On Tuesday we heard testimony from the Department of Justice which indicated vehicle trafficking from the border regions to the interior of Mexico is checked for vehicle registration at customs check points. Would it be possible for the theft rings to operate without the complacency of the Mexican officials to bypass the checkpoint?

Lieutenant BARBA. No, sir, I don't feel it could be. It is mandatory, it is my understanding of Mexican law, that all vehicles entering Mexico have to stop at these checkpoints and produce ownership papers or authorization to travel into Mexico. So, consequently, equipment or vehicles that are stolen cannot get in beyond this point unless—if somebody is allowing them to do it.

Mr. YATRON. It is obvious from your testimony that the involvement of Mexican officials in crimes committed in the United States is widespread. Would you outline the possible reasons, such as underpay, failure to provide vehicles for their use, as contributing factors to this type of activity?

Lieutenant BARBA. Yes, sir; it appears like the main two areas are right there, low wages to the law enforcement officials and lack of providing proper equipment.

Another area I feel is also lack of training for law enforcement officials in Mexico. They are just appointed throughout. There is no basis for any education whatsoever on the law enforcement officers throughout Mexico. It is a different system than ours, completely, and this is why a lot of our problems occur.

Their way of life is completely different from ours, so consequently all these problems occur, and they are just condoned to a certain extent.

Mr. YATRON. Has the involvement of Mexican officials ever led to any violence with any of your officers?

Lieutenant BARBA. No, sir; we do not interfere with their operation in Mexico at all whatsoever.

Mr. YATRON. Has there been any effect on auto theft activity since the publishing of the newspaper articles detailing the involvement of Mexican police officers?

Lieutenant BARBA. Yes, sir; there has been a reduction, in the survey I spoke about earlier that we started keeping figures on in 1980. We were keeping close tabs on Chevies and Fords mainly, plus other special cars that they were taking.

A reduction has been almost to zero. We have just completely dropped to zero. We had had an increase in El Paso in comparing 1979 and 1980 figures.

For the first quarter we had experienced a 28-percent increase. Since this thing occurred 5 weeks ago, we have dropped down to zero, almost zero on all this type of vehicles taken.

Mr. YATRON. In your opinion, what caused this reduction?

Lieutenant BARBA. We have been working on this for some time, getting our documentation together and the U.S. Consulate Office in Juarez has helped us tremendously into Mexico. This consulate official has gone and presented the problem to the higher officials in Mexico, and I feel that this is why we have gotten a response through the federal agencies into investigating the problems on the Juarez side of it.

Mr. YATRON. On Tuesday we heard testimony from the Department of Justice which stated that after the negotiation of a new treaty for the return of stolen vehicles, that cooperation with Mexican police agencies had greatly improved. Would you agree that a new treaty will make a significant difference in the conduct of the Mexican police officers?

Lieutenant BARBA. Yes, sir. We would first of all have to know what the new treaty would be about. We would have to be probably talked to by these officials that draft this treaty. We can explain to them what problems we have. Maybe they are already working on that area and maybe they know all our problems.

I don't know. But we have not been contacted by them for that purpose. If we knew what the treaty was and to what extent it is going—I know the problems we have with the present treaty and the new one perhaps could be improved.

Chief RODRIGUEZ. I think any treaty that should be developed, Mr. Chairman, should be developed with the people who live on the border and the bordering cities and they certainly should involve some of the law enforcement agencies within those cities to bring to light these problems that we have continually.

We feel we can work them out through cooperation with both countries, but I think involvement by the cities on the borders needs to take place.

Mr. YATRON. I agree with both of you.

Could you describe for us the current procedure for returning a stolen vehicle from Mexico back into the United States?

Lieutenant BARBA. On that question, I have three points that I outlined as to the methods of bringing vehicles back at this time from Mexico.

We have at times excellent cooperation from some of the officials, some of the police agencies, on limited areas. Let us say we receive a call from one of the officers by phone and he says, "Do you have such and such a car stolen?" We look it up through the computer and come up with a car stolen right there. We advise him we do have a stolen car report on that, and we start the procedure.

We contact Colorado and get a copy of their stolen car report and find out who the insurance adjuster is, if the car has been paid off or if it is a local car we contact the owner in El Paso.

If no insurance payment has been made, then we place this officer and this owner or adjuster together. At that point the officer will get from whoever is claiming that car proper registration, translated papers, whatever is needed.

Also payment for wrecker fees, storage fees, which he himself had to pay out of his pocket. The agency does not provide this money to these officers. Consequently, this officer has to work out his own deal. All the time and effort that is spent by this officer on this is on his own,

the agency is not really doing it. He is doing it. Otherwise, he would leave the car abandoned on the streets if that is where he located it. This is the easiest way for the car to be returned.

Our department assists people from anywhere in the State to go there and help them up to this point. When payments are made, we are not involved. We are not even around. We are not going to get involved in that at all.

The second way of getting the car back—and by Mexican law the car has to be returned to the Registra Federal throughout the States in Mexico. Somehow or other, we have good relationships with the commandante. We get all the paperwork which makes it very, very difficult for us to get translated and certified by the Mexican consulate on this side of the border from whatever city the paperwork is coming from before we can get all the paperwork into Mexico.

It is too short—72 hours to get all this done. That is spelled out in the treaty.

This man cooperates with us very well and we don't go through the entire treaty, but we submit the proper paperwork and then we get the vehicles back.

Then the third way in both instances before the vehicles have the battery, the spare tire and the radio or stereo system missing, always. You seldom recover one with any of those items.

The third step is going through the treaty and that can last between at the shortest time 6 months by the time all the paperwork is submitted all the way up to Mexico, through the embassies and back on out, and between 6 months and 2 years before we get a car back.

By the time we get it back, it is a total wreck, not worth anything. So, the treaty can be improved a lot.

I would like to state on a couple of the statements. Mr. Chairman—I don't know if you would be willing to—but we do have documented information. We have some photographs, some video tapes, that perhaps could be of interest to you, and other documentation; but it would have to be done in executive session.

Mr. YATRON. I want to thank you both for appearing here today. I have no further questions at this point. I don't know if Mr. Green has any.

Mr. GREEN. From your relationships with other law enforcement officers along the border, do other border communities have the same kinds of problems you are having?

Lieutenant BARBA. I would assume they do, but El Paso being the largest city on the Mexican border, we just take about the bulk of the problem.

Mr. GREEN. That is all I have, Mr. Chairman.

Mr. YATRON. At this point, we would like to go into executive session. I realize you have a plane to catch and in the interest of time, we ask those who are not certified to be here, to leave the room.

[The following letter and statements were received for the record:]



**International
Association of
Chiefs of
Police, Inc.**
Eleven Firstfield Road
Gaithersburg, Maryland 20760
Phone (301) 948-0922
Cable Address IACPOLICE

Norman Danwick
Executive Director

President
Joseph S. Dominelli
Rotterdam, NY

Immediate Past President
Wilson E. Speir
Austin, TX

First Vice President
William F. Quinn
Newton, MA

Second Vice President
James P. Damos
University City, MO

Third Vice President
Leo F. Callahan
Fort Lauderdale, FL

Fourth Vice President
Howard L. Runyon, Sr.
Passaic Township
Stirling, NJ

Fifth Vice President
Thomas J. Sardino
Syracuse, NY

Sixth Vice President
John J. Norton
Foster City, CA

Treasurer
James C. Crawford
St. Paul, MN

Division of State and
Provincial Police
General Chairman
Robert W. Landon
Olympia, WA

Division of State
Associations of
Chiefs of Police
General Chairman
Willie Bauer
Beaumont, TX

Past President and
Parliamentarian
Francis B. Looney
Farmingdale, NY

REC'D CP&F SUB.

JUN 44 1980

June 20, 1980

JUN 24 1980

The Honorable James H. Scheuer, Chairman
Interstate and Foreign Commerce Committee
Subcommittee on Consumer Protection
and Finance
3275 House Office Building Annex No. 2
Washington, D.C. 20515

and

The Honorable Gus Yatron, Chairman
Foreign Affairs Committee
Subcommittee on Inter-American Affairs
709 House Office Building Annex No. 1
Washington, D.C. 20515

Dear Messrs. Scheuer and Yatron:

While the International Association of Chiefs of Police (IACP) is generally supportive of the Bill as a whole, it has come to our attention that there may be some exceptions in the pending Motor Vehicle Theft Prevention Act (HR 4178) which are of concern to our membership. In that regard, I wish to advise you that our membership addressed those issues at our last Annual Conference and at that time, passed a resolution entitled "Endorsement of the Motor Vehicle Theft Prevention Act of 1979" which specifically dealt with the following three issues:

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" (S. 1214 and H.R. 4178) will help prevent the theft of motor vehicles by requiring their manufacturers to improve its locking systems and number its major components; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" will create strong penalties for persons who remove the identification numbers of motor vehicles and motor vehicle parts and who illicitly traffic in such vehicles and parts; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" will give the United States Customs Service a clear mandate to help its sister law enforcement agencies in the fight against motor vehicle theft by giving it authority in the area of the importation and exportation of the stolen motor vehicle;

A full copy of the resolution is enclosed for your review. We hope that you will give this matter full consideration as it reflects a composite viewpoint of law enforcement executives nationwide.

Sincerely,

R. H. Sostkowski

R. H. Sostkowski
Director
Division of State and
Provincial Police

Enclosure

ENDORSEMENT OF THE "MOTOR VEHICLE
THEFT PREVENTION ACT OF 1979"
1979

WHEREAS, Motor vehicle thefts approached 1,000,000 vehicles in 1978 and cost the consumer and taxpayer more than \$4 billion; and

WHEREAS, The preliminary statistics for the first three months of 1979 show a 15% increase in motor vehicle thefts; and

WHEREAS, This increase is reflected in all geographical areas of the nation; and

WHEREAS, The seriousness of motor vehicle theft has for too long been neglected by the legislators and policy makers of our nation; and

WHEREAS, A concerted effort by all levels of government, the private sector, and the motor vehicle owner is crucial to the curbing of this growing epidemic; and

WHEREAS, While motor vehicle theft remains within the primary responsibilities of state and local government, the Federal Government as the national government has an obligation to act in those areas where it has the constitutional authority and responsibility; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" (S. 1214 and H.R. 4178) will help prevent the theft of motor vehicles by requiring their manufacturers to improve its locking systems and number its major components; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" will create strong penalties for persons who remove the identification numbers of motor vehicles and motor vehicle parts and who illicitly traffic in such vehicles and parts; and

WHEREAS, The "Motor Vehicle Theft Prevention Act of 1979" will give the United States Customs Service a clear mandate to help its sister law enforcement agencies in the fight against motor vehicle theft by giving it authority in the area of the importation and exportation of the stolen motor vehicle; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police supports the passage by the Congress of S. 1214 and H.R. 4178 as amended by the members in meeting at the 1979 Annual Conference and attached hereto; and be it

FURTHER RESOLVED, That the International Association of Chiefs of Police calls upon its members to actively encourage their perspective Congressional delegations to give this important crime prevention measure their full support; and be it

FURTHER RESOLVED, That a copy of this resolution be sent to all the members of the Senate and House Committees having jurisdictions over these bills.

1025 CONNECTICUT AVENUE, N.W., WASHINGTON, D.C. 20036 / 202-833-3450

AUTOMOTIVE
PARTS &
ACCESSORIES
ASSOCIATION

STATEMENT OF THE

AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION

PURSUANT TO THE CONSUMER PROTECTION AND FINANCE SUBCOMMITTEE

HEARINGS ON H.R. 4178, THE MOTOR VEHICLE THEFT

PREVENTION ACT

*Submitted
for the
Record.*

Submitted June 24, 1980

We are pleased to have this opportunity to submit this statement to the Subcommittee pursuant to its investigation of automobile theft and theft prevention. APAA represents nearly every company that is engaged in the design, manufacture, distribution, sales and installation of aftermarket vehicle security devices and thus we feel uniquely qualified to contribute to these hearings. While we wholeheartedly endorse the Subcommittee's efforts in the areas of improved vehicle and part identification, and increased criminal penalties for those engaged in illegal activities, we are opposed to the concept of federally-mandated OEM installation of anti-theft devices. APAA agrees wholeheartedly that something more must be done to prevent the huge losses currently being suffered by vehicle owners, but we are not at all certain that forced factory installation of security devices is an appropriate response to the problem.

As the representatives from Ford, GM and Chrysler stated in their testimony before a Senate Subcommittee in December of 1979, factory installation of vehicle security devices might well be counter-productive, in that the broad dissemination of repair information would make it even easier for a thief to determine how most easily to defeat the device. One of the greatest advantages aftermarket installation of a security device gives an owner over OEM installation is the ability to use a device that is relatively tailored to that particular

owner's car. Also, individual installation can take advantage of the opportunity to attach and hook up a device in a unique manner -- routing wires a certain way or placing the activating device in a particular position.

Aftermarket installation also gives the consumer an opportunity to choose an auto-theft device that is appropriate not only to his or her vehicle, but also to the environment in which the car is maintained. Past testimony has shown that certain cars are more desirable to thieves, and that some areas have a substantially more severe theft problem than others. Thus, a Corvette owner in a high-crime area may want (and need) four security devices while a station wagon owner in a bucolic village may need only to lock the car doors to get equal security. Consumers should be allowed to retain this flexibility and freedom of choice, and should not be forced to pay for universal devices that may or may not be adequate or appropriate for their vehicles or environment. The difference in cost to the consumer can be substantial, as is demonstrated by the following example: a basic alarm which honks and flashes lights when doors are tampered with now costs between \$140 and \$175 as a factory option in an average car; the same device would cost between \$19 and \$25 if the consumer were to buy the alarm over the counter and install it himself or herself.

Vehicle security devices are an unfortunate but definite necessity in today's society, and the aftermarket has a commendable record of being responsive to changing demands in the market. The number of different security devices available beyond the door locks and steering column ignition lock now standard in all vehicles is a demonstration of the aftermarket efforts to meet the specific needs of vehicle owners. The security device business has developed into a \$20-\$30 million industry comprised almost exclusively of small businesses. These small businessmen concentrate on staying one step ahead of the thief -- the vehicle manufacturer has more than enough other government regulations to comply with and cannot be expected to contribute significantly to the leading edge of anti-theft technology.

APAA is convinced that a major impact can be made on the auto theft industry with a program that is significantly less costly than OEM security device installation and is, in fact, a prerequisite to any success in preventing this illegal business from getting out of hand. We are speaking, quite simply, of a substantial information and consumer-education program, spearheaded by the Federal government, with the participation and cooperation of industry and consumer groups.

A security device will never be effective if owners are not actively involved in the battle against theft. One out of five theft-victims leave their keys in the ignition -- an alarm certainly would not help them! One way to discourage thefts is

to make cars less theft-prone, and there is a lot of ground that can be gained in this area before any devices are needed. Education and awareness can make far greater inroads at this point than can any form of regulation, and the former are clearly more cost-effective.

The National Automobile Theft Bureau, an insurance industry coalition, has a pamphlet which provides basic information about auto theft and some excellent suggestions on how to make one's vehicle less desirable to a thief. Information such as this should be more broadly disseminated, possibly through television and radio as well as print media.

Vehicle owners must be convinced that they, and they alone, are the most important link in any chain of efforts to curtail the theft that is increasing at an alarming pace. Owners must first learn to use fundamental anti-theft techniques and common sense against thieves before any government- or industry-designed mechanical devices will be of any assistance. So long as owners persist in leaving vehicles unlocked, parking in poorly-lit areas, and ignoring other theft-prevention suggestions, theft will continue. Owners should be encouraged to report when street lights are out, when strangers are observed hanging around a "desireable" car, or when their cars appear to have been tampered with, even if it is not stolen or damaged.

Basically, we would prefer to see a concerted education effort take place before any further government-mandated devices are installed on vehicles. Simultaneously, we believe there should be some improvements and standardization in the method by which theft data is reported and compiled. Auto theft is a national, not a state or local, problem and should be analyzed without the hindrance of state lines and their accompanying differences in definition and methodology. The federal government can be most helpful by providing the assistance needed to coordinate and rationalize the activities of the numerous law-enforcement agencies involved in combating auto theft. The broad authority delegated to the Secretary of Transportation in H.R. 4178 should be used to standardize the reporting of theft data and facilitate the communication of information between police and governmental agencies. We submit that this will be a far more profitable use of the Secretary's authority than the unfettered mandate to "issue proposed notices of rulemaking covering the areas of unauthorized starting of the motor vehicle and major component identification."

Presently only a small percentage of the companies writing automotive insurance offer a discount to owners who install appropriate security devices in their vehicles. Further, such discounts are not widely advertised nor promoted. The government should encourage insurance companies to continue and expand programs wherein consumers are given credit for

efforts to make their vehicles less theft-prone. The carrot is still the best motivation known for increasing one's attention-span and performance. Such an incentive should increase the likelihood that vehicle owners will become an integral part of the fight against auto theft.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
BEFORE A JOINT HEARING OF
THE SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS
OF THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
AND
THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE
OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
RE H.R. 4178, MOTOR VEHICLE THEFT PREVENTION ACT

June 10, 1980

The American Farm Bureau Federation, the largest general farm organization in the United States, appreciates the opportunity to comment on the Motor Vehicle Theft Prevention Act of 1979. We commend the members of these Subcommittees for efforts to help reduce crime.

Farm Bureau is aware of the economic hardships and inconvenience that result from the loss of personal property. Recent evidence has indicated significant increases in the incidence of auto theft. We support your efforts to reduce such crime which would result in a decrease of personal loss. We believe H.R. 4178, the Motor Vehicle Theft Protection Act, is designed toward that end.

While the main thrust of H.R. 4178 deals with the problems of auto theft and resulting "chop-shop" activities, Farm Bureau is primarily interested in Title V of the legislation. This deals with the problems of theft in the agricultural and construction industries.

A direct interest of farm and ranch families is the occurrence of theft in rural areas of farm equipment, farm commodities, livestock, and other personal property. Unlike the problem of auto theft, the lack of specific data has made it difficult to determine the nature and scope of this problem. Our best estimates place national losses between \$500 million and one billion dollars annually. Farmers and ranchers in this country can ill afford such losses; and it is our hope that Title V will point the way towards solving the problem without the creation of burdensome government regulations.

The voting delegates to our 1980 annual meeting adopted the following policy regarding this issue:

"Rural theft is a major problem. While we do not object to a federal survey of the scope of the problem, any federal role must be limited to assistance to states in publicizing the need for identification of machinery and other personal property. We are opposed to the titling, registration and licensing of farm machinery at the state or federal level.

"Farm Bureau supports use of the standardized 10-character machinery identification system, which includes the National Crime Information Center (NCIC) number."

We believe the appropriate solutions to this problem will be found at state and local levels. As a result, Farm Bureau, in cooperation with state and local law enforcement agencies, has developed a nationwide crime prevention program. A main facet of this program is the utilization of owner-applied numbers (OAN) on implements of husbandry. To date 40 State Farm Bureaus have programs

underway, and we believe this to be the most comprehensive program currently being used. Our goal is to assist law enforcement officials to identify the criminal, to establish the means by which property can rightfully be recovered, and, as a result, build an effective deterrent to rural crime.

Farm Bureau's program uses a basic 10 character number recognized by the National Crime Information Center (NCIC) and other law enforcement agencies. The participating farmer or rancher applies an OAN to his property with the use of engraving tools in a standard location as well as locations known only to himself. Confetti with the farmer's OAN is available for mixing with grain and other commodities. He then registers the identified property with a designated law enforcement agency, generally the county sheriff. Once property has been reported stolen, notice is sent to all states requesting that an alert be distributed of the reported theft and that the stolen property can be identified by the individual OAN. Gate signs indicating that farms have identified property are available.

It is our intention to create as much awareness as possible among law enforcement personnel to the theft problem. This includes informing law enforcement officers of the resulting losses due to the increasing value of farm machinery and equipment as well as "down time" losses to farmers. To assist local law enforcement personnel, identification system manuals have been printed showing pictures of typical farm machinery to aid in identification, and locations where OAN's are generally applied to assist in confirming owner identity. For the record we are including a copy of our crime prevention program manual for your information.

While Farm Bureau is generally supportive of H.R. 4178, we have two concerns relative to Title V.

First is the terminology of "off-highway" vehicles found in Title V. In addition to off-highway vehicles farmers and ranchers are faced with the potential theft of propelled equipment as well as self-powered equipment. In addition, potential targets are tools, welding equipment, parts, supplies, chemicals and fertilizers. Farm Bureau recommends that references in Title V to "off-highway vehicles" also include implements of husbandry.

Our second concern deals with titling and registration of farm equipment. Farm Bureau has long opposed any effort in this area because of fear of eventual licensing and tax levies for such equipment. The cost to many individual farmers would be excessive due to the number of individual pieces of equipment necessary to operate even a small acreage. Title V, Sec. 501(a), subsection 10 states that the report shall include information on the passage of any state laws relating to the titling or deeding of off-highway vehicles. Farm Bureau recommends that report language specifically indicate that regulations not be imposed to require titling, registration, and/or licensing of farm machinery at the state or federal level.

Farm Bureau believes that the provisions of Title V will provide meaningful data to determine the scope of the problem dealing with the theft of farm machinery. This information, along with efforts in the private sector, will help bring about appropriate solutions to the problem without creating burdensome government regulations.

We appreciate your consideration of Farm Bureau's views and request that our comments be made a part of the hearing record.

[Whereupon, at 12:20 p.m., the subcommittees proceeded in executive session, under separate transcript and the hearing was adjourned.]



END