

FEDERAL ROLE IN TRAFFIC SAFETY

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
EXECUTIVE REORGANIZATION
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
EIGHTY-NINTH CONGRESS
SECOND SESSION

TRAFFIC SAFETY: EXAMINATION AND REVIEW
OF EFFICIENCY, ECONOMY, AND COORDINATION
OF PUBLIC AND PRIVATE AGENCIES' ACTIVITIES
AND THE ROLE OF THE FEDERAL GOVERNMENT

MARCH 22, 1966

PART 4

Printed for the use of the Committee on Government Operations



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1966

49-959

FEDERAL ROLE IN TRAFFIC SAFETY

(Pursuant to S. Res. 186, 89th Cong.)

TUESDAY, MARCH 22, 1966

U.S. SENATE,
SUBCOMMITTEE ON EXECUTIVE REORGANIZATION,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1318, New State Office Building, Senator Abraham Ribicoff (chairman) presiding.

Present: Senators Ribicoff, Kennedy of New York, Jackson, Harris, and Simpson.

Also present: Jerome Sonosky, staff director and general counsel; Philip Cook, professional staff member; Robert Wager, assistant counsel; and Esther Newberg, chief clerk.

STATEMENT OF HON. ABRAHAM RIBICOFF, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator RIBICOFF. The committee will be in order.

When the Subcommittee on Executive Reorganization began its inquiry into the Federal role in traffic safety exactly a year ago today, we were aware that we were dealing with a controversial topic. The safety of motor vehicle travel is a matter of vital concern to the American people as a whole, as well as to the millions whose livelihoods depend upon our transportation system and automotive industry.

As a matter of fact, currently there are 91 million registered motor vehicles in the United States, and 98 million licensed drivers.

Soon after the hearings began it was clear that the controversy was likely to become more heated as old theories were subjected to scrutiny and established positions came under attack.

I think our inquiry has been helpful. It has shed light on important matters that have long been only dimly understood. It has shown us areas of controversy where we must look further for the right answers. At the same time, the hearings have quickened the determination of experts in many quarters to make highway travel as safe as possible, as soon as possible.

The hearings have resulted in the introduction of a variety of new safety features on our new automobiles without the passage of any specific legislation. Further, it has led to a national highway safety bill, forwarded to this Congress by the President.

Much of the subcommittee's success has resulted from the willingness of experts in this important field to express their views vigorously

and frankly. This right to testify freely without fear or intimidation is one of the cornerstones of a free and democratic society. Any attempt to jeopardize this right is a serious matter.

I have called this special meeting today to look into the circumstances surrounding what appeared to be an attempt by General Motors Corp. to discredit Mr. Ralph Nader, a recent witness before the subcommittee. This large company whose principal executive officers appeared before this same subcommittee last July, has admitted responsibility for undertaking a determined and exhaustive investigation of a private citizen who has criticized the auto industry verbally and in print.

There is no law which bars a corporation from hiring detectives to investigate a private citizen, however distasteful the idea may seem to some of us. There is a law, however, which makes it a crime to harass or intimidate a witness before a congressional committee. One of our purposes here today is to inquire into the purposes and effects of the action initiated by General Motors.

Personally, I don't like to see anyone subjected to harassment, intimidation, or character assassination. But I am particularly disturbed when this sort of activity is injected into the efforts of a legislative body to deal with a vital public issue, like traffic safety.

I am concerned because I know that the subcommittee will never be able to complete its work successfully if witnesses believe their personal lives might be investigated and their rights to privacy infringed by the auto industry or other interested parties.

This situation cannot be allowed to go unchallenged. It goes to the very heart of the legislative process. If this hearing does nothing else today, it should reaffirm the right and duty of every citizen to speak his mind on matters of public interest and concern.

Would you, Senator Simpson, or Senator Harris, like to make any comment?

Senator SIMPSON. I haven't anything.

Senator HARRIS. I have no opening statement. Thank you, Mr. Chairman.

Senator RIBICOFF. The first witness is Ralph Nader. We will stand in recess until the witness comes.

(Short recess.)

Senator RIBICOFF. The committee will be in order.

It had been my intention to call Mr. Nader as our first witness, but Mr. Nader has not arrived, and it is now 10:15. Would you object, Mr. Roche, to giving your statement at this time?

Mr. ROCHE. I will be very happy to give my statement, Mr. Chairman.

Senator RIBICOFF. Mr. Roche, as a matter of formality, in keeping with the rules of the committee, may I ask you if you would be willing to take an oath, please?

Will you raise your right hand?

You do solemnly swear that the testimony you shall give before this Senate subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROCHE. I do.

Senator RIBICOFF. For the purposes of committee procedure, we will allow each witness to give his entire statement without interrup-

tion. After the witness has given his statement, each member of the committee in turn will be confined to asking questions for a period of 10 minutes. After every member of the committee has had an opportunity to ask questions, then those members of the committee who may have other questions may proceed beyond the 10-minute period.

Thank you, Mr. Roche. You may proceed.

TESTIMONY OF JAMES M. ROCHE, PRESIDENT, GENERAL MOTORS CORP.; ACCOMPANIED BY THEODORE C. SORENSEN, COUNSEL

Mr. ROCHE. Thank you, Mr. Chairman.

For the record, my name is James M. Roche and I am president of General Motors Corp., Detroit, Mich. I am here today at the chairman's invitation issued in conjunction with his March 10 statement to the Senate. That statement ordered hearings concerning this corporation's responsibility for a private investigation of Mr. Ralph Nader, a witness before this subcommittee who has been critical of the automobile industry's efforts on traffic safety and particularly the GM Corvair. I immediately stated our intention to cooperate with this subcommittee in every possible way.

Let me make clear at the outset that I deplore the kind of harassment to which Mr. Nader has apparently been subjected. I am just as shocked and outraged by some of the incidents which Mr. Nader has reported as the members of this subcommittee.

As president of General Motors, I hold myself fully responsible for any action authorized or initiated by any officer of the corporation which may have had any bearing on the incidents related to our investigation of Mr. Nader. I did not know of the investigation when it was initiated and I did not approve it.

APOLOGY TO SUBCOMMITTEE AND NADER

While there can be no disagreement over General Motors' legal right to ascertain necessary facts preparatory to litigation, as I shall discuss in a moment, I am not here to excuse, condone, or justify in any way our investigating Mr. Nader. To the extent that General Motors bears responsibility, I want to apologize here and now to the members of this subcommittee and Mr. Nader. I sincerely hope that these apologies will be accepted. Certainly I bear Mr. Nader no ill will.

To the best of my knowledge—and I have made every effort to obtain all the facts since learning about this some 2 weeks ago—the investigation initiated by General Motors, contrary to some speculation, did *not* employ detectives giving false names, did *not* employ Allied Investigation, Inc., did *not* use recording devices during interviews, did *not* follow Mr. Nader in Iowa and Pennsylvania, did *not* have him under surveillance during the day he testified before this subcommittee, did *not* follow him in any private place, and did *not* constantly ring his private telephone number late at night with false statements or anonymous warnings.

At the time the investigation was initiated last November, Mr. Nader's book had not yet been published, he had *not* appeared nor was he scheduled to appear as a witness before this subcommittee and

he was *not* regarded to anyone's knowledge as a consultant to this subcommittee. In short, this investigation was wholly unrelated to the proceedings of this subcommittee and Mr. Nader's connections with them.

There has been no attempt by, and it has at no time been the intention of, General Motors Corp., or any of its officers or employees to annoy, harass, embarrass, threaten, injure or intimidate Mr. Nader, to invade his privacy, to defame his character, or to hinder, impugn, coerce, or prevent his testimony before this or any other legislative body. Nor was any attempt made along those lines with respect to any other critic of General Motors.

I personally have no interest whatsoever in knowing Mr. Nader's political beliefs, his religious beliefs and attitudes, his credit rating or his personal habits regarding sex, alcohol, or any other subject. Nor for the record was any derogatory information of any kind along any of these lines turned up in this investigation.

While I do not personally know Mr. Nader, I am informed that he is an articulate attorney and citizen who is deeply interested in traffic safety and has written and spoken extensively on the subject.

We in General Motors certainly would not want any private citizen to think for one moment that he was not free to criticize our corporation or products, before this subcommittee or anyone else, without fear of retaliation or harassment of any kind. While we do not agree with many of the opinions and allegations Mr. Nader has put forward, General Motors has responded to his public criticisms not by responding in kind or ignoring the problems but by inviting him to meet with us to discuss those questions of safety which concern us all. Mr. Nader spent a day at the GM Technical Center, Warren, Mich., early in January visiting with GM executives and engineers. We hope we will have the opportunity to meet with him again in the future.

CORVAIR CASES PROMPTED INVESTIGATION

Under the circumstances, I believe we owe this subcommittee an explanation of exactly what happened and why it happened, as best as I have been able to ascertain. As of November 1 of last year, General Motors Corp. was a defendant in over 100 lawsuits involving potentially about \$40 million in damage claims relating to the design of Corvaire cars of the 1960 through 1963 models. Although the only two cases actually tried and decided on the basis of the Corvaire's design resulted in verdicts in our favor, both State and National legislative bodies have respected our wish not to discuss in public any issues involved in pending litigation. While I am not a lawyer, I am certain that the learned lawyers on this subcommittee understand that practice in keeping with the canons of ethics. As the U.S. Supreme Court has aptly put it, "it is impermissible to litigate by day and castigate by night." (In *Re Sawyer*, 360 U.S. 622, 635.)

Suffice it to say that the general counsel of our corporation has a responsibility to the stockholders to defend all such suits with all his strength and ability and with every proper method and measure. I understand that both State and Federal courts have consistently held that most lawsuits, and particularly product liability cases of this kind, necessarily and customarily require considerable investiga-

tion—investigation of the accident, the damages, the parties, the witnesses, the qualifications of experts and related facts.¹

Troubled by what appeared possibly to be a concerted effort on the part of a few trial attorneys handling most of the Corvaire cases to stimulate both additional cases and the kind of sensationally adverse publicity that might influence juries against the Corvaire—and troubled further by requests from shareholders as well as from both satisfied and worried Corvaire buyers that the corporation counteract the harsh attacks on this product which had been continuously made outside the courtroom—our general counsel felt called upon, *first*, to ascertain whether any actions for libel of the corporation or its products or bar association grievance procedures, based on violations of the canons of ethics, should be instituted against members of the bar (including Mr. Nader) who publicly discussed pending or anticipated litigation; *second*, to ascertain whether any witness, or author of any book or article which might be offered as evidence in any court (including Mr. Nader) was entitled to the legal definition of "expert"; and *third*, to ascertain whether any of the individuals (including Mr. Nader) who were most often said to be cited or consulted by these attorneys, or to be publicizing their allegations, could properly be cross examined in any trial in which they might appear as expert witnesses to show bias, lack of reliability or credibility, if it were a fact that they had a self-interest in the litigation or had been attempting deliberately to influence public opinion.²

In Mr. Nader's case, and only in Mr. Nader's case, the general counsel felt that he could not ascertain the answers to these questions—and they were only questions, not charges—without using a private investigating agency to check on Mr. Nader's credibility, reliability, and qualifications as an expert witness and his ties, if any, with these attorneys. A brief inquiry in Mr. Nader's hometown in Connecticut revealed nothing. Inasmuch as he gave a Washington address on a brief filed against General Motors in a product liability case, but could not be found in any Washington telephone or legal directory, the general counsel requested a Washington attorney, Mr. Richard Danner, to secure an investigation of the facts needed. At that time Mr. Nader had not yet been announced as a witness before this subcommittee; and the general counsel, treating this like all other investigations of fact related solely to pending and anticipated litigation, did not consider it necessary to inform the other officers of the corporation.

ROCHE DID NOT KNOW OF INVESTIGATION

This investigation was initiated, conducted, and completed without my knowledge or consent, and without the knowledge or consent of any member of our governing committees. To say that I wish I had known about it earlier is an understatement—and I intend to make

¹ *Miller v. United States* (192 F. Supp. 218, 222): "The weight and value of the testimony of the expert witness depends largely upon the qualifications (of) such expert, and these qualifications may be the subject of intensive investigation by the opposing counsel." *Hare v. McGuire* (174 Pac. 663, 664); in upholding propriety of man threatened with lawsuit employing a detective to shadow, investigate, and otherwise check on the other party and potential witnesses: "Anyone has a right, when threatened with litigation, or desiring himself to sue, to employ assistance with a view of ascertaining facts as they exist. * * *

² In *Hatch v. Ooms* (69 F. Supp. 788, aff'd. 338 U.S. 318), for example, investigation revealed that an article by a supposedly disinterested person had actually been arranged by the attorneys for one side.

certain that we are informed of similar problems of this magnitude in the future.

Mr. Danner secured the services of Vincent Gillen Associates, an investigation agency in New York City, a decision which was not ratified by or made known to me. Nor was I informed of the pre-employment investigative methods which would be employed by Mr. Gillen and his associates. Most of the information gathered in this effort, which was terminated last month, was, not surprisingly, irrelevant for the very narrow purposes which our general counsel had originally intended.

When I first read in the press on March 6 that Mr. Nader was apparently being shadowed and investigated, and his friends questioned about his beliefs, I was just as surprised and disturbed as all of you must have been. Two days later, in the process of ordering a formal statement denying our involvement, I discovered to my dismay that we were indeed involved. I immediately ordered an investigation and release of the facts as we then knew them.

We earnestly hope, Mr. Chairman, that you will not interpret this episode as reflecting GM's response to the issues raised by your subcommittee and by others concerned with traffic safety. We deeply share that concern. We want to consider all complaints and suggestions on their merits, not on the basis of personalities. We know that any automobile is subject to accident and that we must be constantly devising and improving ways to protect the occupants and others. If our concern for safety has not always come through with sufficient clarity and vigor in previous statements, including our statement before this subcommittee last summer, then I can assure you that we regret that failure.

Without straying too far from the purposes of today's hearing, I do want to stress that General Motors is expanding its research, engineering and testing in all areas of safety, including that of the second collision and the causes of both accidents and injuries. We are stressing safety in our advertisements and consumer contacts, and adding new safety features to our cars as fast as they can be effectively developed, carefully tested, and thoroughly proven to be practical. We are in every other way devoting more time, imagination, attention, manpower, and statistical studies than ever before to this all important safety factor. We are, in short, in all our plans and calculations, giving safety a priority second to none. And we consider this to be our duty.

In every endeavor at General Motors, we are always striving to do better, and this includes safety. But we take great pride, Mr. Chairman, in your recent comments on GM's leadership in introducing the collapsible (energy absorbing) steering column and in providing for dual braking systems on all cars. Other safety features which need not be detailed now are also being provided as standard, as well as optional, equipment for 1966 and 1967 cars.

The traffic toll, of course, is still tragically high. As the President has pointed out, the car, the driver, and the highway environment all have a role in accidents, and all must be improved. Automotive design is our responsibility. I am urging our engineers and experts on to greater heights, to be pioneers in automotive safety. But in this broad effort the entire automobile and insurance industries, the uni-

versities and research centers, the various voluntary organizations, and the State and Federal Governments all have important roles to play. General Motors will cooperate fully in all these endeavors, including the support of constructive State and Federal legislation. It is in that spirit of cooperation that I have come before you today not only to report on this unhappy episode, but also to pledge our continuing effort to work with all those concerned with improving traffic safety.

FREQUENCY OF PERSONAL INVESTIGATION BY GM

Senator RIBICOFF. Mr. Roche, I appreciate your forthright statement. What concerns me is this: Here you are the head of one of the largest companies in the world. I can understand your desire to find out if there is a connection between Mr. Nader and other attorneys involved in litigation. But how widespread is it, in corporations such as yours, to have people who are involved in controversies or who might make a derogatory remark about General Motors to have their entire life investigated?

Mr. ROCHE. It is a very uncommon occurrence in our corporation, Mr. Chairman, and to my knowledge this is the first one of this kind that has ever been undertaken. On the contrary, I think that we solicit the comments and the criticism of our products. We spend a great deal of money and time through consumer research and other methods to find out what people think about our products, what they like about them, and what they dislike about them. An episode of this kind is certainly a very rare and unusual occurrence in General Motors.

Senator RIBICOFF. Do you know that it is rare or unusual or does this take place without you even realizing it?

Mr. ROCHE. No, sir; I would know about it if it did take place, and we have been making very careful checks to ascertain what other investigations have been made, and other investigations have to do only with minor affairs, such as preemployment checks of individuals who are joining us, perhaps internal problems we might have with employees, and perhaps problems in connection with embezzlement, and purchasing activities, or other activities of the corporation.

There have been very few of them. I have had the records checked very carefully over the past few years, and I can assure you that there is nothing except very minor investigations along the lines that I have mentioned.

POLICY DETERMINATION IN GENERAL MOTORS ON INVESTIGATIONS

Senator RIBICOFF. How many employees does General Motors have?

Mr. ROCHE. Worldwide we have approximately 740,000 employees and of that, approximately 540,000 are in the United States.

Senator RIBICOFF. Who is responsible for policy to determine whether an individual is to be investigated, whether he is within your corporation or someone outside the corporate employ? Who makes that decision?

Mr. ROCHE. The primary responsibility for making that decision depending on the nature of the case would be the general counsel.

Under ordinary circumstances the decision would be made in consultation with other executives of the corporation who may be familiar with the particular problem involved. But were it a serious enough matter, then it would be called to the attention of other officials in the corporation, or perhaps some of our top committees.

Senator RIBICOFF. How do you explain the lack of communication or the communication gap, so to speak, between whoever ordered this investigation and the detectives who were doing it? The reports were being sent back to General Motors as fast as the investigators were making them, showing up the invasion of Mr. Nader's personal life, the question of what his sexual behavior may be, whether or not he was anti-Semitic, what his grades were in high school, what his grades were in college, what his employment activities were, and all throughout the investigation, very little was showing up concerning his connection with other lawyers involved in litigation with the Corvaair.

POSSIBLE NADER LINK WITH CORVAIR LITIGATION

Mr. ROCHE. I am familiar with that now, Mr. Chairman, and I understand that very, very little was indicated. The investigation was undertaken by the general counsel in the belief that Mr. Nader did have some connection, did have a possible connection with the Corvaair litigation.

He had been identified through the ATLA Group as a Corvaair expert and it had been stated through the ATLA organization, that anybody having an interest in Corvaair should contact Mr. Ralph Nader. I think this happened back in the summer of 1965. Subsequently, Mr. Nader's book, or previews of his book, appeared in publications. One I think was in the Nation and the other was in the Charleston Gazette, in which the chapter he devoted to the Corvaair was commented upon very extensively. Back in November the general counsel's office believed that it was necessary to try to determine what connection, if any, or interest in the litigation Mr. Nader might have. They first went to his hometown which was in Winsted, Conn., and they were unable to find him in Winsted. They were told at that time that possibly he was in Washington, and made the usual checks through Washington through legal directories as I indicated in the statement, and were unable to find out anything about him. It was after that search had proved fruitless, Mr. Nader's comments, press interviews, TV appearances, and so forth, continued to be very critical of the Corvaair, and I think that our general counsel felt that it was his responsibility and duty to attempt to determine whether or not there was any association between Mr. Nader and the Corvaair litigation. It was on that basis that the investigation was undertaken.

Senator RIBICOFF. Is your general counsel in this room with you today?

Mr. ROCHE. Yes; he is, Mr. Chairman.

Senator RIBICOFF. So he will be available for questioning as we go along?

Mr. ROCHE. Yes.

RIBICOFF INVESTIGATED

Senator RIBICOFF. By the way, were you aware, Mr. Roche, that the investigators that were hired, when I stated when Mr. Nader appeared

before our subcommittee on February 10 that the first time I had ever seen Mr. Nader was when he walked in to the committee room, was also subject to investigation, as to whether the chairman was telling the truth when he said that he had never seen Nader before?

Mr. ROCHE. I am not aware of that, Mr. Chairman. I am aware of the remarks that you made at your hearing, but I did not know of the other circumstance; no, sir.

IN RE SAWYER CITATION

Senator RIBICOFF. You mentioned on page 3, and I think it is important, the case of: In re Sawyer (360 U.S. 622). I do not suppose you are a legal authority and that your counsel must have put in the quote from that case:

It is impermissible to litigate by day and castigate by night.

Let me read what Justice Brennan, speaking for the Court, really said:

The verbalization is that it is impermissible to litigate by day and castigate by night, * * * but to us it seems totally to ignore the charges made and the findings. (360 U.S. 622, 635-636.)

Then the Court concludes:

But it hardly needs elaboration to make it clear that the question of the total insufficiency of the evidence to sustain a serious charge of professional misconduct against the backdrop of the claimed constitutional rights of an attorney to speak freely as any other citizen is not one which can be subsumed under the headings of local practice, customs or law (360 U.S. 622, 640).

Now I think what the court had in mind in the 1959 *Sawyer* case, Mr. Roche, was what Louis Brandeis once said:

We hear much of the corporation lawyer and far too little of the people's lawyer. The great opportunity of the American Bar is and will be to stand again as it did in the past ready to protect also the interests of the people.

Now the question that you raise in General Motors of your desire not to have your products discussed in public during the course of litigation fails to take into account that the American people do have a right to know, to have discussed, any product or any issue which may affect their lives, their well-being and their health, and Mr. Nader, whether he be a lawyer, a newspaperman, or just any individual, certainly does have the right to write articles, to write a book, to testify before a committee, or to get on a soapbox in the middle of a public park to make a speech about a matter that he believes concerns the well-being of our country. And I do not want you to feel, or want the country to feel, the Supreme Court has laid down a rule that a member of the bar, once he is involved in litigation, is foreclosed from discussing matters of public policy that might be involved in litigation.

Mr. ROCHE. I am sure that is right, Mr. Chairman, and I think that the purpose of this in the mind of our general counsel, and he will be glad to speak for himself when the proper time comes, was simply to determine whether or not Mr. Nader had any interest beyond acting as an impartial critic of our product. Canon 20 of the Canons of Ethics states that "Precluding newspaper discussion of pending litigation applies not only to discussion in newspapers but to any discussion in a magazine including legal magazines or other publications intended or calculated to influence the decision in a pending case in which the

writer is counsel, and would also include by implication similar radio and TV broadcasts."

Senator RIBICOFF. Yes, but there was no evidence that you gathered that Mr. Nader was counsel in any Corvair litigation, was there?

Mr. ROCHE. Not at any Corvair litigation as I mentioned earlier. The American Trial Lawyer's Association's publications were referring to Mr. Nader as an expert in Corvair affairs, and were suggesting that anybody who had an interest in Corvair litigation contact Mr. Nader and gave his address as I recall it at Winsted, Conn. I think that was the primary reason for our general counsel's feeling that there was a possibility of Mr. Nader having an interest in the Corvair litigation.

Senator RIBICOFF. I have taken up 10 minutes. The rules apply to the chairman, as well as to the members of the committee. I will have some other questions later.

Senator Simpson, do you have any questions?

ROCHE COMMENDED

Senator SIMPSON. Mr. Chairman, I want to join with you and associate myself with the remarks made by this testimony of Mr. Roche's. He has been very forthright and helpful. This committee tries so hard to find from the facts and investigation that leads to constructive laws with respect to the United States of America transportation, and it is a little difficult to have to be called outside to trace a side issue down like this. I hope when we have this behind us that we get on with our constructive work.

Mr. Roche, are you still conducting the traffic safety investigation at your various plants that you testified to?

Mr. ROCHE. The traffic safety activities?

Senator SIMPSON. The research.

Mr. ROCHE. Yes; we are engaged in very extensive research, Senator Simpson.

Senator SIMPSON. That is all I have.

Mr. ROCHE. At our proving grounds, and through our engineering and research activities; yes, sir.

Senator SIMPSON. That is all I have, Mr. Chairman.

Senator RIBICOFF. Senator Kennedy?

Senator KENNEDY. First, Mr. Roche, let me commend you on your statement.

Mr. ROCHE. Thank you.

Senator KENNEDY. I agree with Senator Simpson and the chairman, it is a most forthright statement.

Mr. ROCHE. Thank you, Senator.

Senator KENNEDY. It is very helpful to the committee. I am sure it was difficult to make, and therefore all the more commendable.

Mr. ROCHE. Thank you, sir.

Senator KENNEDY. I extend my appreciation to you for your efforts to come before the committee and give us all of the facts in connection with this mater, and I commend your candor and your honesty in doing so.

Mr. ROCHE. Thank you, sir.

GENERAL MOTORS STATEMENT OF MARCH 9, 1966

Senator KENNEDY. There are a few questions that I would like to ask. First, going back to the General Motors statement that was made originally, that is a matter of some concern to me. At the time this investigation originally was written about in the newspaper, a statement was put out I believe by you. Would you agree that the statement that was put out on, I guess, March 9, 1966, a statement issued by General Motors, was misleading about the facts in connection with this matter?

EXHIBIT 116

STATEMENT OF GENERAL MOTORS CORPORATION

General Motors said today that following the publication of Mr. Ralph Nader's criticisms of the Corvair in writings and public appearances in support of his book "Unsafe at Any Speed," the office of its general counsel initiated a routine investigation through a reputable law firm to determine whether Ralph Nader was acting on behalf of litigants or their attorneys in Corvair design cases pending against General Motors. The investigation was prompted by Mr. Nader's extreme criticism of the Corvair in his writings, press conferences, TV and other public appearances. Mr. Nader's statements coincided with similar publicity by some attorneys handling such litigation.

It is a well known and accepted practice in the legal profession to investigate claims and persons making claims in the product liability field, such as in the pending Corvair design cases.

The investigation was limited only to Mr. Nader's qualifications, background, expertise and association with such attorneys. It did not include any of the alleged harassment or intimidation recently reported in the press. If Mr. Nader has been subjected to any of the incidents and harassment mentioned by him in newspaper stories, such incidents were in no way associated with General Motors' legitimate investigation of his interest in pending litigation.

At General Motors' invitation, Mr. Nader spent a day at the GM Technical Center, Warren, Michigan, early in January visiting with General Motors executives and engineers. He was shown a number of engineering and research testing and development programs in the field of automotive safety. A number of the accusations in his book were discussed at length, and a presentation was made of the evidence used in the successful defense of the only two Corvair lawsuits tried.

Mr. Nader expressed appreciation for the courtesy in providing him with detailed information, but he nevertheless continued the same line of attack on the design of the Corvair in a number of subsequent press conferences, TV and other appearances. This behavior lends support to General Motors' belief that there is a connection between Mr. Nader and plaintiffs' counsel in pending Corvair design litigation.

Mr. ROCHE. I suppose, Senator Kennedy, that had I known or had we known at the time what I know now, I suspect that the wording of the statement might have been somewhat different.

Senator KENNEDY. My point is that if we just take this statement, that had been made by General Motors, and take the newspaper articles which first brought this matter to light, then taking the statement had the chairman not called a hearing, really the public and the newspapers would have been misled. Mr. Nader's honesty and integrity would have been seriously questioned, if we had not gone on with this hearing, and if you had not made this frank and forthright statement which you have made before this committee. There would have been serious questions raised about not only the newspaper articles and the individuals who wrote those articles, but also Mr. Nader's integrity. Do you agree with that?

GENERAL INTENT OF INVESTIGATION

Mr. ROCHE. Possibly that interpretation could be placed upon that, Senator. However, I think the statement represented the general intent of the investigation at that time.

Now, since then, I have learned that in the approach to the investigation, there had to be some basis for making the investigation. It was the judgment of the people who were arranging the investigation that a preemployment type investigation would be made, and that is the kind of an investigation that was undertaken. In the course of that investigation, apparently some areas were probed in a very unfortunate way as it turns out. To that extent I would say that had we known and had I seen the reports at all at the time this was made, the full detail of all the reports of the investigation, that possibly this wording could have been changed to—

Senator KENNEDY. Can I just give you—for instance—what was said and what was put in the Congressional Record, and what was broadcast all over the country. It states that:

General Motors said today that following the publication of Mr. Ralph Nader's criticisms of the Corvair in writings and public appearances in support of his book "Unsafe at Any Speed," the office of its general counsel initiated a routine investigation through a reputable law firm to determine whether Ralph Nader was acting on behalf of litigants or their attorneys in Corvair design cases pending against General Motors.

It was certainly an investigation that went quite beyond that.

Mr. ROCHE. Well, as I have indicated, Senator Kennedy, to our knowledge many of the items of harassment which had been alleged did not occur as a result of any investigation that was made by—

NOT A ROUTINE INVESTIGATION

Senator KENNEDY. Would you say now that this was a routine investigation to determine whether Mr. Nader was acting on behalf of litigants or their attorneys?

Mr. ROCHE. I would say, Senator Kennedy, that it is not a routine investigation insofar as General Motors is concerned, but it is my understanding that this is considered a routine investigation of potential witnesses in connection with litigation that may be of interest to a defendant.

Senator KENNEDY. There is some inconsistency, it seems to me, if you say in this statement that it was a routine investigation on behalf of litigants or their attorneys in Corvair design cases pending against General Motors, and then in your statement today admit that there was a good deal of harassment, and that the investigation went beyond what you had thought should take place, and apologize to Mr. Nader.

Mr. ROCHE. That is right.

Senator KENNEDY. This statement is inconsistent with that?

Mr. ROCHE. I think that it is inconsistent to that extent; yes, sir.

Senator KENNEDY. Then your release states:

The investigation was limited only to Mr. Nader's qualifications, background, expertise and association with such attorneys.

That statement really as it turns out is not accurate.

Mr. ROCHE. That was the intent of the statement, and the intent of the investigation.

Senator KENNEDY. I understand, but that isn't in fact what occurred, Mr. Roche? It went far beyond that, did it not?

Mr. ROCHE. As I have indicated, Senator Kennedy, whether or not in the course of preemployment application investigations this is the type of information that is ordinarily solicited, I can't answer.

Senator KENNEDY. Let me ask you now based on the facts that you know at the present moment, the investigation was really much more, far beyond what the original statement of General Motors indicated on March 9?

Mr. ROCHE. I would say that is true; yes, sir.

Senator KENNEDY. Let me just say, and I am not going to keep pressing this, but I think it is a matter of concern to this committee and to the Congress of the United States as well as the newspapers. Where your release states that if Mr. Nader has been subjected to—

any of the incidents and harassment mentioned by him in newspaper stories, such incidents were in no way associated with General Motors' legitimate investigation of his interest in pending litigation.

That is a fact that is also not accurate, is it?

GM ADMITS SOME HARASSMENT

Mr. ROCHE. Well, I think it depends on the interpretation of acts of harassment, Senator Kennedy. I think what we meant by that statement was that certainly we had been assured that our investigation had not had anything to do with the harassing telephone calls. We had not followed Mr. Nader in some—

Senator KENNEDY. Wasn't Mr. Nader in fact called by—

Mr. ROCHE. He was called twice to my knowledge, both times in the morning, once about 10:30 and again about 1:00 in the afternoon.

Senator KENNEDY. Isn't it correct that he was followed?

Mr. ROCHE. He was under surveillance in Washington for a period of about 1 week; yes, sir.

Senator KENNEDY. Well, it says, here the statement says that—

If Mr. Nader has been subjected to any of the incidents and harassment mentioned by him in newspaper stories, such incidents were in no way associated with General Motors' legitimate investigation of his interest in pending litigation.

That statement, really, Mr. Roche, as it is being developed before the committee, is not accurate.

Mr. ROCHE. Well, again I think, Senator, that it gets back to what is an element of harassment.

Senator KENNEDY. Can you hold up? Maybe I will take back what I said about your statement. I thought your statement indicated that you thought that there had been harassment.

Mr. ROCHE. I think that there has been some harassment.

Senator KENNEDY. But you say in here, the original statement on March 9 says that—

If Mr. Nader has been subjected to any of the incidents and harassment mentioned by him in newspaper stories, such incidents were in no way associated with General Motors' legitimate investigation of his interest in pending litigation.

Mr. ROCHE. Perhaps our initial press release was too broad, Senator, but I think that the intent of the release referred to some of the incidents which had been described in the press, but as to the use of girls

accosting Mr. Nader, the employment of detectives who were giving false names, and the constant ringing of his telephone at night, and as reported in the press and accounts I read, his telephone was continually being rung during odd hours of the night, and disturbing his rest.

Senator KENNEDY. Well, Mr. Roche—

Mr. ROCHE. And in that sense we did not conduct any of these items of harassment.

Now to the extent that this went into private affairs and other questions, which is regrettable, that those are acts of harassment and I believe that they are, then to that extent the statement is not clear.

Senator KENNEDY. I think that is a mild way of putting it, if I may say so, Mr. Roche. I commended you on your statement, and I commended it because I thought it was frank and honest, and I think that it is frank and honest. But as I gather from your statement today, you said that there had been acts of harassment by representatives of those who were associated with the General Motors Corp., and you apologized for it. This statement of March 9 quite clearly indicated that no such events or incidents ever occurred. My point was that the statement of March 9 it seems to me is inaccurate, not because of statements that are made by Mr. Nader, but because of your own statement here.

Mr. ROCHE. I think that the statement on March 9, Senator Kennedy, represented what you might term the intent of the investigation as—

Senator KENNEDY. Don't you think that the General Motors Corp. has a responsibility to be accurate, full, truthful, and honest in connection with these matters?

Mr. ROCHE. I certainly do, and to the best of our ability that is what happened. I think we have this to bear in mind. That I first found out about this investigation late in the afternoon or early evening of March 8, as I indicate in the statement, and my first responsibility was to attempt to learn what did happen, and I immediately returned to Detroit and endeavored to find out specifically what happened. I have learned a great deal more in the intervening time. But I thought our first responsibility was to put out a statement that admitted our responsibility for conducting an investigation, and that is this statement.

As I indicated earlier, were I writing this statement this press release today, I think it would be in different language.

Senator RUBINOFF. Senator Kennedy, your 10 minutes are up and you will have another opportunity. Senator Harris.

ROCHE LEARNED OF INVESTIGATION ON MARCH 8

Senator HARRIS. Thank you, Mr. Chairman. Mr. Roche, I believe from your statement on page 5, you say that it would have been on March 8 by adding 2 days later to March 6 when you were in the process of ordering a formal statement denying the involvement of GM, you discovered to your dismay that GM was indeed involved. To what degree did you discover GM's involvement in the investigation at that time?

Mr. ROCHE. Well at that time I learned that we had conducted an investigation—

Senator HARRIS. Did you learn that it was a preemployment as you call it, type?

Mr. ROCHE. No, sir, I did not. I did not learn that it was that type of an investigation. All I learned at that time was that we were involved, and when I asked for the name of the investigating agency that was used, I was informed that it was Vincent Gillen Associates, and that of course was the name of the agency that was described in the story in the New York Times on March 6, which I read. I happened to have been in New York that day.

Senator HARRIS. The New York Times article indicated that matters extraneous to preparation of lawsuits had been involved in the investigations, did it not?

Mr. ROCHE. It said that certain inquiries had been made with respect to Mr. Nader's sex habits and problems, if any.

Senator HARRIS. And you learned that GM was in fact involved in the investigation on March 8.

Mr. ROCHE. Yes, sir.

Senator HARRIS. And then did you approve the press release on March the 9th which Senator Kennedy has previously alluded to?

Mr. ROCHE. Yes, I did.

Senator HARRIS. Did you feel no responsibility to delve further into the investigation before approving the press release which said that it had only to do with preparation of the lawsuit?

Mr. ROCHE. I thought, Senator, that our first obligation was to admit our responsibility in connection with the investigation. We discussed this phase of it, and I was assured that this was an investigation made solely for the purpose of determining Mr. Nader's connection with the Corvair litigation.

Senator HARRIS. Who assured you of that?

Mr. ROCHE. I was assured by our legal staff.

Senator HARRIS. Who are they?

Mr. ROCHE. I was assured by Mr. Bridenstine who is assistant general counsel and was working on the problem at the time.

Senator HARRIS. He assured you of something, one of your people assured you of something that was not in fact true then?

Mr. ROCHE. Well, it was not true at the time; yes, sir.

Senator HARRIS. What do you mean it was not true at the time?

Mr. ROCHE. Well, I think that our people were not aware of all of the things that had happened, and I think maybe there was some misunderstanding between a preemployment investigation and what might be considered to be a routine investigation. I have been told, and I have no basis for knowing other than that, that it is quite common practice in making preemployment investigation—and this was a preemployment investigation pretext that was used—that questions of background and questions of this kind with respect to the drinking and the moral habits of an individual are part of that kind of an investigation. If that is so, then I presume that this is not an unusual happening.

Senator HARRIS. You are saying then that your own legal staff—no one in GM to your knowledge knew in advance that this investigation would go into facts that were not required to prepare the lawsuit; is that what you say?

Mr. ROCHE. To my knowledge I don't think that was contemplated; no, sir.

INVESTIGATING AGENCY DECIDED ON PREEMPLOYMENT PRETEXT
WITHOUT KNOWLEDGE OF GM

Senator HARRIS. And then who did make that decision? Who made the decision that extraneous matters would be investigated?

Mr. ROCHE. I think that that decision was made by the people who were conducting the investigation.

Senator HARRIS. They, just on their own, decided to do more than was required?

Mr. ROCHE. I have been informed that the preemployment pretext, as it has been referred to, was decided to be the basis for the investigation, and that decision, insofar as I know, was made by the investigating agency.

Senator HARRIS. And no one else knew about that before they did it on their own.

Mr. ROCHE. Not to my knowledge; no, sir.

Senator HARRIS. Nobody within GM?

Mr. ROCHE. Not to my knowledge.

Senator HARRIS. Nobody within your general counsel's office?

Mr. ROCHE. Not to my knowledge.

Senator HARRIS. And not in the office of the Washington law firm?

Mr. ROCHE. No, the Washington office had nothing to do with it. Our Washington office knew nothing about this.

Oh, I am sorry. Mr. Sorensen says you said the Washington law firm. I thought you said the Washington office.

Senator HARRIS. No, the Washington law firm I meant.

Mr. ROCHE. I am sorry, sir.

Senator HARRIS. They did know that other matters were going to be investigated?

Mr. ROCHE. I don't know whether they did or not.

Senator HARRIS. Haven't you made any attempt to find out? Who ordered the investigation, isn't that a matter of some concern to you now?

Mr. ROCHE. Yes, sir; I know who ordered the investigation.

Senator HARRIS. All right, who did pass on what was required for the lawsuit; that is the question.

Mr. ROCHE. Well, I am not aware that anybody ordered an investigation into these matters. I think that the investigation that was made into these areas resulted solely by their interpretation of what constituted a routine preemployment pretext investigation.

Senator HARRIS. By "they," you mean the investigators?

Mr. ROCHE. The investigators; yes, sir.

Senator HARRIS. And have you attempted to determine why they decided to go into other matters? Have they given you any reason why they did that?

Mr. ROCHE. Yes. I think the reason that has been given me, the explanation has been given me that this is a part of that type of investigation, and that if they had simply gone out on the basis of trying to determine Mr. Nader's interest in Corvair affairs, that they wouldn't have gotten very far in finding the answers to the problems they were seeking. So it was decided that this preemployment type investigation would be made, and in the course of that type of investigation again I am told that questions of this kind are fairly commonplace, as a part of such investigation.

Senator KENNEDY. Would the Senator yield?

Senator HARRIS. Yes.

ROLE OF MISS MURPHY

Senator KENNEDY. Not for a question but because I think maybe there is information in connection with this of which you were unaware, while the Senator is. I have Mr. Danner's statement, which gives some of the information on which this investigation was begun and he talks about a Miss Murphy who I understand is in the legal department of General Motors Corp.

Mr. ROCHE. That is right, Senator Kennedy.

Senator KENNEDY—

A discussion in some depth ensued at which time Miss Murphy went into details as to the type of information needed, including the date and type of government employment, sources of income, type and locale of law practice, if any, business associates, movement, and, in short, a complete background investigation of Mr. Nader's activities.

Senator HARRIS. Were you aware of that, Mr. Roche?

Mr. ROCHE. Yes, I have been aware of that since we started—since I first knew of the investigation; yes, sir.

Senator HARRIS. This is not news to you to learn of it this morning?

Mr. ROCHE. About the background investigation?

Senator HARRIS. Yes.

Mr. ROCHE. No. I would construe background to include some of these things we are talking about.

Senator HARRIS. So you think this is different from extraneous matters, investigating extraneous matters?

Mr. ROCHE. I think what we were interested in, Senator, what our general counsel's office was interested in, was some knowledge of Mr. Nader's background, expertise in the area of automotive design, his background as an attorney, and his possible interest in Corvair litigation, and those were the only areas that were of any interest to us. They are the only areas that I can conceive would have any value whatsoever to us, because certainly as I have indicated in my statement, neither I personally or General Motors has any other possible interest in Mr. Nader.

Senator HARRIS. Were you aware of these facts of Miss Murphy's instructions about how the investigation was to be conducted, and into what areas? Were you aware of that at the time you issued the March 9 press release?

Mr. ROCHE. No, sir, I was not. I was given to understand it was a routine investigation into the areas that I have mentioned.

Senator HARRIS. So it seems to me you would be rather upset with Miss Murphy then not disclosing those whole facts and let you go ahead and issue a press release which didn't state the whole facts.

Mr. ROCHE. Senator, I am very much upset about the whole affair.

Senator KENNEDY. Let's not focus on Miss Murphy, whoever she is. I am sure Miss Murphy works for—

Mr. ROCHE. Miss Murphy is a very capable young lady and a member of our legal staff.

Senator KENNEDY. We just got over St. Patrick's Day.

Senator RIBICOFF. Senator Jackson.

Senator JACKSON. I have no questions at this time.

RIGHT OF THE INDIVIDUAL TO PRIVACY

Senator RIBICOFF. Mr. Roche, there is no question in my mind that you are an honorable man. There is no question in my mind that you are upset at what has taken place. But I think what we have in front of us is a question of policy not only of a congressional committee but a question of policy on behalf of the large corporations, the large employers of this Nation. There is too much snooping going on in this country. Privacy, which everyone cherishes as having great meaning, seems to be downgraded. People don't feel that others have the right to invade their private lives, to besmirch their character, and yet we have here a situation where you, the leader of one of the biggest corporations, apparently has incidents going on of which you were not aware. There is no question in my mind that this was done without your knowledge. I take everything you say and I do not question your integrity, Mr. Roche, but I do think it highlights the responsibility of the leaders of American business, and that goes for leaders of American labor and the leaders even of American Government, to make sure that they do everything they can to preserve the individual's right of privacy and the integrity of each individual in this country.

Now, let's see what happened in this case. I have the detective reports that were sent apparently to your general counsel. The detective who was following Mr. Nader reported very frequently. This is a very thick book with daily reports. It runs to many pages. It is apparent, as you thumb through and read this report, that practically none of the investigation had anything to do with what you contended your investigation was for in your news release of March 9. Practically no questions were asked of other litigants or attorneys involved in litigation concerning the Corvair. There was very little inquiry concerning Mr. Nader's legal activities. I know Winsted, Conn. It is a small town, in the northwest section of my State. Detectives invade this small town. They go to the high school principal and start making personal inquiries about a young man of the town who went to high school.

They ask questions of private citizens. They go to his boyhood friends and start asking pertinent questions. They go to a small town like Winsted and ask questions whether a man like Ralph Nader was anti-Semitic. They ask questions about his sex habits. They go into questions about his employment, who his friends were, why isn't a man like this at his age married? What grades did he get? Would you hire him? Now it doesn't take very long for people to start repeating that. Before you know it, you have a man who has led a private and honorable life having reflections cast upon his entire character, and that of his family, because of these questions that detectives, who basically aren't sensitive, ask about a man by the name of Ralph Nader, and this must be happening all over America with many other Ralph Naders.

EXTENT OF SURVEILLANCE

Now, are you also aware of the fact that after it was announced on January 17 that the committee would resume its hearing on the Federal role in traffic safety and that Ralph Nader would be one of the witnesses, that at that point the detective agency employed by General Motors placed Mr. Nader under constant surveillance.

No longer was that just a question of asking questions in his hometown and at the university that he went to and among his friends and associates in Hartford, Conn., were he had been associated in the practice of law. But now he was placed under surveillance. He was being followed.

When he went into a restaurant to eat, detectives saw who he was eating with and what he ordered for lunch. They got the names of the taxicabs he was riding in. They followed him when he went into a bank to make a deposit or make a withdrawal. They tried to determine what hours he kept in the roominghouse where he lived. Were you aware then that once it was announced that he—that we were to resume hearings—that suddenly Mr. Nader was placed under constant surveillance which terminated at about the time the press discovered by accident that Mr. Nader was under surveillance? Were you aware of all that?

Mr. ROCHE. No, sir, I was not aware of it, Mr. Chairman. I am aware now of all of the things that you mentioned, but I certainly was not aware of it at the time.

Senator RIBICOFF. And would you say that this, on behalf of American business, to say the least, is most unworthy?

Mr. ROCHE. Is most what?

Senator RIBICOFF. Is most unworthy?

Mr. ROCHE. Yes, I would agree with you, Senator.

Senator RIBICOFF. Senator Kennedy?

Senator KENNEDY. Just a couple of questions, Mr. Roche.

At the time that the press release was put out on March 9, did the general counsel approve of the press release?

Mr. ROCHE. No, Senator Kennedy, he did not. It was read to him over the telephone. He was not in the city at the time.

Senator KENNEDY. Did he make any objections to the fact that it wasn't completely accurate?

Mr. ROCHE. No, sir; he did not.

Senator Kennedy. Was he aware—he must have been aware of these other reports that he had, since he had ordered these investigations.

Mr. ROCHE. He was aware of the reports and the investigation, yes, sir.

Senator KENNEDY. Have you found any explanation as to why, therefore, he did not make any effort to give the accurate and complete story to the public?

Mr. ROCHE. I think that the only explanation, Senator Kennedy, that again gets back to the preemployment type of investigation, and whether or not questions of this kind are considered to be commonplace in that type of an investigation.

Senator KENNEDY. I gathered originally from the discussion with Senator Harris that this was decided and determined by the investigative agency.

Mr. ROCHE. By?

Senator KENNEDY. That this kind of information, the gathering of these kinds of facts, that this decision was made by the investigating agency. In fact, it was made by General Motors, was it not?

Mr. ROCHE. I think that the preemployment-type investigation approach was determined by the investigative agency.

Senator KENNEDY. Yes, but all of the kinds of information that you wanted to gather which the chairman has spoken of and Senator

Harris has touched on, the interest in obtaining that information was indicated by General Motors.

Mr. ROCHE. I don't think that it was ever spelled out in that detail, Senator Kennedy, and I can't conceive of any reason why General Motors would want any information of this kind with respect to Mr. Nader.

MISS MURPHY SUGGESTED BACKGROUND INVESTIGATION

Senator KENNEDY. Let me just give you what, according to Mr. Danner's testimony, he said, talking again of poor old Miss Murphy. He says:

Discussion at some depth ensued at which time Miss Murphy went into details as to the type of information needed.

Then she spells it out—

including the date and type of government employment, sources of income, type and locale of law practice, if any, business associates, movement—

She is the one that suggested the preemployment pretext—

and, in short, a complete background investigation of Mr. Nader's activities.

Now, let me just make my own position clear. I think that you were justified, if you felt the protection of your own company, your stockholders and the good name of your automobile, the Corvair, required it to conduct an investigation of the kind to determine whether Mr. Nader was in fact in the employment of some of these litigants. Apparently there was an effort, a conscientious organized effort to try some of these cases in the newspaper rather than to try them in the courts. From what I have learned, there has been some of that effort in the Midwest and some on the west coast rather than just doing it through the court.

There have been a good deal of public statements in connection with this matter. So, I understand your concern. I can understand the fact that you would feel an investigation to determine about Mr. Nader's connection and association with these individuals, particularly if he was going to be an expert witness, was completely justified. That part of it I don't find any fault with.

What I think we are concerned about is whether that investigation then went on to the area of harassment, intimidation, and possibly blackmail. These are some of the questions that were raised by the investigators. I think this is a matter that is of concern to us and a matter of concern to the general public.

It appears to me there are two points. First, despite the initial exchange with Senator Harris, it would appear, and I don't want to be unfair about it, but it would appear that the investigation, the thorough and complete kind of investigation was in fact ordered by the representatives of the General Motors Co. And second; that when the explanation was put out to the general public prior to your very candid and honest testimony before the committee; when that explanation was put out to the general public, it misled and in fact was really, I might say, false in connection with some of the statements that have been made.

Now, those two points are of concern, I think, to the committee and to the general public.

Mr. ROCHE. Certainly that was not the intent, Senator Kennedy, and as I indicated earlier, I think were we writing this release in the light of the things that we have learned in the last 10 days—

RESPONSIBILITY OF GENERAL MOTORS FOR CONDUCT OF INVESTIGATION

Senator KENNEDY. And I can understand why you did it. But what I don't understand is why people in your office would permit the release of a false statement. I mean when you call in someone and say, we want to put the facts out, we want to be candid and honest with the general public. Because nobody has a greater responsibility really than General Motors. They are the leading corporation in the United States, they stand for something not only in this country but all over the world.

Mr. ROCHE. This is certainly not like General Motors, Senator Kennedy, and I understand what you mean. This is a new and strange experience for me. It is a new and strange experience for most of the people with whom I am associated. And we do not like this kind of an approach to a problem of this kind. And I appreciate the remarks you made about our right to investigate in connection with litigation in the protection of the good name of our product, and I am satisfied that in all good faith this is why we may have strayed from the path. I am satisfied that in all honesty and good faith that that was the sole purpose of attempting to find out something about Mr. Nader's interest in the Corvair cases.

Senator KENNEDY. Mr. Roche, maybe we are going to develop more information in connection with this, but it certainly appears to me from the investigation that was ordered, according to the investigator, the investigation that was actually conducted, the obvious fact that the people in General Motors were receiving reports as to what was taking place, that there were those in General Motors who knew fully and completely what kind of investigation you were trying to conduct.

Mr. ROCHE. I agree with that, Senator Kennedy. There were certain people on the legal staff who were receiving these reports, had access to them, and knew the type of investigation.

Senator KENNEDY. I don't think you could say that it is just the investigators, but it was really in fact General Motors that directed this, whether it was you or some of those who worked within the company—and I agree completely with what the chairman said regarding your own testimony. I believe that.

Mr. ROCHE. Thank you.

Senator KENNEDY. There is no question about that. But it was a fact that there were those in General Motors who were conducting the investigation and there were those, it appears from your own testimony, there were those in General Motors who were conducting the investigation, knew what the investigation was all about, and yet permitted the statement which to be charitable about it, was inaccurate, permitted that statement of March 9, which was inaccurate, which was placed in the Congressional Record, which was relied upon all over the country, permitted that statement to go out. Not only do I think that the investigation itself was serious, the kind of investigation that was conducted, but I think it is terribly serious, almost equally unfortunate if not more unfortunate, that General Motors permitted this statement

to go out on March 9 which so misled the general public and misled Members of Congress and the press of the United States in connection with a very serious matter.

WAS MARCH 9 STATEMENT MISLEADING?

Mr. ROCHE. I can assure you, Senator Kennedy, that there was no intent on the part of anybody to mislead anybody. The all important consideration on March 9 again was to admit our responsibility.

Senator KENNEDY. Mr. Roche, I am going to have to disagree with that except on your own part. I don't think that you can argue the question that if the individuals within your legal department knew of the investigation, knew of the extent of the investigation, ordered the investigation which would cover "movement," received reports, and examined the statement that went out on March 9, that they can then say that they were being candid or honest with the general public or with the Congress of the United States. Wouldn't you say this raises serious questions about that?

Mr. ROCHE. I think it raises a question, Senator Kennedy, but again I think when we get back to the interpretation of what would be regarded as a commonplace investigation under the circumstances of a preemployment-type check versus some other kind of a check.

Senator KENNEDY. No; that is not what the question is, Mr. Roche, if I may disagree with you. Again, I am not going to prolong this, but my point is that the investigation was ordered by the legal staff. They stated quite clearly what they wanted to cover. They received reports as to what they wanted to cover, No. 3 and 4, and after receiving those reports, approved of a statement that went out on March 9. Somebody within the General Motors structure was not being honest and candid with the public. Would you agree?

Mr. ROCHE. Or perhaps the communications were not as good as they should have been, Senator.

Senator KENNEDY. Mr. Roche, I have got the statement. Are we going to go through this?

Mr. ROCHE. No. That isn't what I meant.

Senator KENNEDY. I mean it is not a question of communications. Both of us can read.

Mr. ROCHE. No, no.

Senator KENNEDY. You mean within General Motors?

Mr. ROCHE. I mean within the analysis of the reports, yes, sir; within General Motors, sure; yes, sir.

Senator KENNEDY. I understood you said it was read over the phone. I can't believe General Motors—

Mr. ROCHE. No, Senator Kennedy.

Senator KENNEDY. I can't believe that with the record that General Motors has made in the United States, that they would run something like this, that they would be so inefficient that that kind of a statement went out carelessly.

Mr. ROCHE. No, the statement did not go out carelessly, Senator Kennedy. I assure you it is one of the most difficult statements that I ever had anything to do with.

Senator KENNEDY. So, therefore, you must have talked to the people who knew about it, and the people who knew about it, knew it was inaccurate.

Mr. ROCHE. We talked to representatives of our—

Senator KENNEDY. But they must have known it was inaccurate at the time the statement was put out.

Mr. ROCHE. They can answer that only for themselves, Senator Kennedy.

Senator KENNEDY. Have you asked them yourself since then, since you have learned more facts about this yourself?

Mr. ROCHE. I think that some of them did not know about it; yes, sir.

Senator KENNEDY. Wait a minute. It is not the question of someone not knowing about it. Did you ask them whether they knew it was inaccurate at the time? Did you raise a question about the fact that they permitted you to put out a statement that was itself inaccurate.

Mr. ROCHE. Yes; we have discussed that. We have discussed that.

Senator KENNEDY. Did they have some reason for it?

Mr. ROCHE. I think in the minds of the people who were working on the statement, they believed it was a proper statement at that point; yes, sir.

Senator KENNEDY. I like my General Motors car, but you shake me up a little bit.

Mr. ROCHE. I am not trying to shake you up at all, Senator Kennedy. Again I think that this thing, that this whole affair was undertaken by our legal staff and—

Senator KENNEDY. Let me just say this closing, I don't see how you can know the facts, I don't see how you could order the investigation as the representative of your legal department did, order, the investigation to be conducted as it was, that you received periodically or your legal staff receive periodic reports as to what was taking place, including what the chairman described, and then put out a statement like this, which is not accurate, which you agree is not accurate, and which was reviewed by the very people who knew the facts and who ordered the investigation.

That, Mr. Roche, disturbs me as much as the fact that you conducted the investigation in the way that it was conducted in the beginning. Isn't it equally as disturbing to you?

Mr. ROCHE. Yes, sir; it is, and I agree that if we were rewriting the statement in the light of what we have learned since, that the statement would be changed.

Senator RIBICOFF. Senator Harris, do you have any more questions?

Senator HARRIS. Mr. Roche, you say that in the light of the facts the statement would have been changed?

GM EMPLOYEES KNEW MARCH 9 STATEMENT WAS NOT COMPLETE

Mr. ROCHE. Yes, sir.

Senator HARRIS. And do you agree that there were those within General Motors—and the corporation of course has to assume responsibility for its employees—there were those within General Motors who knew that extraneous matters were regularly being investigated, and that that was not reported in this statement of March 9 issued by General Motors.

Mr. ROCHE. There were people in General Motors who were receiving copies of this report, yes, Senator, and some of the things that

were included in that report, including the type of investigation that was undertaken, was not covered in this statement, yes, sir.

Senator HARRIS. I want to say, too, I appreciate your personal candor, but I trust that there are lessons to be learned for everybody in this situation for the future?

Mr. ROCHE. I can assure that that lesson has been learned.

Senator RIBICOFF. Senator Jackson?

Senator JACKSON. No questions.

TIMING OF PRESS RELEASE

Senator RIBICOFF. I am just curious. Does General Motors usually issue press releases at 10 o'clock at night?

Mr. ROCHE. No, sir; it does not, Senator Ribicoff. First of all, it was released a little ahead of that. I was in New York on the day that I first learned of this, as I think I indicated, and I left New York that night and returned to Detroit. I had an important meeting the next morning at our technical center and did not get back to the office until the afternoon, the early afternoon. In the meantime I had instructed our legal department to go to work on the kind of statement that we could make, with our public relations people, and for my review at the time when I returned to the office. I returned to the office in the early afternoon, and we worked on the statement and different versions of it from approximately 2:30 in the afternoon, I would say until about 8:30 that night when I left the office and saw the statement, and from then on it was the mechanics of preparing it that resulted in the timing of it.

Senator RIBICOFF. Mr. Roche, I assume that when you learned about this and the statement was issued that you relied completely on your legal staff. You probably had not seen the detailed reports from the detective agency, had you?

Mr. ROCHE. No, sir; I did not see any of the detailed reports.

Senator RIBICOFF. And therefore you felt that you could rely upon your general counsel to issue a statement that would reflect what had taken place.

Mr. ROCHE. I relied on the assistant general counsel who was handling the affair for the general counsel who was not in town; yes, sir.

Senator RIBICOFF. Was this matter—the whole matter of Nader—handled by your general counsel or by your assistant general counsel?

Mr. ROCHE. The whole matter of Nader, the investigation was approved by our general counsel.

Senator RIBICOFF. And his name is?

Mr. ROCHE. Aloysius F. Power.

Senator RIBICOFF. If there are no other questions of Mr. Roche, I think we ought to have Mr. Power testify so we can get an idea just actually what did take place.

Senator KENNEDY. Could I just say, Mr. Roche, the announcement, the timing of the announcement reminds me a little bit of an incident in which I was personally involved when President Kennedy was about to name his first Attorney General to his Cabinet. When asked how he would announce it, he said, "I will open the door at 2 o'clock in the morning and say he is my brother." [Laughter.]

Senator RIBICOFF. Is Mr. Power here? Would you come forward, please?

Mr. ROCHE. May I thank you, Mr. Chairman, and gentlemen for your courtesy?

Senator RIBICOFF. Thank you, Mr. Roche. Mr. Power, would you bring with you Mr. Bridenstine and Miss Murphy. We might as well have you all appear at the time time.

Mr. Roche and Mr. Sorenson, I think it would be preferable if you stayed during the rest of the hearings. Mr. Nader might have something to say. Certainly, if there is anything you gentlemen would like to rebut, you will have the opportunity to do so. We would like to have the hearing as complete and as fair as possible.

Would there be any objection on the part of you, Mr. Bridenstine, Mr. Power, for you and Miss Murphy to be sworn and take the oath?

You do solemnly swear that the testimony you shall give before the Senate subcommittee shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. POWER. I do.

Mr. BRIDENSTINE. I do.

Miss MURPHY. I do.

Mr. DANNER. I do.

Senator RIBICOFF. You may proceed with your statement. Do you Power, or would you prefer to be questioned? Do you have a statement?

Mr. POWER. Yes, I would like to make a statement.

Senator RIBICOFF. You may proceed with your statement. Do you have any copies by any chance?

Mr. POWER. That is the only copy that they have here. We will get together additional copies and file them.

Senator RIBICOFF. All right you may proceed.

TESTIMONY OF ALOYSIUS F. POWER, GENERAL COUNSEL, GENERAL MOTORS; ACCOMPANIED BY LOUIS H. BRIDENSTINE, ASSISTANT GENERAL COUNSEL, GENERAL MOTORS; MISS EILEEN MURPHY, GENERAL MOTORS LEGAL DEPARTMENT; AND RICHARD G. DANNER, ATTORNEY

Mr. POWER. The decision that an investigation of Mr. Ralph Nader should be undertaken was made by me in the discharge of my responsibilities as the general counsel of General Motors. This decision was arrived at and the investigation was commenced in the month of November 1965 which was some 2 months prior to the time when I or any other representative of General Motors first learned that Mr. Nader was scheduled to appear as a witness before any congressional or legislative committee.

The investigation was undertaken as a prudent and appropriate measure in the preparation of the defense of a series of major lawsuits then pending against General Motors. It was not undertaken for the purpose of harassing or intimidating a witness before any congressional or legislative committee.

In the light of the situation existing at that time, I could not have arrived at any other decision consistent with my responsibilities as the general counsel of General Motors.

LEGAL BASIS OF NADER INVESTIGATION

As of November 1965 the design of the Corvair automobile was under a concerted attack in 106 suits pending in 23 different States throughout the United States. Before reviewing the background of these lawsuits and the factors which led to our belief in the need for information about Mr. Nader, I would like to refer briefly to the well settled legal basis for such an inquiry.

In lawsuits involving the design and safety of complex products like an automobile, the testimony and writings of purported experts are not incidental kinds of proof but are of the utmost importance. The outcome of such litigation very often turns entirely upon the testimony of such witnesses. It is, therefore, axiomatic as Senior Federal District Judge Rodney has said in 1961, that—

the weight and value of the testimony of the expert witness depends largely upon the qualifications [of] such expert and these qualifications may be the subject of intensive investigation by the opposing counsel. (*Miller v. U.S.*, 192 F. Supp. 218, 222 (D. Del. 1961).)

How knowledgeable is the expert? What is his background? How reliable and worthy of belief is he? Does he have a personal interest in the outcome of the litigation or any similar litigation? Have his writings been arranged for by the attorneys for an adverse party rather than constituting the author's own independent and disinterested work? (Cf. *Hatch v. Ooms*, 69 F. Supp. 788, Aff'd, 338 U.S. 318.) Unless the relevant facts can be determined and brought out, the court and jury may be misled and the cause of justice thwarted.

It is essential that such matters be investigated in advance of trial so that any bias or self-interest may be exposed by cross-examination or in argument to the court. And of course, a party need not do the investigating himself but may employ others to do it for him. As the California Supreme Court said in *Hare v. McGue*:

Anyone has a right when threatened with litigation or desiring himself to sue, to employ assistance with a view of ascertaining facts as they exist. (174 Pac. 663, 664 (Cal. 1918).)

Another consideration which has been in the forefront of our minds has been canon 20 of the Canons of Professional Ethics of the American Bar Association. This canon condemns public discussion or statement by a lawyer concerning pending or anticipated litigation.

The scope of and the reasons for this rule having been clearly articulated in two opinions of the American Bar Association Committee on Professional Ethics and Grievances:

Canon 20.

(and I am quoting)

Precluding newspaper discussion of pending litigations, applies not only to discussion in newspapers, but to any discussion in a magazine, including legal magazines or other publications intended or calculated to influence the decision in a pending case in which the writer is counsel, and would also include by implication similar radio and television broadcast. (A.B.A. Opinion 256 A, in *Drinker, Legal Ethics 206* (1953).)

Our fundamental concepts of justice and our American sense of fairplay require that the petit jury shall be composed of persons with fair and impartial minds and without preconceived views as to the merits of the controversy and that it shall determine the issues presented to it solely upon the evidence adduced

at the trial and according to the law given in the instructions of the trial judge. (A.B.A. Opinion 199, Opinions of the Comm. on Professional Ethics and Grievances.)

As the Supreme Court has so aptly put it, "it is impermissible to litigate by day and castigate by night. (*In re Sawyer*, 360 U.S. 622, 635.) When an attorney is confronted with activities by opposing counsel or his agents, which indicate a possible violation of canon 20, and which may be prejudicial to his client's right to a fair trial, he obviously has the duty to seek to ascertain the facts.

I might also refer in passing to canon 27 of the Canons of Professional Ethics of the American Bar Association, which condemns the solicitation of professional employment "by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations," and specifically refers to "indirect advertisements for professional employment such as furnishing or inspiring newspaper comments."

RELATION OF CORVAIR LITIGATION TO INVESTIGATION

With these legal aspects in mind, let me describe those circumstances relating to the Corvair litigation which led to the conclusion that there should be an investigation. In order to place in proper perspective this conclusion arrived at in November of 1965, it is first necessary to review the developments which had occurred during the several years immediately preceding. The Corvair automobile was introduced in the fall of 1959. In October of 1962 there were 15 cases pending, 14 of which had been filed by a single Los Angeles law firm, Harney, Ford & Schlottman. In that month the following advertisement placed through the Los Angeles News Service, Inc., appeared in the legal newspapers of Los Angeles and a number of other cities across the country, such as Chicago, New Orleans, Baltimore, and Pittsburgh. I am quoting now from the advertisement:

Attention attorneys: Council representing plaintiffs in suits against General Motors Corp. regarding alleged breach of warranty of fitness and negligence in design of Corvair automobile desires to exchange information with other attorneys representing plaintiffs in similar suits.

Copies of these ads are attached as exhibit 117.

EXHIBIT 117

[From the Chicago Law Bulletin, Oct. 17, 1962].

NOTICE TO LAWYERS!

Counsel representing plaintiffs in suits against General Motors Corporation regarding alleged breach of warranty of fitness and negligence in design of Corvair automobile desires to exchange information with other attorneys representing plaintiffs in similar suits.

Please write Box 0-8, Law Bulletin.

[From the Chicago Daily Law Bulletin, Oct. 15, 1962]

NOTICE TO LAWYERS!

Counsel representing plaintiffs in suits against General Motors Corporation regarding alleged breach of warranty of fitness and negligence in design of

Corvair automobile desires to exchange information with other attorneys representing plaintiffs in similar suits.

Please write Box 0-8, Law Bulletin.

[From the Daily Record, Baltimore, Md., Oct. 15, 1962]

Counsel representing plaintiffs in suits against General Motors Corporation regarding alleged breach of warranty to fitness and negligence in design of Corvair automobile desires to exchange information with other attorneys representing plaintiffs in similar suits. Please write Box 23, The Daily Record, Baltimore 3. 015-5t

[From the Los Angeles Daily Journal, Oct. 19, 1962]

PERSONALS

Counsel representing plaintiffs in suits against General Motors Corporation regarding alleged breach of warranty of fitness and negligence in design of Corvair automobile desires to exchange information with other attorneys representing plaintiffs in similar suits. Please write Box 133, Los Angeles Daily Journal.

[From the Official Daily Court Record, New Orleans, La., Oct. 19, 1962]

ATTENTION ATTORNEYS

Counsel representing plaintiffs in suits against General Motors Corporation regarding alleged breach of warranty of fitness and negligence in design of Corvair automobile desires to exchange information with other attorneys representing plaintiffs in similar suits. Please write Box 511, The Official Daily Court Record.

[From the Pittsburgh Legal Journal, Oct. 19, 1962]

Counsel representing plaintiffs in suits against General Motors Corporation regarding alleged breach of warranty of fitness and negligence in design of Corvair Automobile desires to exchange information with other attorneys representing plaintiffs in similar suits. Please write Box 402, % Pittsburgh Legal Journal.

EXHIBIT 118

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., March 16, 1966.

To: Senate Subcommittee on Executive Reorganization.
From: American Law Division.
Subject: Legal Ethics.
(Attention of Mr. Wager).

This is in response to your inquiry of March 11, 1966, for information on the practice of attorneys placing notices in legal publications seeking information from other attorneys as to legal cases, especially in regard to the ethics of the practice.

A search of the ethics opinions of the American Bar Association's Committee on Professional Ethics has failed to turn up any ruling on the question.

At your request we telephoned the Chicago offices of the A.B.A. (312-HY3-0533) and talked to a Mr. Rivers. He advised us that to his knowledge this practice was not widespread and indeed was rare and that he was unfamiliar with any relevant opinions. He will, however, check his files and forward to us by mail any relevant material which he finds.

Such material will be forwarded to you upon receipt.

JOHNNY H. KILLIAN,
Legislative Attorney.

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., March 17, 1966.

To: Senate Subcommittee on Executive Reorganization.
From: American Law Division.
Subject: Legal Ethics Question.
(Attention of Mr. Wager).

This is in further answer to your inquiry of March 11. We enclose a copy of a letter from the Assistant Director, Division of Committee Services, American Bar Association in response to our inquiry.

JOHNNY H. KILLIAN,
Legislative Attorney.

AMERICAN BAR ASSOCIATION,
Chicago, Ill., March 15, 1966.

MR. JOHN H. KILLIAN,
Legislative Reference Service,
Library of Congress,
Washington, D.C.

DEAR MR. KILLIAN: AS I understand the question which you posed in our telephone conversation today, it is the propriety and prevalence of an attorney soliciting advice and information through legal periodicals from other attorneys who have handled similar cases.

With reference to the prevalence aspect of the question, I have discussed the matter with our Division of State and Local Bar Services as well as the staff of the American Bar Journal. Both of these sources of information do not recall ever seeing such a request in a legal periodical and indicate that although the practice possibly exists, it is not likely very prevalent.

With regard to the ethical propriety of such a request, I have researched the Opinions of the Committee on Professional Ethics but have been unable to find any Opinion dealing with this subject. In this connection, however, you may wish to know that any member of the Association is eligible to request a separate Opinion of the Ethics Committee on any ethics question which does not involve past conduct.

Sincerely yours,

JAMES E. REMBERT,
Assistant Director, Division of Committee Services.

Thereafter, the number of such lawsuits increased, and in June 1964 there were 30 cases pending, of which 25 had been filed in southern California by the Harney firm. During that month, the case of *Rose Pierini v. Washburn Chevrolet*, a Chevrolet dealer and General Motors came to trial in Santa Barbara, Calif. Both defendants were fully insured by the Royal-Globe Insurance Co. and represented by counsel retained by Royal. Mr. Harney represented the plaintiffs.

At the outset of the trial there was testimony that shortly before the accident in which Mrs. Pierini's arm had been completely severed, her car had been serviced by a student who was an inexperienced part-time employee of the codefendant dealer. A police officer testified that, at the scene of the accident, Mrs. Pierini had asked him to retrieve her wedding ring and wrist watch from her severed arm which was lying some distance away. The jury was permitted to view colored pictures of the stump of Mrs. Pierini's arm. These pictures had been taken in the hospital when the wound was raw and bleeding, and they were gruesome in the extreme.

PIERINI CASE SETTLEMENT

In the face of these developments, and conscious of the extent to which the emotions and compassion of the jury had inevitably been

aroused, the Royal claims manager discussed the case with plaintiff's counsel, and offered to settle the \$300,000 claim for the sum of \$70,000. This offer was accepted, and as a result of the settlement, the defendant's evidence was never presented.

The settlement of a lawsuit either before trial or after trial has started does not constitute any admission of liability on the part of a defendant, and, in fact, courts will not permit any reference to a settlement for this purpose. Nevertheless, within 2 hours of the settlement, Mr. Harney appeared on a local Santa Barbara TV newscast during which the settlement of the lawsuit was hailed as a victory for the plaintiff.

One of the most startling aspects of Mr. Harney's television appearance—and most prejudicial to the fair trial of the other Corvair cases—was the showing of a movie which Mr. Harney had caused to be made prior to the trial. The film showed a Corvair automobile being driven and finally turned over by a racing driver named Paul O'Shea, who was one of Mr. Harney's proposed witnesses at the trial. As a result of the publicity generated by the settlement, and Mr. Harney's television appearance, the wire services picked up the story of the settlement and it appeared in a number of newspapers throughout the country the next day.

The settlement of the *Pierini* case was publicized on a nationwide basis as a victory for the plaintiffs in the first in a series of some 30 pending cases involving the design of the Corvair automobile, this, despite the fact that not a single engineering witness had testified at the trial, and despite the fact that the case had been settled before any of the defendants' evidence had been introduced.

Following this publicity, General Motors began to receive letters from stockholders and Corvair owners all over the country. Some who assumed that the truth of the charges with respect to the Corvair had been established, expressed fears for their own personal safety, and demanded to know why General Motors had manufactured such a car. Others reported the completely satisfactory performance of their own Corvairs, and their indignation at the charges which were being made against General Motors.

After the settlement of and publicity in connection with the *Pierini* case, the Harney firm filed an additional 24 cases bringing their total to 48 cases.

Senator KENNEDY. Could I interrupt a minute? I understand that this was about Mr. Nader. I didn't know Mr. Harney was going to be—

Mr. POWER. We are trying to show what our motive was in making the investigation of Mr. Nader. Mr. Nader comes into this picture very strongly in connection with this very *Pierini* case that we are talking about, and I would like the opportunity to present this.

Senator KENNEDY. I have no objection to listening. I just didn't know what the connection was.

Mr. POWER. That is what we are coming to.

Senator KENNEDY. I didn't know what we were leading to.

Mr. POWER. Some 9 months later, in March 1965, a feature article appeared in a tabloid called *Midnight*, which is distributed on many newsstands. Emblazoned over the entire front page was "150 Lawsuits Charge: GM Cars Are Death Traps—Hushed-Up Evidence Revealed in Court."

The center spread article was headlined "GM Sued for Unsafe Autos. Woman Awarded 70 G's for Loss of Arm in Defective Corvair."

Then followed a story of the *Pierini* settlement, and excerpts from the complaints in 13 cases which the article indicated were before the courts. Of the 13 cases listed, process in 3 of them had not even been served when this issue of *Midnight* was published, and 1 had not even been filed. A review of our files shortly thereafter revealed that all of the 13 cases had been filed by the firm which had negotiated the *Pierini* settlement, Harney, Ford and Schlottman. The headline of this March 22, 1965, issue of *Midnight* is attached.

[From the *Midnight*, Mar. 22, 1965]

EXHIBIT 119

150 LAWSUITS CHARGE: GM CARS ARE DEATHTRAPS

HUSHED UP EVIDENCE REVEALED IN COURT

COLLINS CASE

Again General Motors received a flood of letters.

The first complete trial of a Corvair design case, *Doreen Collins v. General Motors Corporation, et al.*, began in June 1965 in the superior court in San Jose, Calif. Again Mr. Harney was principal trial attorney for plaintiff, who claimed \$400,000 in damages for the death of a daughter, and for injuries to herself and three other children. Plaintiff's case consumed some 8 weeks, during which time numerous witnesses testified. The expert engineering witnesses called by the defendant included Mr. Frank J. Winchell, Chevrolet chief research and development engineer, Dr. Frank Arnold and Dr. John Shine, both of Stanford University, and Dr. Ralph Moyer of the University of California.

At the end of the 10-week trial, the jury returned a verdict for General Motors.

ANDERSON CASE

One month after the start of the Collins trial in California, and 5 weeks before its conclusion, another case, that of *Vivian R. Anderson v. General Motors Corporation* went to trial in Clearwater, Fla. This case involved death and injury to two young lawyer legislators with judgment sought in the neighborhood of \$1 million. As in the *Collins* case, the allegation by the plaintiff Anderson and the cross-claimant driver, Russell, was that the Corvair was defectively designed.

During this 6-week trial, the plaintiff and cross-claimant put on many expert witnesses, including Prof. Thomas Manos, who had also testified for the plaintiff in the *Collins* case. As in the *Collins* case, the jury in Florida was instructed by the court that all the plaintiff and cross-claimant had to prove in order to recover from General Motors was that the Corvair was defective and that such defect had caused the injuries. The jury returned a unanimous verdict in favor of General Motors against both the plaintiff Anderson and the cross-claimant Russell.

While the *Collins* and *Anderson* cases were still on trial, Mr. Harry M. Philo of the law firm of Goodman, Crockett, Eden, Robb & Philo, of Detroit, Mich., made a presentation attacking General Motors and the Corvair at the annual meeting at ATLA in Miami, Fla., on July 25, 1965. ATLA (American Trial Lawyers Association) is the newly adopted name of NAACA (National Association of Claimants' Counsel of America) which was also known at the National Association of Claimants' Compensation Attorneys. The association of which Mr. Philo is an active member is composed largely of attorneys who specialize in the field of personal injury litigation, usually on a contingent fee basis. At the very time Mr. Philo was making his Miami speech, his law firm was in the midst of the *Anderson* trial in nearby Clearwater, representing the cross-claimant driver against General Motors, and also had a suit pending in the Michigan courts against General Motors involving an accident alleged to be due to the faulty design of the 1962 Corvair.

In his presentation to the ATLA annual meeting, Mr. Philo made a number of unsupported and sensational charges regarding the 1960-63 Corvair. He asserted that:

It is impossible to predict how many injuries and deaths have resulted from the instability of the Corvair automobile, but my guess is that it would reach five figures.

There is a drawing board error in the basic rear suspension geometry.

General Motors, therefore, had warnings of the deficiencies of the independent rear swing axle suspension which would allow the rear wheels to tuck under during severe cornering conditions; * * * lower cost was the major consideration in the choice of the rear suspension, not safety.

These assertions received substantial publicity in newspapers.

Attached as examples are articles from the *Miami Herald*. Additional examples of this kind of publicity are attached.

PUBLICITY REGARDING CORVAIR CASES

[From *The Miami Herald*, July 29, 1965]

EXHIBIT 120

MORE SUITS AIMED AT AUTO MAKERS?

(By Stuart Auerbach, Herald Staff Writer)

A Detroit attorney Wednesday predicted an increasing number of cases against automobile manufacturers for the unsafe design and construction of cars.

Dean A. Robb, attending the American Trial Lawyers convention at the Fontainebleau Hotel, Miami Beach, said two test cases are now in the courts—one in Clearwater.

Robb said his firm has wrecked three cars in building up a case against the automobile manufacturers.

In an interview, he chastised manufacturers for a delay in installing safety features—like seat belts—in cars.

"For at least 10 years, auto manufacturers have known that seat belts would save many persons from injury or death," he said. "They had a duty to tell us that."

In a number of cases, Robb said, the automobile manufacturer has been added as a second party in a personal injury case—along with the person charged with the accident.

Robb's partner, Harry M. Philo, has told the convention that about 160 suits have been filed against General Motors. The suits claim that 1960 through 1963 models of Corvair tend to go out of control because of a design error corrected in the 1964 and 1965 cars.

"It is impossible to predict how many injuries and deaths have resulted from the instability of the Corvair automobile," Philo said, "but my guess is that it would reach five figures."

He said that 1,000 suits were brought against automobile manufacturers last year, and the number would increase to 5,000 next year.

Philo's talk on Sunday provided a primer for other lawyers planning suits against General Motors. He said the rear suspension of the Corvair was badly designed.

"A blowout, a gust of wind, being passed by a large truck, S curves, small-radius curves, a hole or bump in the road which causes an emergency steering wheel correction, can cause the Corvair to go completely out of control," he said.

Philo quoted two General Motors consultants as describing the dangers of the Corvair's engineering.

Philo charged the entire auto industry "has not only been negligent in its failure to provide crash-worthy vehicles, it has been grossly neglectful in the past in its research concerning automobile stability and control."

[From the Detroit Free Press, Jan. 11, 1966]

EXHIBIT 121

1960 TO 1963 MODELS—STATE BAN URGED ON OLD CORVAIRS

(By Phil Corner, Free Press Staff Writer)

The national chairman of the American Trial Lawyers Safety Committee urged the State Legislature Monday to bar from Michigan highways Corvair autos manufactured in the model years 1960 through 1963.

"You have to get the Corvairs off the road," Detroit attorney Harry M. Philo, president of the local chapter of the American Trial Lawyers Association, told a special State Senate study committee.

General Motors officials said they had no comment on Philo's statement.

Philo was the final speaker at a four-hour committee hearing on highway safety legislation.

Committee Chairman John T. Bowman (D., Roseville) said Philo's comments would be given further study.

Bowman promised "strong, positive action" by the 1966 legislature in auto safety and predicted enactment this session of a compulsory motor vehicle inspection law.

Philo focused his talk on automotive design defects and urged the Legislature to get tough with manufacturers.

He said Corvair made between 1960 and 1963 were designed negligently in that they did not have "sufficient cornering capacity to meet unexpected situations."

"The second it becomes unstable," he said, "it goes out of control and as soon as it goes out of control, it turns over."

He called for legislation requiring manufacturers to meet adequate cornering standards and said, "If the Corvairs are allowed to continue to operate, I think the Legislature is derelict in its duty."

He told the committee that General Motors Corp. remedied the defects in its later Corvair models.

Philo, who has been involved in several damage suits growing out of Corvair accidents, said he has discussed the vehicle in talks before 10,000 trial lawyers.

Philo also called for legislation requiring dual braking systems on all autos and new standards for tires. He said most safety efforts are aimed at the driver and the highways and overlook the problem of design.

"The only way that we can reduce injuries and deaths is by attacking vehicle design," he declared.

He said manufacturers must design vehicles with the aim (1) of preventing accidents and (2) of minimizing danger to the auto's occupants when an accident does occur.

He said legal precedent for writing such safety standards into the law was set in 1902 when the Michigan Legislature banned the sale of unsafe cornpickers.

Bowman said he would push for more stringent controls on tire performance. But, regarding Philo's testimony, he said, "None of us in the Legislature, including myself, are experts in the field of auto design."

Mechanical inspection legislation is a perennial. Bills presently are shelved in House and Senate committees.

Bowman said he would prefer that a mechanical inspection program be handled administratively by the State Police.

[From the New Bedford Times (Mass.), Jan. 11, 1966]

EXHIBIT 122

OUTLAWING EARLY CORVAIRS URGED

DETROIT, Jan. 11 (AP).—A representative of the American Trial Lawyers Association urged today that Michigan bar the 1960-63 model Corvair autos from the roads.

A Michigan Senate Special Highway Safety Committee heard the proposal from Harry M. Philo of Detroit, chairman of the association's National Safety Committee.

Philo said Corvairs made between 1960 and 1963 were unsafe to drive because of what he called designing defects. He said General Motors Corporation, manufacturer of the Corvair, remedied the defects in its later models.

[From the Kansas City Star, Jan. 11, 1966]

EXHIBIT 123

WOULD BAR CORVAIRS

THE 1960-63 MODELS ARE BRANDED AS UNSAFE

DETROIT (AP).—A representative of the American Trial Lawyers association urged yesterday that Michigan bar the 1960-63 model Corvair automobiles from the roads.

A Michigan Senate special highway safety committee heard the proposal, from Harry M. Philo of Detroit, chairman of the association's national safety committee.

Philo said Corvairs made between 1960 and 1963 were unsafe to drive because of what he called designing defects. He said the General Motors corporation, manufacturer of the Corvair, remedied the defects in its later models.

General Motors declined comment on Philo's proposal.

EXHIBIT 124

GENERAL MOTORS CORP.,
Detroit, Mich., January 26, 1966.

HON. JOHN T. BOWMAN,
Chairman Interim Committee of the Highway Committee,
Lansing, Mich.

DEAR SENATOR BOWMAN: It disturbed us to learn through newspaper and radio reports that Mr. Harry M. Philo made an unsolicited appearance before your committee and from this forum made the unsupported and sensational assertion that the 1960 through 1963 model Corvairs are defectively designed and dangerous and should be banned from the Michigan roads. In his statement before your committee, he reached the point of asserting that this is "the worst crime that's happening in Michigan today" and that the design of the Corvair is "a horrible problem." He concluded "that there's probably been 10,000 serious injuries and deaths from the negligent design of the Corvair."

Mr. Philo admitted that he was not an automotive safety engineer but was instead a trial lawyer who is President of the Detroit chapter of ATLA. However, he did not make clear in what capacity he was appearing. In addition, he did not state that ATLA is an association of plaintiffs' attorneys whose members specialize in product liability litigation on a contingent fee basis against manufacturers.

Most importantly, he did not make clear to the committee that: (1) he and his law firm represent plaintiffs in litigation now in the Michigan courts based on the assertions he made before the committee against the Corvair; and (2) he and his firm also represented a party in Clearwater, Florida, in a case tried last summer in which he unsuccessfully made the same claim that the Corvair was defectively designed.

The fact that Mr. Philo currently represents plaintiffs in Corvair litigation and therefore has a pecuniary interest in having people believe the claim that the Corvair is defectively designed is a material fact to consider in assessing why he appeared before your committee and the validity of his assertions.

As you no doubt know, the Canons of Professional Ethics of the American Bar Association as well as the Canons of Ethics of the Michigan State Bar condemn attorneys' use of newspaper publicity regarding pending or anticipated litigation. In keeping with both the letter and spirit of these canons, it has been a General Motors policy of long standing that it will not make any public statements directly to news media or indirectly at any public hearings relating to matters that are in litigation. Our experience has been that legislative committees recognize and accept the validity of that policy. We presume that you also subscribe to this. Therefore, consistent with our policy and practice, we have not included in this statement to your committee evidence establishing the safe design of the 1960-1963 Corvair.

However, to assure that your committee is not misled, we can advise you regarding litigation already terminated. In the only two cases in which this claim that the Corvair is defectively designed has been tried and decided, the juries in both instances returned verdicts in favor of General Motors. The first case involved a trial of ten weeks in San Jose, California. The second case, in which Mr. Philo and his law firm participated, involved a six weeks' trial in Clearwater, Florida. In his statement before your committee, Mr. Philo named Dr. Thomas Manos as authority for Mr. Philo's assertions. It is interesting that Dr. Manos testified at length for the plaintiff and was cross-examined in both trials regarding his tests and conclusions on the Corvair design.

In these two trials, we, of course, presented evidence and our witnesses were cross-examined regarding the development, design and performance of the Corvair. In both cases, and under proper rules of procedure and evidence, the juries disagreed with plaintiffs' counsel and agreed with our position.

Consistent with the Canons of Ethics and our long-standing policy, we have not undertaken in this statement to provide specific answers to Mr. Philo's assertions before your committee. However, you can be assured that General Motors is prepared to answer Mr. Philo clearly and completely in the proper forum—the courtroom.

We trust that the above will help your committee assess the weight to be given to Mr. Philo's appearance and to his unsupported statements regarding the design of the Corvair. We would appreciate your making this statement part of the records of the committee.

Very truly yours,

ALOYSIUS F. POWER,
General Counsel.

EXHIBIT 125

Additional examples of adverse and misleading publicity regarding the 1960-1963 Corvair disseminated or stimulated by ATLA or by plaintiffs' attorneys:

1. The December 1965 issue of the ATLA Newsletter states the following conclusion:

"Keeping judicial boxscore on the Corvair controversy requires the alertness of unjaded observers, & we would respectfully suggest that the G.M. reckoning now stands at The People:3; G.M.:2."

This untrue score is reached by counting the *Pierini* settlement as a victory for plaintiff; by counting as a second victory a default judgment entered in Chicago without mentioning that this case is and has been in the process of appeal to the Illinois Supreme Court since June 1965 (*Franklin* case); and by improperly classifying as a Corvair design case a suit in Louisiana in which the issue actually tried and decided was whether certain specified parts of the particular car involved in the accident had failed prior to the accident, thereby causing the accident (*Dumas* case).

The technique used in the article to classify the Dumas case as a Corvair design case is the old familiar one of quoting out of context. Only this sentence from the lower court's lengthy Reasons for Judgment appears in the article:

"There is no doubt in the Court's mind that a left rear tire cambering 45° under a vehicle traveling 40 miles an hour can cause the driver to lose control." This leaves the false impression that the court concluded that the left rear wheel of every 1960-1963 Corvair will camber 45° and that this was a defective design. The true finding of the court was that this cambering was due to the failure of the shock absorber and the loosening of the bolts holding the left rear suspension to the body on this one car. The two paragraphs immediately preceding the sentence quoted by the ATLA Newsletter demonstrate this:

"The physical evidence introduced at the trial clearly indicated that the left rear wheel assembly of the car in question had been considerably loose. The unrebutted testimony of eye witnesses established that the left rear wheel of the Dumas vehicle did in fact collapse when it entered onto the bridge.

"Mr. John J. Stansberry had been following the Dumas vehicle at about four or five car lengths and could clearly see the rear of the vehicle when it reached the slight rise on the bridge. He saw the left rear wheel of the Corvair 'cock' at a 45° angle (far in excess of the normal specified 10° camber) and the left rear end drop down and stay down. He also observed the bizarre maneuvers of the Dumas car and Mr. Dumas fighting to control it.

"There is no doubt in the Court's mind that a left rear tire cambering 45° under a vehicle traveling 40 miles an hour can cause the driver to lose control."

In addition, the court stated as follows:

"The shock absorber in the Dumas vehicle was shown to have broken due to metal failure. This alone, together with a slight rise on approaching the bridge, very well could have been the trigger which set off the subsequent events. A shock absorber, ostensibly designed to absorb compression, is used in this car to prevent extension (downswing) of the entire assembly. It failed. Without its failure there could be no 'cocking' at a forty-five degree angle, and no one-tire-only dragmarks."

It is difficult to view this misconstruction of the court's decision in a publication prepared by ATLA attorneys for use by ATLA attorneys as either unintentional or in error.

Incidentally, this committee may be interested in knowing of further additions to the "boxscore."

Another case (*Priver*), based on the alleged defective design of a 1961 Corvair, went to trial on February 23, 1966 in the Superior Court of Los Angeles. After four days of trial and while Paul O'Shea, plaintiff's expert, was under cross-examination, Mr. Harney offered to dismiss with prejudice for the sum of \$1.00. This was accepted and the case was dismissed accordingly. On March 11, 1966, we were advised that a fourth case (*Goldenberg*), based on the alleged defective design of a 1962 Corvair, was voluntarily dismissed with prejudice by Mr. Harney.

2. On January 10, 1966, Mr. Harry Philo, appearing as President of the Detroit Metropolitan Chapter of ATLA, gave unsolicited testimony at hearings conducted before an Interim Committee of the Highway Committee of the Michigan Senate. Although he admitted that he was not an automotive safety expert, he made the unsupported and sensational assertion that the 1960 through 1963 model Corvairs are defectively designed and should be banned from the Michigan roads.

Newspapers across the country carried prominently the story that the State of Michigan was urged to ban the Corvair. A few typical newspaper articles are attached as Attachment 1 to this Exhibit E. Many radio and television news programs featured the story. Not surprisingly, General Motors was besieged by letters and telephone calls, mostly from Corvair owners worried about the safety or trade-in value of their 1960-63 Corvairs and wondering what General Motors was going to do to fix or repurchase their cars.

I felt obligated to forward certain comments about Mr. Philo's misleading testimony to the Chairman of the Interim Committee of the Highway Committee. In my letter to him of January 26, 1966, I stated:

"The fact that Mr. Philo currently represents plaintiffs in Corvair litigation and therefore has a pecuniary interest in having people believe the claim that the Corvair is defectively designed is a material fact to consider in assessing why he appeared before your committee and the validity of his assertions.

"As you no doubt know, the Canons of Professional Ethics of the American Bar Association as well as the Canons of Ethics of the Michigan State Bar con-

demn attorneys' use of newspaper publicity regarding pending or anticipated litigation. In keeping with both the letter and spirit of these canons, it has been a General Motors policy of long standing that it will not make any public statements directly to news media or indirectly at any public hearings relating to matters that are in litigation. Our experience has been that legislative committees recognize and accept the validity of that policy."

A copy of my letter is attached as Attachment 2 to this Exhibit E.

Two days later a member of the Michigan Senate was reported in the press to have announced that he would introduce legislation to ban the Volkswagen, the 1960 through 1963 model Corvair, and some other vehicles from the highways of Michigan. Legislation would have had that effect was introduced on February 1, 1966. Mr. L. H. Bridenstine, Assistant General Counsel, General Motors Corporation, and Mr. Frank J. Winchell, Chief Research and Development Engineer of Chevrolet Motor Division of General Motors, represented General Motors at hearings regarding this and other proposed legislation which were conducted on February 21, 1966 by the Michigan Senate Committee on Highways. The text of their presentation opposing the legislation is attached as Attachment 3 to Exhibit E.

None of the bills opposed on February 21, 1966 by the automobile industry have been recommended for action by the legislative committee.

3. Two weeks ago the front page of the March 6, 1966 issue of *The National Insider*—a tabloid of the same type as *Midnight*—carried the banner line that "This Car Is A Death Trap" along side a picture of a Corvair. The reader was referred to the center spread article titled: "Auto Safety Expert Charges This Automobile Is A DEATH TRAP! GM Knew It But Risked Your Life For Its Own Profits!" Beside the title of the article is a picture of the same Mr. Harry Philo. Below the title is a picture of a Corvair with the statement: "If you have a 1960-63 Corvair, you'd better get rid of it!" The writer of the article states: "This reporter learned the shocking facts about the Corvair from Harry Philo, national chairman of the American Trial Lawyers' Safety Committee."

The article also states that:

"Philo isn't the only attorney working to get the faulty Chevrolet Corvairs out of circulation."

On the same page, there appears an article based on an interview of Mr. Ralph Nader attacking the design of automobiles.

A copy of the article from the March 6, 1966 issue of *The National Insider* is attached as Attachment 4 to this Exhibit E.

4. The Corvair design litigation is currently being featured in serialized form in *Road Test* magazine, commencing with the May, 1966 issue. The cover feature line asserts: "First Exposure—Corvair Law Suits" right beneath the statement "The Factual Automotive Guide Contains No Advertising."

Pictures of four wrecked Corvairs, each accompanied by a brief description of the single car accident start the article. It is represented that "these four cases are a random sampling of something like 100 lawsuits now on file against General Motors Corporation where the car involved is a 1960 to 1963 Corvair." Then follow three full pages of carefully selected portions of the 352-page deposition of the Chevrolet staff engineer, Kai Hansen, who was in charge of the Corvair development project.

This deposition was taken in 1962 by plaintiff's attorney, David Harney, during discovery proceedings in the *Mary Jane Drummond* Corvair design case, but was not filed with the court until 2 weeks ago. The *Drummond* case is currently in the 2d week of trial in Los Angeles, California. At the conclusion of this article, the publisher exhorts the reader to see Part II in the July issue, which will contain more sworn testimony from General Motors engineers.

5. Although not related to the realm of adverse publicity, it should not go unnoticed that another of Mr. Nader's activities appears to be the recommending of possible experts to plaintiffs' attorneys handling automobile design cases. For example, attorney Edward F. Sutkowski of Peoria, Illinois, wrote as follows to Professor Eugene Larrabee of the Massachusetts Institute of Technology on June 2, 1965:

"The undersigned represents an individual who was involved in a motor vehicle accident in a 1965 Volkswagen automobile. Mr. Ralph Nader mentioned your name as "that of an individual who has had some experience in the negligent design aspects of this vehicle.

"I would appreciate knowing if you have any information about the problem above; and if so, I would appreciate the same."

Mr. POWER. At the same time ATLA headquarters was actively engaged in disseminating Corvair information to inquiring attorneys. Two typical letters from Thomas Lambert, editor-in-chief of ATLA publications, dated respectively June 22, 1965, and July 22, 1965, are attached.

EXHIBIT 126

AMERICAN TRIAL LAWYERS ASSOCIATION,
WATERTOWN, MASS., June 22, 1965.

ROBERT P. HALL, Esq.,
Oklahoma City, Okla.

DEAR ROBERT: We have your letter of June 11 requesting information on the Corvair.

The list of cases and attorneys handling related Corvair cases is extensive. The names of those who have sent enquiries to this office are enclosed.

One of the most important cases involving this automobile was a California case settled by David M. Harney, of Harney, Ford and Schlottman, 650 South Grand Avenue, Los Angeles, California 90017, for \$70,000 against General Motors. The passenger in the car suffered the loss of an arm, which came as a result of the accident, claimed to have been caused by the poorly designed automobile, due to 63% of the weight being concentrated in the rear.

The 1962 issue of the Consumer Report-Buyer's Guide, at page 382, reports that the Corvair tends to oversteer under extreme conditions. I would suggest reading their report.

David Baum of Pollack and Pollack, 3810 Wilshire Boulevard, Los Angeles, California, reported that he is presently handling several cases dealing with tight steering in the Corvair Monza.

We also suggest that you write to Ralph Nader, 53 Hillside Avenue, Winsted, Connecticut. Ralph is a lawyer who has developed expertise in the area of automobile manufacturer liability. Ralph has a substantial amount of information on the Corvair.

For some general material, see 7 ATLAS News L. 281 (Nov. 1964) and TRIAL, Vol. 1, No. 1 (Dec. 1964), p. 29.

Jefferson G. Greer of Greer and Greer, 424 South Cheyenne, Tulsa 3, Oklahoma, is formulating a group whereby mutual assistance will be rendered in the preparation of these Corvair cases. This will enable the practitioners handling such cases to collect the relevant data and prosecute the case with a minimum of cost. I would suggest contacting Jefferson at your earliest convenience.

We hope the foregoing will prove serviceable.

Sincerely,

THOMAS F. LAMBERT,
Editor-in-Chief, American Trial Lawyers Association.

CORVAIR INQUIRERS

James Cullis, Card, Merrill, Cullis & Timm, 2041 Main Street, Sarasota, Florida
Wendell Cronso, Cramer & Cronso, Burns, Oregon
Verne Lawyer, Lawyer & Lawyer, Suite 400-427, Fleming Building, Des Moines 9,
Iowa

Vincent F. Nolan, 45 Exchange Street, Rochester 14, New York

George W. Fryhofer, Waynesboro, Georgia

Bernard Chazen, Baker, Garber & Chazen, 1 Newark Street, Hoboken, New
Jersey

Robert E. Sharp, Bott, Sharp & Carey, 500 Argyle Building, 300 East 12th Street,
Kansas City, Missouri 64106

Allen Glenn, Bryant, Glenn & Thomas, P.O. Box 282, Petroleum Building,
Abilene, Texas

Joseph A. Maiullo, Maiullo & Maiullo, 2480 First National Building, Detroit 26,
Michigan

David Neal Rosen, Forquer, Wolfe & Rosen, 12th Floor, Luhrs Tower, Phoenix,
Arizona 85003

Lester Katz, 983 Main Street, Hartford, Connecticut

Robert J. Jacobson, 808-08 Gem City Savings Building, Dayton, Ohio 45402

Louis G. Davidson, 100 North LaSalle Street, Chicago, Illinois 60602

David R. Goldberg, Cubbon & Rice, Suite 300—Security Building, Toledo, Ohio
43604

Jack R. Berger, Suite 1701, 5455 Wilshire Boulevard, Los Angeles 36, California
Maurice Pope, 511-15 Corby Building, St. Joseph, Missouri

Emanuel Moss, 1800 Girard Trust Building, Philadelphia 2, Pa.

George G. White, 2330 S. Brentwood Boulevard, St. Louis, Missouri

James H. Henry, Henry, McCord & Forrester, 205 Coop Building, Tullahoma,
Tennessee

Dan O'Leary, Esq., Pozzi, Levin & Wilson, Suite 808 Standard Plaza, 1100 S.W.
Sixth Avenue, Portland, Oregon 97204

O. Ben Bowen, Bolt and Bowen, 14 Beattie Place, P.O. Box 445, Greenville,
South Carolina

Robert H. Wilson, Big Horn County Courthouse, Hardin, Montana 59034.

Joseph Kelner, Vice-President, American Trial Lawyers Association, 217 Broad-
way, New York, New York 10007

Victor F. Schmidt, 1100 Beechwood Road, Columbus, Ohio 43227

Norman W. Larsen, Fine, Simon & Schneider, 909 First National Bank Building,
Minneapolis 2, Minnesota

Jefferson G. Greer, Greer and Greer, 424 S. Cheyenne, Tulsa 3, Oklahoma

Phillip Bartell, 516 Standard Building, Cleveland, Ohio

Walter Knabe, Capell, Howard, Knabe & Cobbs, 57 Adams Avenue, Montgomery,
Alabama

Al J. Cone, Miller, Cone, Owen, Wagner & Nugent, 507 North Olive Avenue,
P.O. Box 3411, West Palm Beach, Florida 33402

Artie E. Vaughn, Sedgwick County Court House, Wichita, Kansas

Peter Schneider, Schneider & Kaufman, 60 East 42nd Street, New York 17, New
York

M. Louis Abedon, Abedon, Michaelson and Stanzler, 626 Industrial Bank Build-
ing, Providence, Rhode Island 02903

Burton S. Resnic, Resnic, Beauregard and Resnic, 316 High Street, Holyoke,
Massachusetts

C. M. Leibson, Esq., Leibson & Leibson, 140 South Fifth Street, Suite 105,
Louisville 2, Kentucky

Alan J. Friedlaner, 431 Park Avenue, Waverly, New York 14892

Michael J. Silverstein, Silverstein, Kwitney & Goudiss, 420 Lincoln Road Mall,
Mercantile National Bank Building, Miami Beach 39, Florida

Paul J. Brinson, 2912 Delaware Avenue, Kenmore, New York 14217

Louis Samuel Fine, Fine, Staud & Silverman, Suite 1912, 121 South Broad Street,
Philadelphia, Pennsylvania 19107

Daniel J. Allan, McDermott, Quinn & Higgins, 1411 Walnut Street, Philadelphia 2,
Pennsylvania

William E. Townsley, 3199 Avenue A, Beaumont, Texas 77705

George W. Wilhite, Jr., Suite 200, Matrige Building, 411 Fannin, Houston,
Texas 77002

Romolo, Versaci, 1104 Wendell Avenue at Rugby, Schenectady, New York 12308

Robert P. Hall, 2411 First National Building, Oklahoma City, Oklahoma

EXHIBIT 127

AMERICAN TRIAL LAWYERS ASSOCIATION,
Watertown, Mass., July 22, 1965.

J. O. FITZJARRALD, Esq.,
Fitzjarrald & Poole,
Amarillo, Tex.

DEAR MR. FITZJARRALD: We have your letter of July 20 requesting informa-
tion on the Corvair.

The list of cases and attorneys handling related Corvair cases is extensive. The names of those who have sent enquiries to this office are enclosed.

One of the most important cases involving this automobile was a California case settled by David M. Harney, of Harney, Ford and Schlottman, 650 South Grand Avenue, Los Angeles, California 90017, for \$70,000 against General Motors. The passenger in the car suffered the loss of an arm, which came as a result of the accident, claimed to have been caused by the poorly designed automobile, due to 63% of the weight being concentrated in the rear. We have been informed that David is presently engaged in another suit against General Motors.

The 1962 issue of the Consumer Report-Buyer's Guide, at page 382, reports that the Corvair tends to oversteer under extreme conditions. I would suggest reading their report.

David Baum of Pollack and Pollack, 3810 Wilshire Boulevard, Los Angeles, California, reported that he is presently handling several cases dealing with tight steering in the Corvair Monza.

Barney Masterson, 140 Second Street, North, St. Petersburg, Florida, is also trying one.

We also suggest that you write to Ralph Nader, 53 Hillside Avenue, Winsted, Connecticut. Ralph is a lawyer who has developed expertise in the area of automobile manufacturer liability. Ralph has a substantial amount of information on the Corvair.

For some general material, see 7 ATLAS News L. 281 (Nov. 1964) and TRIAL, Vol. 1, No. 1 (Dec. 1964), p. 29.

Jefferson G. Greer of Greer and Greer, 424 South Cheyenne, Tulsa 3, Oklahoma, is formulating a group whereby mutual assistance will be rendered in the preparation of these Corvair cases. This will enable the practitioners handling such cases to collect the relevant data and prosecute the case with a minimum of cost. Jefferson has recently informed us that he has prepared a set of interrogatories which will be made available to interested counsel at duplicating and mailing costs. I would suggest contacting Jefferson at your earliest convenience.

Finally, we have been informed that a default judgment was entered against General Motors in a suit brought in Chicago for the latter's stubborn refusal to disclose incriminating information on its testing and engineering processes. Several claims are now being submitted to the jury on the question of damages. You might find it helpful to communicate with ATL stalwart, Louis G. Davidson, Suite 2007, 100 North La Salle Street, Chicago, Illinois, who is the chief attorney in that case.

We hope the foregoing will prove serviceable.

Sincerely,

THOMAS F. LAMBERT,

Editor-in-Chief, American Trial Lawyers Association.

CORVAIR INQUIRERS

James Cullis,
Card, Merrill, Cullis & Timm,
2041 Main Street,
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Wendell Gronso,
Cramer & Gronso,
Burns, Oregon
Verne Lawyer,
Lawyer & Lawyer,
Suite 400-427
Fleming Building,
Des Moines 9, Iowa
Vincent F. Nolan,
45 Exchange Street,
Rochester 14, New York
George W. Fryhofer,
Waynesboro, Georgia
Bernard Chazen,
Baker, Garber & Chazen,
1 Newark Street,
Hoboken, New Jersey
Robert E. Sharp,
Bott, Sharp & Carey,
500 Argyle Building,
300 East 12th Street,
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Allen Glenn,
Bryant, Glenn & Thomas,
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Maiullo & Maiullo,
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Lester Katz,
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Robert J. Jacobson,
803-08 Gem City Savings Building,
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Louis G. Davidson,
100 North LaSalle Street,
Chicago, Illinois, 60602
David R. Goldberg,
Cubbon & Rice,
Suite 300—Security Building,
Toledo, Ohio, 43604
Maurice Pope,
511-15 Corby Building,
St. Joseph, Missouri
Emanuel Moss,
1800 Girard Trust Building,
Philadelphia 2, Pa.
George G. White,
2330 S. Brentwood Boulevard,
St. Louis, Missouri

CORVAIR INQUIRERS—Continued

James H. Henry,
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C. Ben Bowen,
Bolt and Bowen,
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Robert H. Wilson,
Big Horn County Courthouse,
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American Trial Lawyers Association,
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New York, New York, 10007
Victor F. Schmidt,
1100 Beechwood Road,
Columbus, Ohio, 43227
Norman W. Larsen,
Fine, Simon & Schneider,
909 First National Bank Building,
Minneapolis 2, Minnesota
Jefferson G. Greer,
Greer and Greer,
424 S. Cheyenne,
Tulsa 3, Oklahoma
Phillip Bartell,
516 Standard Building,
Cleveland, Ohio
Walter Knabe,
Capell, Howard, Knape & Cobbs,
57 Adams Avenue,
Montgomery, Alabama
Al J. Cone,
Miller, Cone, Owen, Wagner & Nugent,
507 North Olive Avenue,
P.O. Box 3411,
West Palm Beach, Florida, 33402
Peter Schneider, Schneider & Kaufman, 60 East 42nd Street, New York 17, New York
M. Louis Abedon, Abedon, Michaelson and Stanzler, 626 Industrial Bank Building, Providence, Rhode Island, 02903
Burton S. Resnic, Resnic, Beauregard and Resnic, 316 High Street, Holyoke, Massachusetts
C. M. Leibson, Esq., Leibson & Leibson, 140 South Fifth Street, Suite 105, Louisville 2, Kentucky.
Alan J. Friedlander, 431 Park Avenue, Waverly, New York, 14892
Michael J. Silverstein, Silverstein, Kwitney & Goudiss, 420 Lincoln Road Mall, Mercantile National Bank Building, Miami Beach 39, Florida
Paul J. Brinson, 2912 Delaware Avenue, Kenmore, New York, 14217
Louis Samuel Fine, Fine, Staud & Silverman, Suite 1912, 121 South Broad Street, Philadelphia, Pennsylvania, 19107
Daniel J. Allan, McDermott, Quinn & Higgins, 1411 Walnut Street, Philadelphia 2, Pennsylvania
William E. Townsley, 3190 Avenue A, Beaumont, Texas, 77705
George W. Wilhite, Jr., Suite 200, Mafrige Building, 411 Fannin, Houston, Texas, 77002
Romolo Versaci, 1164 Wendell Avenue at Rugby, Schenectady, New York, 12308
Robert P. Hall, 2411 First National Building, Oklahoma City, Oklahoma
Elmer I. Schwartz, Metzenbaum, Gaines, Schwartz, Krupansky, Finley & Stern, 700 Union Commerce Building, Cleveland, Ohio, 44115
John W. Day, Barker, Day, Callow & Taylor, 1925 IBM Building, Seattle, Washington, 98101
Edward M. Miller, Levin, Levin, Garvett and Dill, 1250 Penobscot Building, Detroit 26, Michigan
Richard E. Shandell, Fuchsberg and Fuchsberg, 250 Broadway, New York, New York, 10007
Harold Infield, Quine and Infield, The First Akron Building, 611 West Market Street, Akron, Ohio, 44303
Charles A. Williams, Williams Building, Broadway at 17th, Paducah, Kentucky
J. O. Fitzjarrald, Fitzjarrald and Poole, 517 North Polk, Amarillo, Texas
Mr. Power. Mr. Lambert recommended specific attorneys who could furnish material and information on the Corvair for litigation purposes, and suggested communicating with them.

One of these especially recommended was Mr. Nader of whom he said:

We also suggest that you write to Ralph Nader, 53 Hillside Avenue, Winsted, Conn. Ralph is a lawyer who has developed expertise in the area of automobile manufacturer liability. Ralph has a substantial amount of information on the Corvair.

A copy of this type of letter first came to our attention in July 1965. Who was the "lawyer" with whom the ATLA editor was on a first-name basis? At that time Mr. Nader was not listed as counsel in any pending Corvair case. Where did he obtain such a "substantial amount of information on the Corvair," and how had he "developed expertise"?

Was he an engineer, a paid consultant to the ATLA Corvair counsel? Or was he preparing to file another one of these cases?

MUNCY CASE

Very shortly thereafter Mr. Nader's name did appear as counsel, not in a Corvair case and not in a new case, but of counsel on the brief on appeal in another type of automobile liability case. The brief was filed on July 28, 1965, in the case of *Barbara June Muncy and Charles Muncy v. General Motors Corp.*, in the U.S. Court of Appeals for the Fifth Circuit. It showed Ralph Nader's address as "53 Hillside Avenue, Winsted, Conn.—1719-19th Street N.W., Washington 9, D.C." A reference to Martindale-Hubbell, the leading lawyers directory, showed no Ralph Nader in Washington, D.C., but did show a Ralph Nader in Winsted, Conn. A check of various periodical indices disclosed that Mr. Nader had written an article which had appeared in the January 1965 issue of *Trial*, an ATLA publication.

EXHIBIT 128

[From *Trial*, publication of ATLA, January 1965]

PATENT LAWS PRIME SOURCE TO SECURE SAFER AUTO DESIGN TO REDUCE HIGHWAY DEATHS

(By Ralph Nader, author, attorney, and one of America's foremost research authorities on legal and public questions)

The sense of urgency for safe design in cars comes from the realization that over a decade of crash-injury research at numerous universities together with strong denunciations of the automobile makers by medical, public health and consumer-oriented groups, such as Consumers Union and the American Automobile Association, has had, apart from seat belts, virtually no impact on the auto makers.

The numerous hazards of automobiles which needlessly contribute to the accident or to casualties following the collision are well known to the manufacturers. But as the industry's safety engineers know too well, the final decisions on auto design are made by the stylists and merchandisers in the corporate hierarchy.

Under this situation, safety continues to take even more of a back seat to style from year to year. The quantum upsurge of traffic fatalities to an all time high of 43,600 in 1963 and the shocking increase so far this year which, if continued, will catapult the number of dead beyond the 50,000 mark is a traumatic epidemic of blitzkrieg proportions. The full dimension of this "assault on the biosphere," as the scientists call it, should include the additional 4 million plus injuries incurred each year on the highways.

Conceive the trauma in this way: the motor vehicle is the chief cause of accidental death in every age group from 1 to 65 years and outranks any other cause of death in the age group 5 to 30. The chances of an American being in-

jured in a motor vehicle before he dies is about fifty-fifty and statisticians tell us that 4 out of every 10 automobiles will be involved in an injury producing accident before being scrapped.

The prospect of reducing highway fatalities and injuries to a fraction of their present volume as a consequence of safely built vehicles is a goal worthy of the most strenuous exertion of ATLA skills, professional dedication and, above all, independence of judgment. Acting collectively and individually, ATLA members can effect a decisive breakthrough for safer motor vehicle transportation. The august nature of this responsibility is clear. For nowhere on the American scene or horizon is there any other organization so variously equipped to undertake this task.

In general terms, the objective must be to provide incentives and compulsions for automobile manufacturers to deepen their concern and action for the optimum adaptation of automobiles to driver and passenger safety.

The slow and difficult acceptance by industry over the past half century that production workers should be the central consideration in production systems design has led to spectacular reductions in factory injury frequency rates. Industry's motivation has become a tangible one: plant safety has netted dividends in higher quantity and consistency of production, less training of workers, less breakdowns in the production process and lower insurance costs.

On the other hand, dead and injured consumers of automobiles do not interfere with production and sales. They are outside these self-disciplining systems. Consequently, to get action for safer cars by the manufacturers requires a broad and persistent feedback from judicial, legislative and other public as well as private institutions.

CREATIVE CRUCIBLE: THE COMMON LAW AND SAFER CARS

Judicial recourse against hazardous automobile designs is increasing. But measured by the thousands upon thousands of victims of unsafe vehicles whose rights against the manufacturer are neither recognized nor secured, the forward pace remains glacial in character. The ancient Romans perceptively stated: "Out of the Fact comes the Law." It should come as no surprise, consequently, that the chief obstacle to bringing valid design liability cases is insufficient awareness by counsel of how to obtain the requisite evidence to prevail. Not getting the needed evidence is an eroder of one's professional duty to see that his client has every opportunity to receive the protective mantle of justice that our common law affords him.

Tort law—stretching from negligence, implied warranty, *res ipsa loquitur* and lately to strict liability—is by no means hostile to this honored quest. For cases involving products within and without the motor vehicle area, the courts are recognizing that a drastic reshifting of the fulcrum over which competing interests are balanced is necessary to redress the helpless and hapless relationship and resources of the victim as contrasted with the manufacturer of the injurious product.

But even principles of liability which do not require the proof of negligence alleviate only to a limited extent the evidential problems. This is particularly the situation when so many of the facts leading to the matured stage at which the term "evidence" may be legitimately employed are in the manufacturer's exclusive possession; so much so that oftentimes counsel does not even know what questions to ask in his depositions.

The marshalling of evidence crucial to an automobile design case is on two levels—that relating to (1) the site of the collision and (2) the stage of design technology in the context of practicable alternatives.

The degree to which each level must be probed depends on which of the various kinds of design defects counsel is concentrating upon. Some hazards pertaining to brakes, tires, vehicle-induced glare, automatic transmission booby traps and the like may lead to the accident; others such as protruding knobs, dashboards, steering shaft and wheel, uprooted seat, collapsed roof and fire hazards contribute to the injury a split second after the collision. Some designs are latent, inherent dangers; others are observable but dangerous only in collisions; still others are wholly ornamental or stylistic in nature with no functional characteristics, such as sharp hood ornaments and fins that have slashed and speared many a pedestrian.

But for any design case in the motor vehicle area, there are points to keep in mind.

First, whenever possible, the vehicle should be retained for investigation. The practice of permitting the vehicle to be junked or sold as depreciated hardware on the used car market places a hammerlock on most design cases. Such default is so widespread that this obvious point requires continual reiteration. If Harold Corbin, Esq., had not brought the wheel from MacPherson's Buick to George Palmer, the carriage maker for expert scrutiny, Justice Cardozo would not have had the opportunity to articulate that quantum jump forward in negligence law.

Second, counsel should take advantage of increasing attention by the medical profession to the relation between injuries and the portion of the vehicle that inflicted the trauma. Dozens of articles in medical journals over the past two decades have drawn notice to the relationship between the vehicle-based agent and the injury. The attending physician should be urged to observe and report any discernible connections of this kind simply as part of any complete diagnosis or autopsy.

Indications are that the ability and awareness for making such observations by physicians are improving and increasing. Physicians have been among the most eloquent spokesmen for the view that the most rational solution for bashed heads and bodies is prevention through safer designed vehicles.

A study of the relationship, between bodily injury and vehicular damage in actual cases of highway fatalities by Drs. Huelke and Gikas of the University of Michigan Medical School is one instance of such work undertaken at some institutions. Huelke and Gikas stress that first hand observation of the victim and vehicle on the collision site will afford the most accurate data—a conclusion similarly arrived at by a team of Harvard University specialists led by Alfred L. Moseley who worked under a federal grant between 1959 and 1963.

A tragic case illustrates the importance of establishing such relationships. It involves General Motor's Corvair whose above hazardous features include a steering shaft that extends from a point about two inches in front of the leading surface of the front tires—an obvious and documented hazard to the driver in even moderate left-front end collisions. Dr. Horace E. Campbell, Chairman of the Automotive Safety Committee, Colorado Medical Society, recounts in a technical paper this case which he investigated:

"On January 19, 1962, Milford Horn, age 27, the father of two children, a particularly promising engineer, skidded on an icy road into the side of a locomotive. He had died instantly at the scene with a completely broken neck. The State Patrolman told me to go and see the car and I would then understand why.

"The man's character was immediately revealed on my inspection of the car. There were four seat belts; his widow told me later that every belt had to be fastened before he would start the engine. There were four electric flashing signal lights, to be placed on the road in case a tire change became necessary. I learned that he was popular at the plant, active in the church, never drank.

"His car, a 1961 rear-engine model, was extensively damaged at the left front corner. The hub of the steering wheel was displaced, by actual measurement against another car of the same make, two feet upward and backward. It broke his neck. He had no other injuries of consequence.

"The man who towed his car in told me that in every car of this make which he has brought in with left front deformation, the steering shaft is driven backward, often more than a foot. The 1964 models maintain this same design feature."

Third, the automobile design case will usually require obtaining evidence from the industry. Very frequently, it will be difficult to make adequate use of discovery procedures against a defiant manufacturer unless counsel is armed with the leverage that comes from "hard" technical information gathered beforehand.

First and most obvious is the engineering and medical literature—papers delivered at professional meetings and articles published in widely scattered journals. It may be important to know, for example, that a technical paper delivered by a Ford engineer early in 1963 touting the experimental model of the Mustang detailed several safety features which included: (1) genuine bucket seats with lateral holding power; (2) strongly anchored seats; (3) "bent" steering shaft to ward against being driven back into the passenger compartment; (4) collapsible steering shaft to cushion any impact of the driver's chest against the wheel; (5) roll bar structure strengthening the roof against the common roll-over accident; and (6) a fail-safe dual brake system. All these features were deleted from the production model of the Mustang now on the highways.

A fast growing source of specialized knowledge, flowing from federally funded accident prevention research and the vast space program, comes from human engineering (or human factors) experts in the interaction of man and machine. For years, the automobile manufacturers have employed human engineering experts and their number has increased in recent years. Just what these experts are used for by the companies is not apparent, unless it is to impress legislative committees invited to their research centers on company expense. As yet there is virtually no evidence that these human engineering specialists have had any impact on the stylist's authority and scale of priorities.

A non-industry human factors specialist framed the matter this way: "We already know how to instill high levels of habitability, safety, maintainability, and efficiency in space vehicles, weapons control systems, and other such sophisticated hardware. Why can't we do the same for the millions of us who must drive and ride in motorized land-based vehicles?"

An instructive illustration of the approach which human factors knowhow, broadly conceived, takes in safety design analysis appeared in the respected *Product Engineering*, April 27, 1964. The subject of analysis was the display of the new models at the International Automobile Show in New York last April.

Most important is a source of technical information that, to my knowledge, has been wholly neglected and even unknown to counsel in automobile cases. I am speaking of the vast number of motor vehicle patents with primary or secondary safety characteristics. The use of patents in products liability litigation seems worthy of the most thorough exploration. Their broad evidential value, for instance, (1) in helping counsel ask the pertinent questions on deposition, (2) as crowbars for prying out hidden information by industry, (3) in establishing notice, standards of care, reasonableness of risks and (4) in providing leads for expert witnesses, can be decisive.

Many of these patents, directly held by the automobile manufacturers or under license, contain information concerning (1) the safety advance of the patented article over the prior article still in use; (2) the reasons for developing the patented article; and (3) frequently surprisingly candid admissions concerning the true function of vehicle components (such as bumpers). The full application file behind each patent contains additional information not noted or detailed in the patent copy.

One example of many which deals with safety design is a General Motors automotive steering device patent filed in 1954. It reads in part:

"Another difficulty with automotive steering as heretofore practiced is that conventional steering wheels frequently are the cause of injury to the operator. A sudden stop of a vehicle may cause injury to the head, face or body of a driver forced into violent contact with the steering device."

That description is as true today as it was a decade ago. The capability for greatly diminishing or eliminating this hazard has been in the possession of the industry for many years. Robert A. Wolf, Director of the Automotive Crash Injury Research of Cornell Aeronautical Laboratory, and recipient of funds for some of his research from the industry, finally felt impelled to tell an AAA convention audience recently: there is no reason for any further delay in installing collapsible steering mechanisms.

Anyone who has experienced the unsurpassed intransigence of General Motors toward reasoned pleas for safety engineering of its automobiles will appreciate its detailed, technically elaborate, indeed almost eloquent articulation of hazards, that exists on its own models when the purpose is to obtain a patent for a new development.

Even such long time defenders of GM's design policies as former executive, Charles Chayne, find their occasions for candor. Patent 2,929,261, Charles Chayne, assignor to GM, notes that for vehicle controls to be acceptable, "they must not only be easily operated but also accessible to the operator with a minimum of inconvenience. The driver," Mr. Chayne tells us, "should not be required to reach any substantial distance to operate a particular control. Furthermore, safety is a concern since the control must be of the type that an operator would not inadvertently operate under normal conditions."

Apparently, GM's stylists have conformed more loyally to Mr. Chayne's absurd, public refutations of engineering critics from outside the industry than to the more scholarly assessments in his patents. Some contemporary illustrations include the Buick Electra #225 whose power brake pedal and gas pedal are so close together and on the same level that drivers have inadvertently hit both pedals simultaneously. Buick advertisements tell you to appreciate the consid-

eration behind Buick's stickshift which "was planned that way to put the adventure back into driving."

Recent Oldsmobile models have a shift pattern that places the reverse and forward low positions next to each other without separation and with such a slight angular difference that it can scarcely be detected by touch at the knob end of the lever. The slightest transmission-induced driver slip-up in not raising the lever sufficiently will let the car remain in forward low while the driver thinks he is ready to go rearward. This is one of several booby trap problems in connection with automatic transmissions of high-powered cars that has been discussed at technical meetings attended by auto company representatives. Company indifference remains endemic in spite of rapidly increasing reports of the so-called "engine-powered runaway accident," traceable in many instances to transmission pattern hazards.

Numerous industry-held patents describe and endorse the protective and force moderating function of bumpers. But what is the practice?

Consider this description of recent model cars by a non-industry expert: "When the panic stop isn't successful, the bumper cannot be counted on to protect even the sheet metal it is wrapped around. Styling considerations have wrapped the bumper so intimately around the car's perimeter that even some curb-side saplings can dent fenders and break fragile taillight housings if they lean streetward just a few degrees. The truth is that bumpers are not designed or mounted to distribute crash loads. Instead, they generally transmit all or most of this impact energy directly to the vehicle frame and the passengers."

A recent case involving the imaginative development of some approaches outlined above was *Muncy v. General Motors Corp.*,—F. Supp.—[E. D. (Marshall) Texas] decided on April 10, 1964. Plaintiff was a pedestrian mangled by a runaway Chevrolet when the disembarking passenger struck the accelerator pedal with her foot after the driver, prior to alighting, had withdrawn the key thinking this action shut off the ignition.

The interesting feature of *Muncy* in this context was a complaint against General Motors for improper design of the ignition switch that permitted the withdrawal of the ignition key while the motor of the automobile was running and the car in gear. Examination at trial by Scott Baldwin, Esq., of expert witnesses for GM produced admission that human factor designing was recognized and that when the automatic transmission was first installed with the ignition switch design, the precaution of arranging the gear lever so that the motor could not be started with the automatic transmission in a gear position was considered but ignored.

The designer of the switch conceded that the danger of one inadvertently leaving the car in gear with the motor running when the ignition key was withdrawn was recognized at the time the automatic transmission was put into use. But this hazard was considered too remote to require a redesign of the switch.

Prior to trial, the possession of relevant patents by plaintiff's counsel enabled a trip to Detroit for depositions of GM officials to be remembered for other than corporate abuse and diversionary tactics.

These patents were instrumental in having GM produce the employee who designed the switch as a witness at trial—an accommodation that products liability counsel can well appreciate. In addition, prior knowledge by plaintiff's counsel of GM's decision to eliminate the offending ignition switch design on 1965 models enabled that fact to be established by deposition. The jury brought in a verdict against defendant.

THE CORVAIR CASES

The most signal development in the history of applying tort law to motor vehicle design is the Corvair litigation presently assuming mass proportions on a national scale. There are at least 50 such Corvair cases pending in several states which allege negligence in the design of the Corvair (chiefly 1960 to 1963 models) by General Motors. More specifically these allegations have a common theme involving Corvair collisions where the automobile unexpectedly went out of control and/or flipped over.

The principal centers of contention surrounding plaintiff's allegations that the Corvair is an inherently unstable vehicle with hazardous handling problems particularly on turns deals with (1) the heavy distribution of weight on the rear wheels (which goes up to 63%); (2) inadequate and improperly designed spring and suspension systems in the 1960 through 1963 models; (3) the critical relationships between tire pressures, tire structure and oversteering; and (4) various

aspects of the model's steering geometry. It should be noted that the complaints in these cases have been targeted on instability as *accident cause*. As yet, the Corvair litigation has not moved into the design aspects as they are related to injury cause, such as the afore-mentioned steering shaft design.

General Motors produced 1,124,076 Corvairs in the model years 1960 through 1963. The Corvair is the first and only rear engine car mass produced in this country. It is also the heaviest rear engine automobile produced in the non-communist world (a Czechoslovakian model is said to be heavier).

Why was the Corvair built in this unique manner? Top management had decided that if it could build a compact car that would cost the company less than standard models to produce, yet still accommodate comfortably the same number of passengers as standard models, there could ensue only a salubrious effect on profits.

In a little-known, 41-page technical paper "The Chevrolet Corvair" (Society of Automotive Engineers, 140 C, January, 1960) by the Corvair's chief designer, K. H. Hansen, and associates, the author began by noting what the priority considerations were in designing the Corvair.

He said: "Our first objective, once the decision was made to design a smaller, lighter car, was to attain good styling proportions. Merely shortening the wheelbase and front and rear overhang was not acceptable. To permit lower overall height and to accommodate six adult passengers, the floor hump for the drive shaft had to go. Eliminating the conventional drive shaft made it essential then that the car have either rear engine-rear drive, or front engine-front drive." After discussing the limitations of a front engine-front drive arrangement (one being that it took space out of the passenger compartment), Mr. Hansen concluded that "the rear engine-rear drive design appeared the most desirable and ultimately proved the best solution."

Turning to the suspension geometry, Mr. Hansen added: "The Corvair with its low center of gravity and swing axle rear suspension has excellent roll stability. The combination of understeer built into both front and rear suspensions, low profile tires, wide rims and proper tire pressures has made the Corvair a remarkably good handling vehicle."

Apparently, an enterprising company in Riverdale, California, EMPI by name, did not view the Corvair in the same way. Hardly had the first Corvairs hit the highways in 1959 when EMPI began to market successfully an accessory rear stabilizer, called the Camber Compensator Rear Stabilizer. In 1961 EMPI put on the market an accessory front anti-sway bar that, it claimed, "greatly improved the handling of the Corvair."

Referring to the Corvair, *Sports Car Illustrated* in 1961 took note of what it called "the irrefutable evidence that the EMPI Camber Compensator does indeed do much to reduce oversteer and smooth out the unstable rear-end breakaway of cars with simple swing axles."

There are still problems for later model Corvairs, however. For example, the 1964 Corvair owner's manual flatly states that front wheels should carry 15 pounds and rear wheels 26 pounds "cold," and for high-speed driving the pressures should be 18 pounds and 30 pounds respectively. The manual offers this caveat: "Oversteer problems may be encountered with incorrect pressures. Maintain recommended pressures at all times."

Many non-industry specialists disagree with these recommended pressures. In a deposition of tire expert, Raymond B. Stringfield, taken on behalf of General Motors—defendant in one of the Corvair cases in Los Angeles, the witness discussed the various aspects of this problem within the framework of recommended pressures by the Tire and Rim Association of Akron, Ohio—a tire industry standards organization.

The T and R recommended tire pressures for Corvair size tires vary, depending on the load carried and driving speed, but even the minimum pressures are higher than those stated in the Owner's manual. T and R also states that the Corvair tire should not be loaded over 835 pounds under any circumstances. That limit is generally reached for the rear tires (given no additional baggage) when two or more passengers are in the car.

Stringfield stated that four passengers would definitely overload the tire. Under questioning about tire air-out during turning of a vehicle he replied:

"The Corvair is, with any passengers at all, very near the maximum rated load on the rear tires and a sudden thrust (as when a tire is making a turn) is capable of forcing the bead inwardly, unless the air pressure is sufficiently high to resist it and a tubeless tire is more dangerous in that respect than a

tire with an innertube, because the innertube prevents the escape of air, if there is only a slight movement and forces the bead back to place.

"The Corvair recommends 15 pounds in the front wheels. . . 15 is dangerous under any circumstances for any purpose."

General Motors, of course, denies wholly and emphatically all allegations of unsafe design that have been made about Corvair models. In the only case, of the many pending, that has gone to trial, *Pierini v. General Motors Corp., and Washburn Chevrolet* (Superior Court, Santa Barbara, Calif.), General Motors settled for \$70,000 after three days of trial last June. Plaintiff alleged that unsafe design of the Corvair caused it to overturn, while she was driving, and sever her left arm.

Like the thalidomide scandal, the Corvair cases may be the inadvertent catalyst that brings about a widespread and decisive demand for legislation to protect the public—as was called for by a resolution (see insert) introduced by the American Trial Lawyers Association.

For not only Corvair but all automobiles reveal hazards that either increase the likelihood of collision or the probability of injury in the "second" collision when the occupant is thrown against an unsafe environment inside the vehicle.

In our public capacity, this country must begin to devote more attention to the vehicle's role in the accident complex and to provide more funds for research and the training of specialists so that objective knowledge can be developed and freely applied.

Once again, it is seen how the tools of the common law are the tools of freedom. Flushing out facts of mortal moment into public view—an achievement which very often surpasses the capabilities or willingness of the press, legislators or administrators—has always been part of the panoply of glory that graces our common law.

But as an organization, the trial bar can contribute much to a safer highway environment. Inherent in the concept of a "profession" is the responsibility not just to apply the optimum skills and dedications to the problems uniquely within its sphere of learning but also to work for the elimination of those very problems wherever possible. Thus while members of the personal injury trial bar work to obtain adequate compensation for victims, whose rights to safety have been violated, collectively the trial bar also strives for prevention of injuries in the first place.

REFERENCES

1. Three bibliographies of research bearing on motor vehicle design safety, among other topics, are: "A Selected Bibliography of Highway Traffic Safety" (with annotations), 1961, (distributed by Division of Accident Prevention, Public Health Service, Department of Health, Education & Welfare, Washington 25, D.C.); "Human Variables in Motor Vehicle Accidents, A Review of the Literature," 1955, Harvard School of Public Health, 665 Huntington Avenue, Boston 15, Massachusetts (updated revision forthcoming); "Bibliography—Automotive Crash Injury Research," Cornell Aeronautical Laboratory, P.O. Box 235, Buffalo, New York.

2. A very useful lawyer's reference work of direct relevance to motor vehicle design is "Sources of Information for the Trial Lawyer and the Legal Investigator," by Dean A. Robb and Harry M. Philo, Advocates Publishing Co., Cadillac Tower, Detroit, Michigan (1964 pub.).

3. Much valuable information about the Corvair is contained in deposition form. In addition to the references cited in the text, a most revealing and detailed exposition of the handling problems of the Corvair is contained in "Corvair Performance Handbook," \$1.00 from Petersen Publishing Company, 5959 Hollywood Blvd., Los Angeles 28, California. In a series of inadvertently devastating chapters, non-industry specialists detail the inadequacies of the Corvair and what accessory equipment and redesigns are being offered for those who want to get "GT or Gran Turismo performance." The standard of care required for general purpose driving is carefully ignored so as not to clash with the manufacturer. Counsel will take note of how applicable their descriptions are to ordinary and anticipated conditions of driving. EMPI, P.O. Box 608, Riverdale, California sells a Corvair Owner's Handbook, full of valuable detail, for \$4.00.

Numerous articles in specialized automobile magazines have appeared on the Corvair which take note of the model's various problems. A few early citations are: "Rear Engine Mounting, Its Effect on the Automobile Chassis," *Society of Automotive Engineers Magazine*, March 7, 1957 (this of course precedes

the Corvair and discusses the problem generally); "Road Test: Corvair Monza Sprint," *Car and Driver*, July, 1962; "Auto Aerodynamics," *Car Life Magazine*, October, 1961; "Independent Rear Suspension Problem and Promise," *Motor Trend*, October, 1960; "The Great Rear Engine Hassle," *Car Life Magazine*, November, 1959; "How to Make a Corvair," *Motor Life Magazine*, November, 1959; "Corvair Road Test," *Motor Trend*, January, 1960; and "Corvair Conditioning," *Sports Car Illustrated*, May 1960.

4. Important and comprehensive analysis of accident investigation—what, how and where to look for accident and injury causes—are: "Research on Fatal Highway Collisions—papers 1961–1962 and 1962–1963," Harvard Medical School (Boston, Massachusetts); "Experimental Case Studies of Traffic Accidents—A General Discussion of Procedures and Conclusions," Traffic Institute, Northwestern University, Evanston, Illinois, 1960. (Both the Harvard and Northwestern studies were federally financed.) Of unquestioned value for accident case analysis (as distinguished from injury cause) is "Traffic Accident Investigator's Manual for Police," by J. Stannard Baker, 1963, The Traffic Institute, Northwestern University, Evanston, Illinois.

Mr. Power. It was later learned that Mr. Nader had been listed as the "Washington, D.C., correspondent" in an article he had written for the February-March 1965 issue of *Trial*.

On October 8 it was reported in the San Francisco Chronicle that Mr. Nader had recently completed "a searing document that may become the 'Silent Spring' of the automotive industry," and that it was to be entitled "Unsafe at Any Speed." A copy of this article is attached.

[From San Francisco Chronicle, Oct. 8, 1965]

EXHIBIT 129

WORLD OF BOOKS—THE AMERICAN WAY OF DEATH

(By William Mogan)

A searing document that may become the "Silent Spring" of the automotive industry will make its appearance in mid-November, and at long last. Titled "Unsafe at Any Speed," this catalogues the designed-in dangers of the American automobile, complete with diagrams on how safety easily can be engineered into cars, but is not. The author is a young Hartford, Conn., barrister, magazine writer and former editor of *The Harvard Law Review*, Ralph Nader, who is "fanatically well-informed" on the failure of manufacturers to make cars safe.

Nader's publisher, Richard Grossman, told us about this title during a visit here this week. Originally it was scheduled for publication in June. But to avoid any possibility of libel, as Nader names names up and down the assembly lines, a team of lawyers has combed the manuscript. It is legally impeccable at this point, although Grossman suspects that the industry's billion-dollar advertising forces will launch a campaign against the books, as some chemical and pesticide interests did against Rachel Carson's powerful critique of their commercial indifference to the balance of nature.

The book developed from an article by James Ridgeway, "The Corvair Tragedy," in *The New Republic*. Grossman, a former vice-president and senior editor at Simon & Schuster until he launched his own small publishing house three years ago, asked Ridgeway to expand his article into a book. Ridgeway replied that only one writer was well enough informed on the technology of engineering safety who could do it—Ralph Nader.

Nader explains that safety devices for a "crash-proof" car have been available for 30 years, but have been ignored by manufacturers who continue to be obsessed with speed and styling. The technological know-how is there. If we can bring delicate electronics gear safely back from space, we can protect a five-year-old child in a car emergency. The author admits that accidents are inevitable, but insists it is not necessary to kill and maim some 40,000 people on the Nation's roads every year. This, he feels, should be the manufacturers' responsibility. He shows that it has been tragically ignored, right down to Detroit's 1966 models.

Nader's interest and passion in all this was stirred originally during some 40,000 miles of youthful hitch-hiking around the country. He talked with truck drivers about accidents they had seen and recorded their bitter criticism of badly-designed cars. This grew into a legal specialty in traffic cases and a critical attitude that seems to be in the muckraking tradition of Ida Tarbell and Lincoln Steffens.

Grossman feels that "Unsafe at Any Speed" is the most important book he has issued. He expects a strong counterattack from some quarters in Detroit. At the same time he seems to be sitting on the most newsworthy document since Jessica Mitford's "The American Way of Death," something that affects all of us.

Mr. POWER. On October 22, the General Motors law library received the most recent volume of American Jurisprudence Proof of Facts, which had been mailed to all subscribers to the series a short time before. This particular volume contained a 153-page article on "Automobile Design Hazards" written by Mr. Nader. The author was described as "A member of the Connecticut and Massachusetts bars and a graduate of Harvard Law School who 'has written and lectured extensively in the field of automobile design hazards.'" No mention was made of his technical qualifications.

At about the same time the March 11, 1965, issue of the New York Times quoted Mr. Nader as saying that "he had suspended his law practice during his crusade for greater public safety." (P. 18.)

UNSAFE AT ANY SPEED

The November 1 issue of the Nation contained an article by Mr. Nader entitled "Profits versus Engineering—The Corvair Story." He was described as an attorney who "has long been interested in safety problems relating to the automobile." It was noted that the article had been adapted from a chapter in Mr. Nader's book, "Unsafe at Any Speed," to be published later that month.

[From the Nation, Nov. 1, 1965]

EXHIBIT 130

PROFITS VS. ENGINEERING—THE CORVAIR STORY

(By Ralph Nader)

Ralph Nader is an attorney who has long been interested in safety problems relating to the automobile. This article is adapted from a chapter in his Unsafe at Any Speed, to be published this month by Grossman.

In August of 1961, Mrs. Rose Pierini lost her left arm when the 1961 Chevrolet Corvair she was driving turned turtle just beyond the San Marcos overpass on Hollister Street in Santa Barbara, Calif. Exactly thirty-four months later, in the same city, General Motors decided to pay Mrs. Pierini \$70,000 rather than continue a trial which for three days had threatened to expose on the public record certain driving characteristics of their brand-new automobile.

Mrs. Pierini's experience with a Corvair that went suddenly out of control was not unique. Too many Corvairs of this model have shown such inclinations for her case to be singular. What was distinctive about the "accident" was the attempt to find the cause of it on the basis of investigation, instead of resorting to the customary practice of automatically blaming the driver.

As described by a California Highway Patrol officer, John Bortolozzo, who witnessed the flip-over while motoring in the opposite direction, the Pierini vehicle was traveling about 35 miles per hour in a 35-mph zone in the right lane headed toward Goleta. He saw the car move toward the right side of the road near the shoulder and then "all of a sudden the vehicle made a sharp cut to the left and swerved over." Bortolozzo testified at the trial that he rushed over to

the wreck and with two other men helped Mrs. Pierini out of the vehicle while trying to stop the torrent of blood gushing forth from the stub of her arm. She was very calm, observed Bortolozzo, only saying that "something went wrong with my steering."

The officer made a check of the vehicle while it was on its top. He noticed that the left rear tire was deflated. Looking at the road, he noticed some gouge marks made by the metal rim of the left rear tire. He gave his opinion at the trial that the distinctive design features of the Corvair caused it to go out of control and flip over as had other Corvairs in accidents he had investigated. It was during the cross-examination of Officer Bortolozzo by defense lawyers that General Motors decided to settle the case.

Up to this point no engineering experts had been called to testify by plaintiff Pierini, but already the case had been going badly for General Motors. Two members of the respected California Highway Patrol had taken direct aim on the Corvair design. One of them, Charles Hanna, mentioned a confidential circular put out by the highway patrol which dealt with handling hazards of certain rear-engine cars, including the Corvair. Hanna, a fourteen-year veteran of the patrol who had investigated over 4,000 accidents, testified that "I have had many, many chances to observe accidents involving this type of vehicle. And they all have the same type of pattern."

Mr. James A. Johnson, service manager of Washburn Chevrolet Company, where the Pierini Corvair was purchased, told the court that his company sold an accessory specially designed for the Corvair by a nearby manufacturer. Attached underneath the vehicle to each end of the lower control arms, this accessory reduced excessive caving-in, or tuck-under, of the rear wheels on cornering or other stress situations.

The dealership's proprietor, Shelton B. Washburn, confirmed that as early as 1961 General Motors provided dealers with regular production option 696, which they could sell to Corvair owners. RPO 696 included heavier suspension springs and shock absorbers, a front stabilizer bar, and rear-axle rebound straps to reduce tuck-under. This RPO was a factory-installed kit and not openly advertised. It was intended to meet the demands of knowledgeable Corvair owners who take their cornering seriously.

Mr. Johnson, in reply to questioning by plaintiff's counsel, stated that he had been at a General Motors training center at Burbank in 1959 to receive instructions and training about the new Corvair model. There, General Motors personnel told him that the differential tire pressures, front and rear, in Corvair automobiles were a critical factor in their stability. There followed this exchange:

Counsel: *Were you instructed by your superiors to tell members of the public that tire pressures on the Corvair were vital, important, crucial, and critical?*

Johnson: *No.*

Counsel: *Did you instruct your subordinates to tell members of the public and customers of Washburn Chevrolet that tire pressures on the Corvair were vital, important, crucial, or critical?*

Johnson: *We didn't tell the public this, no.*

Counsel: *Is it true that tire pressures on a Corvair are a must: they have got to be just right for the stability of the car?*

Johnson: *Yes.*

When General Motors called a halt at this point, Judge Percy C. Heckendorf appeared as one summarily deprived of a great drama. He told the court: "I am disappointed from your standpoint, members of the jury, that you are not going to be able to see both sides perform and hear their arguments and go into it. It is a real experience and I would love to have heard that."

Other judges in this country are not likely to be so deprived. Even at the time of the Pierini case, there were more than thirty cases filed against General Motors in the Los Angeles area—all alleging in common that Corvairs went suddenly and unexpectedly out of control. General Motors lawyers knew what they were doing in settling the Pierini case. A jury verdict against the company might have ignited a mass litigation over the entire country at a far faster pace than was actually occurring.

The Corvair's peculiar friskiness had not escaped the notice of the automobile writers and editors who put out those sprightly car magazines that fill shelves in drugstores. To this animated cult of auto lovers, the introduction of the "Waterless Wonder from Willow Run" into a world of automobile design, mired for three decades in the rut of follow-the-crowd compromises, was a dream

realized. The Corvair was different. It was the first modern American automobile to offer a swing-axle independent rear suspension with an aluminum, air-cooled engine mounted in the rear. This was news, challenge, and controversy—the combination that makes for good copy and lively reading. Immediately following the car's introduction in September, 1959, the articles began pouring forth on the Corvair road tests, on its rear-engine placement and its suspension system. By 1963, sports car racer and writer Denise McCluggage could begin an article on Corvair handling idiosyncracies with words that assumed a knowing familiarity by her auto buff readers: "Seen any Corvairs lately with the back end smashed in? Chances are they weren't run into, but rather ran into something while going backwards. And not in reverse gear, either."

Then Miss McCluggage went on to describe a phenomenon she termed a "sashay through the boones, back-end first." "The classic Corvair accident is a quick spin in a turn and swoosh!—off the road backwards. Or, perhaps, if half-corrective measures are applied, the backward motion is arrested, the tires claw at the pavement and the car is sent darting across the road to the other side. In this case there might be some front end damage instead."

Was Miss McCluggage trying to frighten anyone? Not in the least. The vehicle's provocative movements were not to be viewed pessimistically as a danger, but merely as a challenge to driving expertise. The Corvair on a sudden detour could be "brought back" before reaching the point of no return, according to the author, given know-how, anticipation and concentration.

Not all this country's 95 million drivers, however, could qualify for the Shell 4,000 Rally. For the 99 per cent not in Miss McCluggage's class, the automobile "after-market" entrepreneurs provided other remedies. Hardly had the first Corvair hit the highway in 1959 before an enterprising company in Riverside, Calif., EMPI, realized that money was to be made from the Corvair's engineering faults. The company developed, tested and began to sell an accessory rear stabilizer called the EMPI Camber Compensator that was specially designed for installation beneath the rear suspension control arms of Corvairs. Quite simply, it was a bar to help keep the wheels in optimum contact with the roadway.

EMPI advertised broad claims for its device: "keeps wheels on the ground," "designed and engineered to correct oversteer," "increases stability in winds," "reduces body sway," "lowers roll center," "reduces lean on turns." Estimates of the compensator's effectiveness in meeting all of EMPI's declared objectives varied, but there was a solid consensus that these objectives defined very real Corvair problems. And there was widespread endorsement that the compensator was a sizable step forward in safety.

EMPI was not the only company offering stabilizing equipment for the Corvair. Several competitors entered the field as the commentary began to build up from the auto magazines. A reader of such magazines who owned a Corvair could well become interested in extra equipment after seeing such reports as:

—The car can be a handful if the driver doesn't understand its peculiarities.

—The rear weight bias and independent springing together give the car rather unsettling properties at high speeds. Take cornering, for example. The rear starts to swing outward. The rear tires dig in but the shift in weight places them at rather odd angles relative to the pavement. These angles are great enough to increase steering force and, suddenly, the car is negotiating a tighter curve than intended. The phenomenon of oversteer has intruded into the scene.

—Another problem with the Corvair is extreme sensitivity to cross winds. If a sudden gust hits the car, it causes the rear to sway rather severely.

The foregoing comments are made by men who know the Corvair and are enthusiastic about the relative newness of its engineering as far as mass-produced American cars are concerned. Their criticisms are serious and are meant to be taken as such by their authors. But critics are not necessarily crusaders. They never indulge in commentary about the kind of engineering and management operations within General Motors which led to such an unsafe vehicle. In the automobile magazine world such commentary is considered poor taste. It may also be indiscreet. One concentrates on the vehicle, not on its makers.

But the auto magazines and the Corvair specialists did have an effect on General Motors and its Chevrolet division. Not that any defects in the vehicle's handling were suddenly revealed to Chevrolet's engineers. Whatever the inde-

pendent specialists could do by way of testing and modifying, Chevrolet could do better. And when a prosperous business can be built up by small companies on the basis of making Corvairs safer, the obvious implication is that the factory models are dangerous, and that implication might seep beyond the tight little world of auto fans and magazines. It took General Motors four years of the models and 1,124,076 Corvairs before they decided to do something for all unsuspecting Corvair buyers by installing standard equipment to help control the car's handling hazards.

Ever since the Corvair was introduced, General Motors' official reaction to criticisms has been silence. The handling hazards of Corvairs did not proceed from engineering mysteries or the prevalence of one technical school of thought over another. The Corvair was a tragedy, not a blunder. The tragedy was overwhelmingly caused by cutting corners to shave costs. This happens all the time in the automobile industry, but with the Corvair it happened in a big way. What was there for General Motors to say?

The tragedy of the Corvair did not begin that 30th day of September in 1959 when it went on display in dealer showrooms. Nor did it begin when Ford test drivers got hold of two Corvairs somewhat prematurely from a dealer in early September, and had them go out of control at the company's test track. It began with the conception and development of the Corvair by leading GM engineers—Edward Cole, Harry Barr, Robert Schilling, Kai Hansen and Frank Winchell.

Cole, now a General Motors executive vice president, provided the managerial ignition. He was an old devotee of rear-engined cars and right after World War II became involved with a short-lived experimental Cadillac having a rear engine. A prototype, ponderously bedecked with dual tires at the rear for stability, was soon shelved. Cole, however, continued to be attracted by the idea of a rear-engined car and he carried it over with him to Chevrolet and developed a project proposal as he rose in that division's hierarchy. In 1955, as chief engineer of Chevrolet, Cole saw a market for a small, "compact" car. Already an unpretentious import with a rear, air-cooled engine and independent suspension was "pre-testing" the American market with rising commercial success. But Cole and his associates were not in any mind merely to produce an American imitation of the Volkswagen. This was to be a brand new kind of car utilizing the lessons of past models and the advances of the latest automotive technology. When he rose to head Chevrolet division in the summer of 1956, Cole put some of his finest engineering talent to work on preliminary design operations. In the spring of 1957, Barr, Schilling and Hansen made formal presentations before the top-level GM engineering policy committee and the executive committee. It was then that the official go-ahead to build the Corvair was given to Chevrolet. Kai Hansen was made head of the project.

Hansen's group knew well the kinds of priorities which would force them to dilute their engineering standards. First, the new automobile had to sell well and make a "target rate of return" on investment. The way to do this, General Motors management decided, was to make a small, lighter car, with fuel economy, which would seat six passengers comfortably and give a ride comparable to a standard Chevrolet passenger sedan. If these objectives could be achieved, the quest for maximum profit would have reached new frontiers. An automobile achieving a reduction of 1,332 pounds of material, or more than one-third the weight of a standard 1960 Chevrolet, that could sell for only about \$200 less than standard models, would constitute a marvel of production cost efficiency and sales ingenuity.

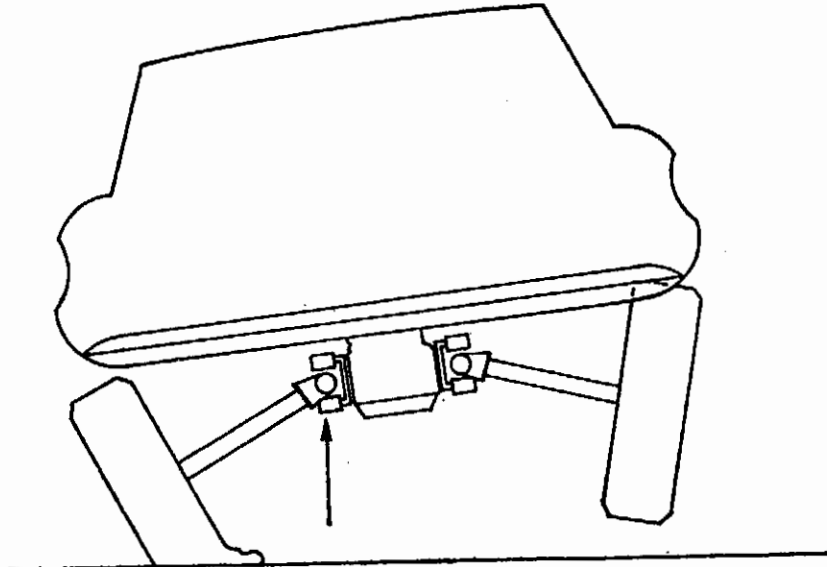
In January, 1960, Hansen told a meeting of the Society of Automotive Engineers: "Our first objective, once the decision was made to design a smaller, lighter car, was to attain good styling proportions. Merely shortening the wheel base and front and rear overhang was not acceptable. To permit lower overall height and to accommodate six adult passengers, the floor hump for the drive shaft had to go. Eliminating the conventional drive shaft made it essential then that the car have either rear-engine, rear-drive or front-engine, front-drive."

Chevrolet engineers decided that the best and most "aesthetically pleasant" utilization of passenger space dictated the use of a rear-engine, rear-drive design. Hansen's job was to get the various factors working for safe handling—principally front and rear weight distribution, tire-pressure differentials and tire design, suspension geometry, and relative dynamic behavior in the front and rear—and still keep a soft ride and maximum cost reduction.

Hansen and his fellow engineers could not have been under any misapprehension as to the magnitude of the handling challenge before them. They had to

deal with by far the heaviest rear-engined automobile in the Western world, having between 60 and 63 per cent of its weight on the rear wheels. This fact alone posed handling problems considerably in excess of those afflicting the smaller and lighter rear-engined European cars. Ocee Ritch, a well-known California auto specialist, describes the consequences of this weight and size difference between rear-engined cars by way of simple analogy: "If you swing a bucket at the end of a short rope and accidentally hit your brother in the head, is he more apt to suffer a concussion if the bucket is empty or full? Similarly, if you increase the length of the rope and swing it at the same speed, will it cause more damage?"

Hansen has never publicly stated what choices he would have preferred to take had he been given more authority against the erosive demands of the professional stylists and the cost department. The secret world of the automobile industry does not encourage free and open engineering discussion of alternative courses of action. But on occasion there is an exposition of what was actually done. Before a meeting of the Society of Automotive Engineers on April 1, 1960, in Detroit, Charles Rubly, a Chevrolet engineer who worked on the Corvair, gave his colleagues the practical considerations: "One of the obvious questions is: 'If you wish more of the roll couple to be taken on the front wheels, why did you leave the stabilizer off?' First, we felt the slight amount of gain realized did not warrant the cost; secondly, we did not wish to pay the penalty of increased road noise and harshness that results from use of a stabilizer. Another question that no doubt can be asked is why did we choose an independent rear suspension of this particular type? There are other swing-axle rear suspensions, of course, that permit transferring more of the roll couple to the front end. Our selection of this particular type of a swing-axle rear suspension is based on: (1) lower cost, (2) ease of assembly, (3) ease of service, and (4) simplicity of design. We also wished to take advantage of coil springs . . . in order to obtain a more pleasing ride. . . ."



Positions assumed by rear wheels of unmodified Corvair showing breakaway, extreme tuck-under and incipient roll-over.

Mr. Rubly's four reasons could be reduced to one: lower cost. Having made such concessions, the Corvair engineers had to compensate for the strong over-steering tendency of the design. This was done by recommending to the Corvair owner certain critical tire-pressure differentials which he should maintain between front and rear wheels. Corvair buyers received this advisory near the

end of the owner's manual: "Over-steer problems may also be encountered with incorrect pressures. Maintain the recommended inflation pressures at all times."

No definition of "over-steer" is given in the manual. The recommended pressures are 15 psi (pounds per square inch) on the front wheels and 26 psi on the rear wheels when cold (defined as "after car has been parked for three hours or more or driven less than one mile") and 18 psi front and 30 psi rear when "hot." According to the Chevrolet division, such pressure differences promote vehicle stability by introducing proper steer characteristics.

It is well established that cornering stability can be improved with any weight distribution, front or rear, by manipulating tire-inflation pressures. But no policy which throws the burden of such stability on the driver by requiring him to monitor closely and persistently tire-pressure differentials can be described as sound or sane engineering practice. The prominent automotive engineer Robert Janeway expressed a deeply rooted technical opinion in engineering circles when he evaluated the use of this human expedient: "Instead of stability being inherent in the vehicle design, the operator is relied upon to maintain a required pressure differential in front and rear tires. This responsibility, in turn, is passed along to service station attendants, who are notoriously unreliable in abiding by requested tire pressures. There is also serious doubt whether the owner or service man is fully aware of the importance of maintaining the recommended pressures."

Corvair dealers and salesmen have widely varying opinions about what are the best tire pressures. It is unusual to find one who adheres to or agrees with the owner's manual recommendations, although recently Chevrolet directives have reiterated the need for following the manual's figures. The apathy among dealers about the function of proper pressures for Corvair handling is quite unsettling. Dealer employees have routinely suggested to inquiries equivalent or near-equivalent tire pressure between front and rear. A Washington, D.C., dealer advised with assurance, "Carry 24 pounds in the front tires and 26 pounds in the rear." The owner's manual was wrong, he said, and concluded with the aside, "Cars are like women. They're all different."

The Corvair driver becomes puzzled on confronting such a range of advice. If he writes to the Chevrolet division for clarification, he receives a reply assuring him that the manual's recommendations are the optimum tire pressures and were derived after exhaustive research and testing. But clearly a more heavily loaded Corvair, such as one with five passengers, requires different tire pressures to minimize differences in tire deflections front and rear. Corvair engineers knew about this problem and considered raising the recommended rear-tire pressures. Once again, however, they succumbed to the great imperative—a soft ride. Rubly recounts it plainly enough: "The 28 psi would reduce the rear-tire deflection enough but we did not feel that we should compromise ride and add harshness because under hot conditions tire pressures increase 3 to 4 psi." Remarks such as these make it difficult to give full credence to company claims and advice dealing with automotive safety. For behind the facade of engineering authority is the reality of the "trade off"—auto industry cant for the bare-bones concessions to the cost and style men. The engineering assurances cannot be taken at face value in such a context of undisclosed compromise.

Another area intimately related to Corvair stability is the load-carrying capacity of the tires. According to the Tire and Rim Association, a tire industry standards group, the maximum-rated loaded capacity of the size tire used on the Corvair is 835 pounds per tire at 24 psi. These maximum-rated loads are derived after compromise between the tire manufacturers and the automobile companies. Yet even under these less than stringent standards, the rear tires of the Corvair are ordinarily overloaded with two or more passengers. In a deposition taken on behalf of General Motors in one of the Corvair cases, tire specialist Raymond B. Stringfield stated that four passengers would definitely overload the tires. He was questioned about the tire *air-out* during cornering. His reply: "The Corvair is, with any passengers at all, very near the maximum-rated load on the rear tires and a sudden thrust [as when a wheel is making a turn] is capable of forcing the bead inward, unless the air pressure is sufficiently high to resist it * * *"

"Under-tired" vehicles are not new to the automobile industry. Since the end of World War I, progressively shaving costs off tires has been one of the cost department's most successful triumphs. A multiplier is operating here; a saving on one tire means savings on all five tires. But although it is not un-

common for other vehicles, overloading tires on the Corvair, in combination with its other unique features, such as weight distribution, can be particularly hazardous.

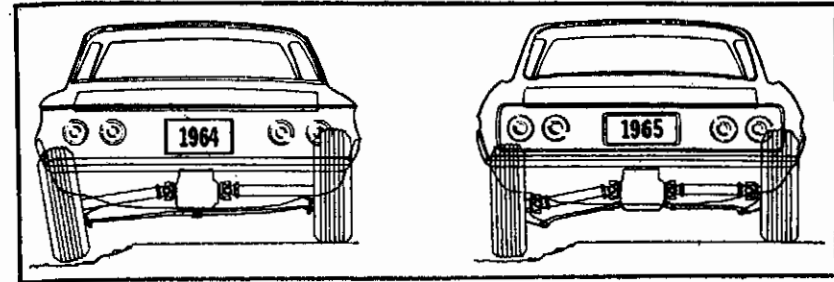
With such a precarious weight distribution and tire load, Chevrolet division's relocation of the spare tire from the front, where it was in the 1960 Corvair, to the rear for the 1961 Corvair Monza, was greeted with sheer incredulity by independent Corvair specialists. The reason for the switch was to increase the luggage space in the front "trunk." This switch not only added to the rear-end weight but exposed the tire in the engine compartment to possibly harmful temperatures.

It would not be fair to say that the Corvair engineers designed a vehicle but forgot the driver. They knew the risks in a design where the car usurps the driving task under certain expected stresses of highway travel. These stresses occur not just in high-speed emergency conditions but in ordinary driving situations within legal-speed limits. The combination of factors which leads to the critical point of control loss may occur with a statistical infrequency, but the traditional integrity of automotive design has been to embrace just such situations. When it serves their promotional interests, the automobile manufacturers show great concern about the most infrequently occurring situations. A continuing illustration is the elaborate defenses which they make for producing vehicles with up to 400 horsepower and a speed capability reaching 150 miles per hour. Is such power and speed hazardous? Not at all, claim the companies, for they provide an important margin of safety in emergency conditions. Apparently emergency conditions include speeds up to and over 100 miles an hour.

The men who headed the Corvair project knew that the driver should be given a vehicle whose handling is both controllable and predictable. They knew that impossible demands could be placed upon the driver by an inherently oversteering behavior. For the past thirty-five years, American cars have been designed to be basically understeering. The Corvair was the first mass-produced exception. Dr. Thomas Manos, the highly respected automotive engineering professor of the University of Detroit, is not teaching Hansen's group anything they do not know when he states his judgment about oversteering automobiles: "The driver must become aware that he has to continually fight the wheel or continuously correct because he is the factor which makes the vehicle a stable piece of equipment."

There is no dispute in automotive-engineering literature that an oversteering, rear-engined vehicle demands more attention on the part of the driver during cornering and other situations where centrifugal forces come into play. The reason for this is plain. John Gordon's explanation is helpful. "If you're making a right-hand turn, there's a tendency for the car to move more to the right than you will anticipate it would in relation to the amount of movement you put on the steering wheel." Robert Janeway, former director of Chrysler's research department, holds that an oversteer condition "is both disconcerting and dangerous except to an expert driver of sports cars or racing cars. The required reversal of steering-wheel direction after initiating the turn is an unstable situation that is difficult for the ordinary driver to handle without overcorrection, with potentially dangerous swings on both sides of the proper curved path. From the standpoint of safety, oversteer is an intolerable condition and has always been recognized as such by the industry in the U.S." The instability of rear-engined oversteering vehicles on a straight road when there are cross winds is also a well-known phenomenon.

During the design stage, Hansen's group tried to counteract the Corvair's inherent oversteer by employing wider wheel rims for increased tire-cornering power and by building some understeer into both front and rear suspension systems according to well-known principles. But it is clear that they were not permitted to go as far as sound engineering practices should have dictated. The type of swing-axle rear suspension used on the 1960-64 Corvairs contained a hazard that was quite independent of the engine location. The rear wheel is mounted on a control arm which hinges and pivots on an axis at the inboard end of the arm near the center of the vehicle. This design encourages tuck-under of the outside wheel on cornering which reduces the wheel's cornering capability and aggravates the oversteer effect. Until the 1964 Corvair, the only component limiting downward wheel travel was the shock absorber—a function which shock absorbers are not designed to serve.



Corvair rear-suspension actions compared. Note that with new models wheels no longer change camber as they move down to accommodate road conditions.

November 1, 1965

What most sets the 1960-63 Corvairs apart from light foreign vehicles, with comparable percentages of weight distribution and swing axles, is the sudden onset of the critical point at which the vehicle goes out of control and frequently flips over. This point is reached by any number of combinations of vehicle speed, radius of curve, and tire-inflation pressures. For example, tests have shown that a Corvair can lurch out of control at about 22 mph, with 26 psi in front and rear tires, and turning on a 50 degree radius of curvature. At higher speeds, a less sharp curve is required to achieve the same rear-end breakaway, but passing maneuvers on a highway could easily involve a severe turn during the swing out and in. Janeway points out that "critical speeds can occur in the normal driving speed range on sharp curves even at moderate degrees of oversteer." Other makes of vehicles can be made to oversteer through drastic tire inflation differentials, or very heavy loading, but as the forces produced mount toward the critical point, they give a warning to the driver in the "feedback" he receives through the steering wheel, if indeed he is not forewarned by the underinflated tires before or as he gets under way.

The Corvair is different in the 1960-63 models and to a lesser extent in the 1964 model. At a critical point of lateral acceleration (or centrifugal force), there is a sudden rear-wheel tuck-under. Technically, the positive camber increases radically 4° to 10 or 11° camber—a horrifying shift causing violent skidding, rear-end breakaway or vehicle roll-over. The change occurs without any warning and in an instant. A variety of disturbing forces may cause this sudden tuck-under—tire blowouts, gusts of cross wind, the second leg of an S-shaped curve or a comparable cornering maneuver. Near the critical point it takes an expert driver to provide the corrective steering action—assuming that highway conditions permit and there are no obstructions, such as another vehicle or a tree. The car was built and sold as "easy handling," "as a family sedan," as a car that "purrs for the girls," according to some of the General Motors advertisements.

In ways wholly unique, the Corvair can become a single-minded, aggressive machine. One factor that has been noticed in many single-car Corvair upsets is that the rear wheel tucks under and the rim touches the roadway. When this occurs no driver can control the vehicle, which will either swerve wildly or, more likely, turn over. Rim scrapings or gouge marks on the road have become the macabre trademark of Corvairs that went unexpectedly out of control.

The Corvair tragedy consisted of a series of lost opportunities. At the time the vehicle was being designed and tested in prototype, the Chevrolet division had fully developed and rigorous proving-ground, laboratory, and theoretical tests for determining vehicle-handling characteristics and directional stability. Proving-ground facilities were equipped with instruments for evaluating the sensitivity of a vehicle and its tendencies to oversteer under a wide range of conditions. At the same time, General Motors had instruments which could even have programed steering responses of the driver and determined the extent of "feedback" that the operator depends upon, from the handling behavior of the vehicle, to govern his driving actions. As far back as 1953, Lyle A. Walsh of the GM engineering staff was writing in the *General Motors Engineering*

Journal about well-established techniques of putting a car's suspension system under the scrutiny of scientific laboratories while the car was in action. In 1953, the same journal contained a report by Chevrolet engineers Robert W. Graham and Ronald E. Shafer about a new simulator to test vehicle suspensions. A year later, Chevrolet's Max M. Roensch described the 4-year-old Chevrolet engineering laboratory, including the elaborate test and development techniques available to supplement the findings of the General Motors proving ground under actual vehicle driving conditions.

Obviously, proving grounds, laboratory and theoretical testing and analysis provided the Corvair engineers with the data to document thoroughly the design limitations of the Corvair before it went into production. Professor Manos, who views the tuck-under problem as the most serious defect of the 1960-1963 Corvairs, has said that he would flunk any student who would not work this calculation out in an automotive engineering course. It is just that elementary and crucial a calculation to vehicle safety.

Yet a safer Corvair suspension system was not forthcoming—not in 1960, not in 1961, not in 1962, and not in 1963. With the receipt of hundreds of written complaints sent to General Motors by people whose Corvairs had suddenly gone out of control, and the real threat of many lawsuits which must have been anticipated by company lawyers, the absence of any corrective action year after year can be explained only by bureaucratic rigidities and abject subservience to cost reduction.

But at last, with the 1964 model, Chevrolet moved to make improvements. A transverse leaf spring in the rear and a front anti-sway bar were included as standard equipment for 1964 models. The leaf spring served much the same function as the EMPI camber compensator and substantially reduced the tuck-under hazard. The 1965 Corvair came out with a more fundamental change in the form of a of a link-type suspension with dual control arms. These improvements represented new company policy, but not engineering innovation. They drew on well-developed knowledge that went back into GM's empirical work during the thirties and extending to the experimental rear-engined race car developed after World War II by Chevrolet's key suspension engineer, Zora Arkus-Duntov.

While General Motors may have finally lumbered into engineering improvements, it would be corporate heresy for the proud industry leader to worry about the hundreds of thousands of Corvairs waiting for the law of averages to catch up with them on some S-curve or breezy straightaway. After all, those Corvairs were already sold.

At the May, 1965, annual shareholders meeting in Detroit's vast Cobo Hall, Dr. Seymour Charles, a General Motors stockholder and the founder of the Physicians for Automobile Safety, rose to plead with management to call back to dealer stations all remaining 1960-63 Corvairs in order that life-saving stabilizing components might be installed. Dr. Charles was not able to arrive at a cost estimate since there is no way of knowing how many such Corvairs are still roaming the highways. (*Motor Trends'* technical editor, Jim Wright, noted in 1963 that the "wrecking yards have a good selection these days.") But assuming that a million cars have survived, the most that such a recall would cost would be \$25 million: equivalent to a half-day's gross sales, or less than five days' net profits (after taxes) to General Motors.

On the platform in front of Dr. Charles were General Motors' board chairman, Frederic G. Donner, and its president, John G. Gordon. Mr. Donner was presiding over the meeting. He deflected the request by inviting Dr. Charles to come up after the meeting to discuss his problems with several of the executives.

Dr. Gordon sat impassively watching Dr. Charles become the first shareholder ever to raise openly at a General Motors annual meeting the question of specific unsafe vehicle design. At the time of GM approval of Chevrolet's Corvair design in 1957, Gordon was group vice president of the body and assembly divisions. This entitled him to membership on both the top-level engineering policy group and the executive committee which approved the Corvair design. He was one of the five men responsible for final approval of the most "revolutionary" automotive package which GM had ever presented to the domestic market. As an automotive engineer with several patents to his credit, Mr. Gordon might have been expected to interest himself in this substantial debut. Yet on April 10, 1965, under deposition, Mr. Gordon stated that he did not recall the Corvair design's being presented

to the engineering policy group. He admitted that he did not know what kind of rear-end suspension was on the Corvair design that was approved for production by his committees.

Gordon became president of General Motors in 1958. In the ensuing seven years he ordered no inquiry into the Corvair design, in spite of rising and unprecedented litigation, owner complaints and detailed confidential company-sponsored investigations of Corvair accidents involving directional instability. He had never heard of the stabilizing equipment produced especially for the Corvair by other, smaller manufacturers.

In his defense, Gordon says his duties were primarily administrative and that he relied on subordinates with technical competence. One such technical subordinate was Charles Chayne, vice president of engineering. In the May-June, 1958 issue of the *General Motors Engineering Journal*, he wrote that one function of the engineering policy group was "to keep informed on the behavior of our products in the hands of our customers so that improvements and corrections can be made if required." He then stated a key principle of General Motors' operating philosophy: "Coordinated control refers to the formulation of overall policy and control of the flow of information. A two-way flow of information exists at each level of management—the downward flow from authority and the upward from initiative."

In the making of the Corvair, there was a breakdown in this flow of both authority and initiative. Initiative would have meant an appeal by the Corvair design engineers to top management to overrule the cost cutters and stylists whose incursions had placed unsafe constraints on engineering choice. There are, however, deterrents to such action. It is to the keepers of those most sacred totems—cost reduction and style—that corporate status and authority accrue. Anyone skeptical about the role of pennies in the production of America's most expensive durable consumer product should heed what Buick's Edward Ragsdale says about putting a new car into production: "Cost estimates are given the closest possible scrutiny, and they frequently are calculated to the fourth and fifth decimal place. The difference of just two cents per car doesn't sound like very much—but at current production rates, two cents a car may mean \$10,000 for the model run. Hence the cost decision has a great bearing upon all proposed changes."

With a spectacular profit record and more than 50 per cent of the domestic automobile market, General Motors is least vulnerable to competitive pressures that might have been the reason for cutting costs at the expense of Corvair safety. It is not commonly realized that General Motors' return on invested capital and its net income as a percentage of its sales are about double those of its nearest competitor—the Ford Motor Company. In 1964, for example, Ford had a net income, as a percentage of sales, of 5.6 per cent and an 11.3 per cent return on invested capital. The comparable General Motors figures were 10.2 per cent, and 20.4 per cent, respectively. These are remarkable differences in American industry for the two leading companies in a highly concentrated product line such as automobiles. It might not have been surprising, if still shocking, to have a Corvair-type tragedy issue from an auto manufacturer whose declining sales and high costs were driving it to the wall. But coming from General Motors, such behavior—and the fact that it is tolerated—is a symptom of a sickness that radiates beyond corporate borders and into society.

On May 18, 1956, almost a year before the Corvair project was launched, GM's prolific inventor, Maurice Olley, filed a patent application (issued as No. 2,911,052 on November 3, 1959) in which he said that he thought of the Corvair-type suspension: "The ordinary swing axle, under severe lateral forces produced by cornering, tends to lift the rear end of the vehicle so that both wheels assume severe positive camber positions to such an extent that the vehicle not only "oversteers" but actually tends to roll over. In addition, the effect is non-linear and increases suddenly in a severe turn, thus presenting potentially dangerous vehicle handling characteristics."

Olley's judgment was ignored.

Six days later, on Saturday, November 6, the same article was reprinted in the *Charleston (W. Va.) Gazette*. The *Charleston Gazette*, however, did include an editorial insert pointing out that General Motors had been the victor in a \$400,000 jury suit, and devoted one-

third of a column to the *Collins* case. The *Anderson* case was not mentioned. (A copy of this editorial follows:)

EXHIBIT 131

[From the Charleston Gazette, Nov. 6, 1965]

GM VICTOR IN \$400,000 JURY SUIT

Since the *Pierini* trial and out-of-court settlement referred to in this article, General Motors has been exonerated in a similar case.

With Stirling Moss, the noted English race driver, testifying as an expert witness for the defense, a jury in San Jose, Calif., found GM innocent in a \$400,000 action brought by a divorcee, Mrs. Doree F. Collins, for damages for the death of her daughter in a 1960 Corvair-truck collision.

In her suit, Mrs. Collins maintains she was driving the Corvair at 45 miles per hour along a straight section of a two-lane highway when the car "fish-tailed" three times, went out of control, and smashed into the truck. She claimed that the accident was caused by the "defective design" of the auto's rear swing axles which allowed the wheels to tuck-in too far and made it "inherently unstable."

Moss testified that he conducted tests and found the Corvair adequately designed for use on American roads by average drivers.

The jury returned a verdict clearing GM and the Corvair after 4 hours of deliberation.

With hundreds of suits reportedly totaling more than \$150 million in claims against GM having been filed across the country, this is the first to reach jury decision and becomes of paramount importance, even though it does not establish a legal precedent, according to *Road & Truck* magazine.

The publication of the Nader article in the November 1 issue of the *Nation*, and the reprinting of this article in the November 6 issue of the *Charleston Gazette* were a matter of great concern to the General Motors lawyers responsible for defending Corvair litigation and raised a number of questions in their minds. The most startling aspect of the article was that it repeated the very same charges with respect to the alleged defect in the design of the Corvair which had been made by the plaintiffs in the *Collins* and *Anderson* cases and had been rejected by the jury in each case.

Yet despite that fact, that both of these cases had been decided in favor of General Motors, more than two and a half months prior to the first publication of the Nader article, Mr. Nader made no reference whatever to either case.

QUESTIONS RAISED BY NADER ARTICLES

The article left the public with the totally false impression that the charges which Mr. Nader made against the Corvair had not yet been considered and passed upon in any court in the country. The article raised a number of questions in the minds of the attorneys responsible for the defense of this litigation.

Who was Ralph Nader? Why was ATLA writing letters suggesting that he be contacted for material and information on the Corvair for litigation purposes?

What was the motivation for Mr. Nader's article published in the *Nation* and reprinted in the *Charleston Gazette*? Why did the article fail to disclose that the *Collins* and *Anderson* cases had been tried and that two juries had already rejected the contentions advanced in his article? Were the Nader article and his forthcoming book part of

an organized nationwide publicity campaign to pretry the Corvair cases by television, newspaper, and magazine, and to precondition prospective jurors in the cases still to be tried throughout the United States?

INVESTIGATION OF NADER IN CONNECTICUT

On November 18, 1965, at my suggestion, an attorney on the legal staff telephoned Royal-Globe Insurance Co., the General Motors product liability insurer, to inquire whether it had used an investigator in Connecticut who might be able to obtain information about Mr. Nader.

We were advised that Mr. William F. O'Neill, 16 Prospect Street, East Hartford, Conn., had in the past made several investigations for the Royal Indemnity Co. Mr. George Leafort of Royal Indemnity was requested to ask Mr. O'Neill to make a check on Mr. Nader to obtain whatever information he could with respect to his qualifications, and whether or not he was a trial lawyer in Winsted, Conn.

Mr. O'Neill sent a report dated November 21, 1965, to General Motors indicating that Mr. Nader had never practiced law in Winsted, although he had practiced briefly in Hartford, Conn., after graduation from law school. He advised that Mr. Nader apparently was not in Winsted, although his mother and father and a brother lived in Winsted at 53 Hillside Avenue.

It was indicated that Mr. Nader could probably be located in Washington, D.C. Although the report indicated that Mr. Nader was regarded as having considerable intellectual ability, it failed to disclose any technical background or experience which would qualify him as an automotive expert.

On November 30 Mr. Nader's book "Unsafe at Any Speed," came on the market. The book was extensively reviewed and attracted widespread attention. The entire first chapter of this book was devoted to a criticism of the Corvair, including a rehash of the *Pierini* settlement, and a reiteration of the same arguments which had been advanced by the plaintiffs and rejected by the juries in the *Collins* and *Anderson* cases.

Against this background it became increasingly important to learn who Mr. Nader was and what were his connections, if any, with the litigants or attorneys in the Corvair design cases:

1. It was possible that Mr. Nader was seeking to build a reputation and become an expert witness in pending Corvair litigation. If so, a detailed knowledge of his background and training would be necessary.

2. Our self-imposed silence on the merits of the issues involved in this Corvair design litigation in order to remain in compliance with the Canon of Ethics was being misconstrued as an admission that this adverse publicity was true. This could affect not only pending litigation, but the reactions and attitudes of potential jurors and our many customers and stockholders. Definite evidence that Mr. Nader was financially interested could be used to counter his attack.

3. If Mr. Nader was financially interested in this litigation as an attorney, or if he was receiving pay or financial assistance from these litigants or their attorneys, then we could consider bringing this extensive and distorted publicity on pending litigation to the attention of the appropriate people having jurisdiction over violations of the

Canons of Ethics. Practically all of the material he was using in his writings to attack the Corvair appeared to come from material collected or obtained by plaintiff's counsel in pending Corvair litigation. ATLA publications were calling attention to his writings and to Mr. Nader as a source of information and material for design and particularly Corvair design litigation.

Definite evidence that Mr. Nader was financially interested could be used to counter his attack.

ROLE OF MISS MURPHY

In a discussion of a proposed investigation of Mr. Nader between members of the legal staff handling Corvair matters of possible sources for developing information on Mr. Nader, Miss Eileen Murphy, a member of the General Motors legal staff who is responsible for our law library, stated that she could ascertain from persons in Washington, whom she knew during the several years that she had served as law librarian for the Civil Division of the Department of Justice, a recommendation or recommendations as to who in Washington might be best qualified to handle such an investigation.

Miss Murphy telephoned Mr. Richard Danner of the Washington firm of Alvord & Alvord on December 22, 1965. She explained that General Motors was currently the defendant in a substantial number of law suits alleging injury as the result of the defective design of the Corvair automobile. She pointed out that Mr. Nader's book "Unsafe At Any Speed" had been published on November 30, which not only criticized the Corvair automobile, but characterized it as unsafe.

Mr. Danner was told that I felt it necessary in order to properly defend the pending law suits, to attempt to find out if Mr. Nader was associated with litigants or attorneys for litigants in the pending Corvair cases, and if he had any qualifications as a potential expert witness in these cases.

Mr. Danner asked Miss Murphy to get in touch with him after the Christmas holidays. This conference was delayed, because of Mr. Danner's illness and travel until January 11, 1966. On that date Miss Murphy met with him in his office in Washington. She gave him biographical data concerning Mr. Nader and a copy of the O'Neill report referred to previously. Then she told him that we thought the investigation should cover the following general areas:

Where does Mr. Nader live and where does he practice law if he is practicing? Had he been employed by the Federal Government? What other employment? Where is the source of his income? What were the details of his background that might affect his writings? Especially does he have any engineering background, since some of his writings indicate some tendency to espouse causes, what facts as to his background and personality might indicate whether his writings were for the purpose of furthering another cause?

What would account for the absence of objectivity unusual in a lawyer in writing about the Corvair? Does he have any connection at all with ATLA or ATLA attorneys? Are there any indications that he might be working as a consultant to lawyers handling Corvair cases against General Motors?

EXHIBIT 132

Memorandum to: Chairman Ribicoff.

From: Jerry Sonosky.

Subject: Testimony of A. Power, General Counsel, General Motors.

At page 1041-2 of the March 22 transcript Mr. Power describes what Miss Murphy told Mr. Danner regarding what General Motors "... thought the investigation should cover...". He also pointed out that Miss Murphy gave Mr. Danner the so-called O'Neill report.

Attached is the last page of a memorandum that was delivered to Mr. Danner by Miss Murphy.

-7-

While at the Department of Labor he was working on a Traffic Safety Committee, chaired by John Conner, Secretary of Commerce. It was an interdepartmental committee. No report was issued that could be found. He was not listed in the Department of Labor Directory of Personnel.

Daniel P. Moynihan was under Secretary of Labor while Nader was supposedly at the Department and is someone Nader holds in high esteem and claims to be influenced by.

Mention the work with Ribicoff Committee - preparing questions for the hearings July, '65 at which Nader appeared with J. Rabe

*S. Rep. Bullock - connection w/ ATLA
Jerry Sonosky Cong. Staff Director*

Does he drink -

Lawyer's Loop - Jim Keely

He has a... habit of sniffing... he had pneumonia on the day of his press conference Jan. 6, 1965 at the Ribicoff Committee

He was involved in an auto accident - he claims too many accidents & injuries.

For identification, the text of the memorandum is as follows:

While at the Department of Labor he was working on a Traffic Safety Committee, chaired by John Conner, Secretary of Commerce. It was an interdepartmental committee. No report was issued that could be found. He was not listed in the Department of Labor Directory of Personnel.

Daniel P. Moynihan was Under Secretary of Labor while Nader was supposedly at the Department and is someone Nader holds in high esteem and claims to be influenced by.

Mention the work with Ribicoff Committee—preparing questions for the hearings July '65 at which FJD appeared with J. Roche.

I.R.S. bank checks—connection w/ATLA.

Jerry Sonosky. Cong. Staff Director.

Does he drink—

Lawyers coop—Jim Kelly

He has nervous habit of sniffing or else he had pneumonia on the day of his press conference Jan. 6, 1965, at the Sheraton Cadillac. He was involved in an auto accident—he claims too inconsequential to discuss.

INVESTIGATION LASTED SIX WEEKS

At the conclusion of the discussion, Mr. Danner said he could undertake the assignment. Miss Murphy said she would return to Detroit and telephone him following a further discussion with me concerning a fee arrangement. Miss Murphy thereafter called Mr. Danner on January 13, 1966, and confirmed the assignment.

Mr. Danner employed Vincent Gillen Associates to do the actual investigation. On February 14, 1966, Mr. Danner was instructed to cease any further surveillance. We were informed that this had already ceased on February 11. On February 28, Mr. Danner was instructed to end the entire investigation.

Reports received by us from Mr. Danner between approximately February 9 and March 14, 1966, did not contain any statements detrimental to Mr. Nader's character. There understandably was some information on unrelated matters which was of little or no value for the purposes for which the investigation was intended.

However, the reports did indicate that Mr. Nader had no educational background or work experience in the field of motor vehicle engineering or technical research, that he did not appear to have the background to qualify as an expert witness in Corvaire design cases; and that he was reported to have had very little trial experience as an attorney.

NADER CONNECTION TO CORVAIRE CASES

The report further disclosed that, according to Mr. Lambert, editor for ATLA publications, Mr. Nader had in fact done consulting work for lawyers who represent litigants in Corvaire design cases against General Motors, such as Mr. David Harney of Los Angeles, counsel for the plaintiff in both the *Pierini* and *Collins* cases, Mr. B. J. Masterson of Clearwater, Fla., counsel for the plaintiff in the *Anderson* case, and Mr. Louis Davidson of Chicago, counsel for the plaintiff in the *Franklin* case.

Senator RIBICOFF. Now, Mr. Power, as a matter of fact, did you ever determine whether Mr. Nader actually represented any litigants in any Corvaire case?

Mr. POWER. As far as I know, I would say he hasn't represented any litigant as such, as an attorney.

Senator RIBICOFF. Did you ever discover or find out whether Mr. Nader had ever solicited any business in the Corvaire litigation?

Mr. POWER. No. We know that he talked with the attorneys in these various cases, and here we are being told by the ATLA editor that he discussed these with the three of them. I don't know.

Senator RIBICOFF. The only way you know is by hearsay?

Mr. POWER. That is right, on an investigation.

Senator RIBICOFF. Did you ever talk to Attorney Harney?

Mr. POWER. No.

Senator RIBICOFF. Did you ever talk to Attorney Masterson?

Mr. POWER. No.

Senator RIBICOFF. Did you ever talk to Attorney Davidson?

Mr. POWER. No.

Senator RIBICOFF. So basically you don't know whether or not Mr. Nader was a consultant or a cocounsel with any of these men who were handling Corvaire litigation for the plaintiffs?

Mr. POWER. No.

Senator RIBICOFF. Now, the *Muncy* case—

Mr. POWER. May I just interject at this point?

Senator RIBICOFF. Yes, sir.

Mr. POWER. I would not have asked them. From my experience they would never have told us anything. Now, let me point out one thing. Every one of these attorneys in these Corvaire cases that are representing plaintiffs, where I didn't know anything about them or other people in the office didn't, we were able to call other counsel in the areas like in Los Angeles, like down in Florida, and get complete information on them, just from what was known generally.

In the case of Mr. Nader, he had no office, we couldn't get any of the information. We never knew whether he was in court or not, and that is what we were trying to find out. He was a mystery man as far as we were concerned as a lawyer.

Senator RIBICOFF. I would say that Mr. Nader isn't a mystery man now, is he? You probably couldn't find out anything about him because he was a young, obscure lawyer who was—

Mr. POWER. That is right.

Senator RIBICOFF (continuing). Doing a job—writing a book—apparently without any extensive practice of law, and, as your investigation disclosed, had been a professor at the University of Hartford for some time; isn't that correct?

Senator KENNEDY. I think in fairness to Mr. Nader we should clear up the description of him as a mystery man. The fact is, as the chairman pointed out, he had just gotten out of law school.

Senator RIBICOFF. He was a young man.

Senator KENNEDY. He wasn't any more mysterious than anybody would be at that age.

Mr. POWER. Well, in Martindale-Hubbell he gave his listing as an attorney, and he gave his address as Winsted, Conn.

Senator KENNEDY. Yes.

Mr. POWER. So we went up there to see if he had an office there and to talk with him. He wasn't there.

Senator KENNEDY. Didn't his family come from Winsted, Conn.?

Mr. POWER. Yes, yes; I am not questioning that. But I have never in all my experience, I have never known of a lawyer listed in Martin-

dale-Hubbell that didn't have an office. That is myself. That is my own experience. I was surprised.

Senator KENNEDY. I introduce you to a second one, the subcommittee staff director.

Mr. POWER. He is listed here because he is working for the Government. That is different. His office is known, because of his position.

Senator RIBICOFF. You have had this investigation made. You used what is known by the investigators as the pretext of a preemployment check to really cover the purpose of what you were trying to find out. You wanted to find out whether Mr. Nader was connected with Corvair litigation. In order to find out you used the pretext of checking his character on the pretext that he supposedly was being checked for a job; is that correct?

Mr. POWER. That is the second phase of the investigation here in Washington. That was not the approach as far as I know in Connecticut.

Senator RIBICOFF. But you had—

Mr. POWER. I am talking about the investigation by O'Neill.

Senator RIBICOFF. But you also used the employment pretext when you hired Mr. Gillen.

Mr. POWER. That is right.

Senator RIBICOFF. And he also used the pretext of an employment opportunity; isn't that correct?

Mr. POWER. That is right.

Senator RIBICOFF. Now, these reports were constantly coming into you, were they not?

Mr. POWER. No. They were coming in—we will get the exact dates, but as my statement reads here, some of them came in on March 9. But there were many of the reports I had not read.

Senator RIBICOFF. But somebody on your staff was getting the reports?

Mr. POWER. Well, yes. They had been reviewed by one or two of the people on the staff.

Senator RIBICOFF. Who on the staff?

Mr. POWER. Well, Miss Murphy received them, and then some of the other men, but I don't know how many. Any one of them had. These are men that are on the Corvair cases that weren't directly connected with this but they were interested in them.

Senator RIBICOFF. But there were a large number of individual reports, and the index indicates that approximately 50, between 50 and 60 people had been interviewed about Nader; is that correct?

Mr. POWER. That is right.

SCOPE OF INVESTIGATION

Senator RIBICOFF. Now, in the course of questioning, the most intimate questions were asked concerning Nader; isn't that correct?

Mr. POWER. Now, on that I want to first point out that from the reports that we got and the understanding of the man who was engaged by Royal up in Connecticut, he did not present any questions, as I understand, along those lines. Subsequently, when Vincent Gillen Associates took over the investigation, the point was made by different people that were talked to—"Now, remember this fellow is not like his brother and his father," and then they commented that they

were anti-Semitic. That is what started some of this. That is where some of this was generated.

Now, I don't know what questions were asked along that line or that this just came up in the course of statements made by people.

Now, this did not happen in connection with the earlier part of the investigation by Mr. O'Neill.

Senator RIBICOFF. But they talked to the next door neighbors. Your investigators talked to the high school principal.

Mr. POWER. Oh, yes; but that still—

Senator RIBICOFF. They talked to friends.

Mr. POWER. I am sorry. For the record I want to point out to you that that was part of the investigation by Mr. Gillen.

Senator RIBICOFF. That is right.

Mr. POWER. That is right.

I was referring to the O'Neill investigation first, I am sorry.

EXHIBIT 133

Memorandum to: Chairman Ribicoff.

From: Jerry Sonosky.

Subject: A. Power's description of O'Neill Report.

On page 1049 of the transcript of the March 22 hearing the inference is left that the initial investigation by GM did not include interviews with teachers, neighbors, etc.

Page 3 of the O'Neill report contains the following:

"According to his teachers he was a very good student and on the honor roll consistently. He was described by the baseball coach (Coleman) as a loner."

Senator RIBICOFF. But I am talking about the all over investigation of this man. I note you talked to the publisher of the newspaper at Winsted where he was a newspaper delivery boy when he was going to high school.

Mr. POWER. Yes.

Senator RIBICOFF. You talked to his associates on the faculty at the University of Hartford. You tried to get ahold of the tax collector. You talked to his friends. You talked to his business associates. You talked to all these people yet the only conversation that the detectives apparently had that had any association at all with the Corvair was with this man Lambert, is that right?

Mr. POWER. That is right.

Senator RIBICOFF. You initiated this extensive investigation. These reports were coming into General Motors employees. You were supposed to be investigating his qualifications as an expert on Corvair and his association with attorneys in Corvair litigation.

PLACING NADER UNDER CONSTANT SURVEILLANCE

Now then, on January 17 this committee announced that it was resuming its hearings, and that Mr. Nader would be a witness. Then for the first time you subjected him to continuing surveillance.

Now, why was there a change? Why did you go from a pretext of an employment investigation, to the type of investigation that included day-by-day and night-by-night surveillance, once it was announced that he was to be a witness before our committee?

Mr. POWER. I want to first get back to—will you read back that first? You were talking about the only thing that we were getting in the way of information was in connection with Mr. Lambert's

statement. We were also investigating his capability, his expertness or anything along the engineering line, and that was one of the things they were going into.

Sure they got statements that didn't say he was an expert. If he had gone to MIT or some place and had a great deal of engineering education, that would be in there, too. But that wasn't in there because there weren't facts of that type. But that is what we had to find out. Oftentimes you make an investigation to find out something specific, and you will end up with a great many statements that don't amount to anything for what you want. But it is the normal course of the investigation.

Now, getting on to the next point you make with respect to the period when this happened, as I understand it, it must have been around February 23, as I understand it, I could be wrong, that the surveillance took place.

Wait a minute. I am sorry, February 4. That began February 4 through February 11, and as a matter of fact when I learned of it, that was the first I knew of it, I told them to stop it. But they had already decided to stop it.

Senator RIBICOFF. It started February 4 and he was to appear before the committee on February 10; isn't that correct?

Mr. POWER. Yes.

Senator RIBICOFF. So a week before he was to appear before the committee and the day after he appeared before the committee, he was under constant surveillance. I mean he was followed to determine where he went, who he associated with, what restaurants he ate in, what he ate, who he talked with, what time he got home, when he went to the bank. He was under constant surveillance.

Now, what did that have to do with the litigation on the Corvair?

Mr. POWER. As far as I am concerned, nothing.

Senator RIBICOFF. Then why was he placed under this type of surveillance?

Mr. POWER. I don't know. It was considered to be the appropriate way to go by the people who were investigating him.

I did not know anything about that at all at the time it happened, and after I heard about it I told them to discontinue any surveillance.

SURVEILLANCE CONSTITUTED HARASSMENT

Senator RIBICOFF. Let me ask you this, Mr. Power. Suppose for no apparent reason you were under constant surveillance for a period of a few weeks. Everything about you was checked. Where you went, whether you were home, whom you associated with, whose automobile you rode in, what cab you took—would you consider yourself harassed, if you were under that type of surveillance for 2 weeks?

Mr. POWER. Well, yes. It would depend on the extent to which I was; yes.

Senator RIBICOFF. Would you feel, too, that if you were aware, without knowing why, that you were being followed around by people and you didn't know why, that there was a sense of intimidation involved?

Mr. POWER. I might have drawn that conclusion. I don't think it is a necessary conclusion.

Senator RIBICOFF. And would you feel that there would be an impugnment of your character if your friends were being asked the most intimate questions about your beliefs, your feelings, your philosophy, your life, your associations? Do you think that this helps or hurts a man's character to have detectives asking these most intimate questions?

Mr. POWER. Well, I don't think it is very good. I don't think it is helpful.

Senator RIBICOFF. And yet basically you were the one, the general counsel of probably the largest corporation in the world, responsible for putting into motion this type of activity against a young man who you said you didn't even know anything about.

Mr. POWER. That is right, yes.

Senator RIBICOFF. And I don't imagine today looking at it you are very proud of your activities.

Mr. POWER. No, I am not proud of that particular part of it. I think one thing must be borne in mind. That this man has written a book in which he charges that we were sacrificing safety for profits, and he alleges that the car, the design of the car is unsafe. We have a few hundred thousand out there, and we certainly wanted to see what proof he had. We have had this issue litigated in two cases in court, and it will be litigated in others in the future. And when a person puts out a book like that, I have never heard of such a thing. I wonder how many of you have where somebody has come out with that type of thing. I am only saying it is unusual, that is all, and that is why we checked into it.

Senator RIBICOFF. Well, you take books. You know it is a very interesting thing. A woman by the name of Rachel Carson put out a book called "Silent Spring." Our subcommittee, as a result of the publication of that book relating to the uses of pesticides and their effect on the entire environment, held a series of hearings, and the chemical industry and the Government made some changes.

Our investigation isn't finished. Some laws have been passed. Some legislation is now pending before Congress. All during the history of this country men and women write books and articles on products. I have read magazine articles and newspaper articles about various phases of this problem—various abilities or lack of safety of automobiles.

Do you investigate everybody who writes an article about a General Motors car?

Mr. POWER. No. We don't find many people doing it on the scale that this was done, and we don't find anybody writing where they are saying that it is unsafe and inherently improper and unsafe design. That is a pretty serious charge.

Senator RIBICOFF. Well, it is.

Mr. POWER. But if someone else writes an article on that, we will check into that one, too. Now, we have got the question of whether or not we are going to stand for disparagement of a product where our own people, engineers have advised us that it isn't unsafe, and they have testified in two cases already in court and a jury has accepted their testimony.

Senator RIBICOFF. Couldn't you write a book or an article saying that the Corvair was safe?

Mr. POWER. Well, I know it is—

BASIC ISSUE RAISED BY INVESTIGATION

Senator RIBICOFF. Basically you are confronted with an issue here. You have the issue of freedom of speech. You have a complicated society we live in, with many esoteric complicated problems, that are beyond the knowledge of the average individual. Suddenly one man devotes a lot of time and energy to study a product. He comes up with the conclusion that this is a defective product or this is a bad product. He may be right or he may be wrong. If he is wrong and libels you, you can sue him.

Mr. POWER. That is right.

Senator RIBICOFF. If you think he is wrong, you can refute him. But the fact remains that in this country 50,000 people are killed every year by automobiles. The fact remains that four and a half million people are injured by automobiles. The fact remains that \$8½ billion are lost in property damage every year because of automobile accidents.

The fact remains that up until the present time there was a seeming indifference on the part of the automobile industry concerning the role of the automobile. The emphasis had been on the driver. The emphasis had been on the road. And suddenly these hearings that this committee has been conducting call into focus the element of what is know as a second collision. It was sort of an esoteric phrase. Most people didn't know and still don't know what you are talking about. But we have finally been able to focus the problem that the automobile has a role to play in trying to save the lives of the people of this country.

I would say that since our hearings started just a year ago today, your company, and I commend you for it, has taken the lead to try to correct some of the defects in automobiles to try to make automobiles safer.

Now, a man by the name of Ralph Nader, or that could be Tom Jones or Bill Brown or Dick Smith comes before a committee of Congress and says that he has some information about basic defects of automobiles. He may be right, he may be wrong, but the committee's staff looked over his material and they felt that here was a man with something to say.

People appear before congressional committees all the time. They are subject to examination and cross-examination. Whoever wants to answer does have a right to answer. This committee always affords equal time to anyone who wants to reply. But in a society as complex as ours, certainly a man with a story to tell, a man with a complaint, a man carrying a banner, a man leading a crusade, a man who feels that there is a wrong in our society that he would like to correct, shouldn't that man have the opportunity to come in open session in front of the press and TV and radio, before Members of Congress, before any spectators who want to be able to come, to be able to tell his story without being followed around, without having his life delved into, without wondering where he lives and who he lives with and what bank he goes to and where he eats and what he eats and what he believes in and what his political philosophy is, what his sex life is, what grades he got in high school, what grades he got in Princeton, what grades he got at Harvard? Shouldn't a person be able to come in and tell his story without having the largest corporation in America hire a series of detectives to follow him around day and night? This to me is as important as any issue we have had before us, and this is a

question of where do we stand in America today and what does freedom mean? What does freedom of speech mean and freedom of expression and the opportunity to tell your story no matter what that story is, in front of a committee of Congress?

Mr. POWER. Well, he certainly should have the right

Senator RIBICOFF. Now, I say this. There aren't many people who would have the courage to stand up. Most people are timid. There are many people with a story to tell, who are reluctant to tell that story, if they feel in the process of telling that story that their whole life and their background will be gone into.

Now one other question. Let us assume that you found something wrong with his sex life. What would that have to do with whether or not he was right or wrong on the Corvaire?

Mr. POWER. Not a thing.

Senator RIBICOFF. What if you found out he was or was not anti-Semitic. What would that have to do—

Mr. POWER. Nothing.

Senator RIBICOFF (continuing). With whether the Corvaire was a good or a bad car?

Mr. POWER. Not a thing.

Senator RIBICOFF. What difference would that make whether he had steak or chicken for lunch, whether the Corvaire was a good or a bad car?

Mr. POWER. Nothing.

RIBICOFF AFFIRMS NADER CHARACTER

Senator RIBICOFF. And what would it have to do with whether he got B's or A's in high school or whether the Corvaire was a safe or an unsafe car?

Mr. POWER. Nothing at all.

Senator RIBICOFF. Well, I think this is the issue that we have before us, Mr. Power, and it is not a pretty one. And also I do believe Mr. Roche when he said he depended upon you or someone else to issue this news release about why Nader was being followed. There is no question, as Senator Kennedy has pointed out, that the entire news release indicates that Mr. Nader was being investigated to determine his connection with litigants and law firms having to do with the Corvaire litigation and his qualifications, background, and association with such attorneys.

Practically the entire investigation had absolutely nothing to do with this, but was an attempt to downgrade and smear a man. And may I say to you, Mr. Nader, that I have read these reports very carefully, and you and your family can be proud, because they put you through the mill, and they haven't found a damn thing out against you.

POWER'S INTERPRETATION OF MARCH 9 STATEMENT

Senator Kennedy?

Senator KENNEDY. Mr. Power, did you agree with the statement of Mr. Roche?

Mr. POWER. Yes.

Senator KENNEDY. I gather, then, that you join in apologizing to Mr. Nader?

Mr. POWER. That is right.

Senator KENNEDY. When this statement was put out on March 9, Mr. Power, were you aware of the fact that this statement was going to be put out?

Mr. POWER. They were working on the statement in Detroit, and I was out of town. I believe I was in New York, and they found me and Mr. Bridenstine, I think, was the one who found me and read the statement to me. I know that as far as I was concerned, I told him that it sounded all right to me, and whether that was the final way it went out, I don't know. But, substantially it must have been.

Senator KENNEDY. Evidently, when they stated that the investigation, and I quote, "was limited only to Mr. Nader's qualifications, background, expertise, and association with such attorneys." Didn't you say to Mr. Roche, "That is not true"?

Mr. POWER. Did I say that?

Senator KENNEDY. Yes.

Mr. POWER. No.

Senator KENNEDY. It wasn't true, was it?

Mr. POWER. What do you mean; it wasn't true?

Senator KENNEDY. Well, the investigation in fact went beyond that.

Mr. POWER. Well, I know, but I didn't know all about the investigation then. We didn't get some of the reports even until after that, and some of the things, I hadn't seen a good many of these.

Senator KENNEDY. Now, Mr. Power, didn't you just testify before the committee that you ordered the end of the surveillance?

Mr. POWER. Yes.

Senator KENNEDY. Then you knew of the surveillance, Mr. Power.

Mr. POWER. I was told by one of the people in our office, and I said, "Call them up and tell them to stop the surveillance."

Senator KENNEDY. Then you knew the surveillance was taking place.

Mr. POWER. I knew it had taken place, but wait just a moment. I am not sure whether that was the night or not. I had told them to stop the surveillance.

Senator KENNEDY. Then you knew the surveillance was taking place.

Mr. POWER. All right.

Senator KENNEDY. It is not all right. I am just asking you.

Mr. POWER. I know. What I want to tell you is that I am around. I was in New York, Detroit, and working on a great many matters, and I had, as a matter of fact, at about that time the settlement of an antitrust bus case and instructions that I had to put out, questionnaires to all our people, and I wasn't sitting down handling this matter.

I would get a report on it. Somebody would just come in, might come in and tell me. That is when I heard about the surveillance. I just said, "Stop it, right away."

Senator KENNEDY. I understand. So you knew the surveillance was taking place.

Mr. POWER. Yes.

Senator KENNEDY. And then when this statement was put out on March 9, which was sometime after you learned of the surveillance, the statement said, "The investigation was limited only to Mr. Nader's qualifications, background, expertise, and association with such attorneys." Didn't you say to Mr. Roche, "We can't say that is correct, that will be misleading, that will be false"?

Mr. POWER. No, I didn't. I didn't talk to Mr. Roche. I talked to Mr. Bridenstine. I didn't think it was—

Senator KENNEDY. Did you say it to Mr. Bridenstine?

Mr. POWER. No.

Senator KENNEDY. You didn't say, "We don't want to put out a false statement"?

Mr. POWER. I don't consider that false.

Senator KENNEDY. It is not accurate, is it?

Mr. POWER. In what respect?

Senator KENNEDY. Well, was it a limited investigation? Wasn't it complete, thorough, and the kind of investigation that was described by Mr. Roche before this committee and described by the chairman?

Mr. POWER. Not as far as I knew at that time. I didn't know all that detail.

Senator KENNEDY. Mr. Power, you just testified before the committee you knew about the fact that there was a surveillance.

Mr. POWER. That is right.

Senator KENNEDY. Then it was more than this.

Mr. POWER. Wait a moment.

Senator KENNEDY. It was not a limited investigation.

Mr. POWER. Wait a moment. Remember that in surveillance they were trying to find out whether or not he had any association with any of these lawyers, and who he dealt with and what the business was. That is part of it. Now ask the investigating agency about that. That is the reason that was being done.

Senator KENNEDY. I understand. I have looked at their statement. I don't think that is the question. The question was this; in your answer to the chairman of the committee, and in your answer to me, you said that you thought it was wrong. You agree with Mr. Roche's statement, and yet even though you knew there was a surveillance going on, that a surveillance had been conducted, you evidently gave approval to putting out a statement that said, "The investigation was limited only to Mr. Nader's qualifications, background, expertise, and association with such attorneys." In fact the investigation went far beyond that.

Mr. POWER. You are talking now specifically on the surveillance?

Senator KENNEDY. I am using that as one example.

Mr. POWER. All right. Let me point out to you that I didn't like the idea of the surveillance.

Senator KENNEDY. I—

Mr. POWER. Just a moment; let me finish.

Senator KENNEDY. But I think it would be well if you answered the question.

Mr. POWER. I am answering the question.

Senator KENNEDY. It will be helpful.

Mr. POWER. I didn't like the surveillance. But that is a matter of judgment as to whether or not you want to do that in connection with trying to get that information. Now I would say don't do it, but someone else could very well, and it is a regular practice—

Senator KENNEDY. Mr. Power, I'm not even raising the question about that. We have already passed on that. You answered those questions of the chairman.

Mr. POWER. All right.

Senator KENNEDY. You said you thought it was wrong. What I am raising is the question about when the statement was put out on March 9. You knew something wrong had taken place. Yet you put a statement out which was misleading, to be charitable about it.

Mr. POWER. Well, I am sorry.

Senator KENNEDY. Why did you give approval of it?

Mr. POWER. I am sorry I don't interpret that statement as being misleading.

Senator KENNEDY. Mr. Roche said he felt it was misleading.

Mr. POWER. Well, I don't.

Senator KENNEDY. You say the investigation was limited only to Mr. Nader's qualifications, background, expertise, and association with such attorneys? Was it in fact so limited?

Mr. POWER. As far as I knew at that time it was.

Senator KENNEDY. Was there a surveillance conducted?

Mr. POWER. Yes.

Senator KENNEDY. Do you think that that is a limited investigation?

Mr. POWER. Yes.

Senator KENNEDY. You think that is a limited investigation?

Mr. POWER. In some cases it is.

Senator KENNEDY. Did you think that was a limited investigation?

Mr. POWER. I didn't like the idea of it.

Senator KENNEDY. Then, it was not a limited investigation.

Mr. POWER. No, no, that isn't the point at all.

Senator KENNEDY. Why did you put an end to it if it was satisfactory.

Mr. POWER. Would you say that the FBI never puts anybody under surveillance?

Senator KENNEDY. I am not even getting into that.

Mr. POWER. I am because I am trying to point out to you—

Senator KENNEDY. Mr. Power, I am just picking up from your answer to the chairman.

Mr. POWER. Yes.

Senator KENNEDY. You stated you thought there was a mistake made. Now, if we want to go back into the question of surveillance, I will be glad to go back into that, but I thought you disposed of that—

Mr. POWER. I said—

Senator KENNEDY. Wait a moment, that you thought there was a mistake made and when you heard about it you ended it. Then you approved of a statement a month later which stated that the investigation was limited, and that statement was sent to the chairman of this committee, was sent to members of the committee, it was sent to the press and put out to the public, and it was misleading and false.

Mr. POWER. Well, I still think that statement is correct. You are saying it is false.

Senator KENNEDY. You don't think that—you think that the investigation was limited.

Mr. POWER. Yes, I do.

Senator KENNEDY. Do you think conducting the surveillance, even though you thought the surveillance was wrong was part of a limited investigation?

Mr. POWER. In many cases, it is, yes.

ROCHE AND POWER DISAGREE

Senator KENNEDY. Then you don't agree with the testimony of Mr. Roche?

Mr. POWER. Well, I don't, if that is what he intended to convey, I don't.

Senator KENNEDY. That is what he intended to convey. That is what he answered.

Mr. POWER. All right, I am just saying that if he did, I don't agree with him.

Senator KENNEDY. What about this other—

The office of its General Counsel initiated a routine investigation through a reputable law firm to determine whether Ralph Nader was acting on behalf of litigants or their attorneys in the Corvair design cases pending against General Motors.

Wasn't it a fact that the investigation went far beyond that?

Mr. POWER. As it turned out, it did.

Senator KENNEDY. You gave approval of the statement.

Mr. POWER. Yes; and I was looking at it from just the way I felt when the investigation was started. I spoke to our man and suggested he call the Royal Indemnity Co. and see if he had anybody that they could use up in Connecticut to check into this.

Senator KENNEDY. Wait a moment.

Mr. POWER. Now wait just a minute until I finish. This was in my opinion an inquiry at that stage of the game. There was no surveillance or nothing else, and there were no questions asked by that man, as I understand it, about sex or anything else in that investigation. Subsequently, when Vincent Gillen Associates, conducted the investigation, statements came from people that were talked to, "Now don't get him mixed up in this thing or that thing." That is the way that ran.

Now, I am only saying to you that when Mr. O'Neill initiated the investigation, at that time it was to me a routine inquiry.

Senator KENNEDY. Wait a moment. You mean that was in November?

Mr. POWER. I know that.

Senator KENNEDY. All right. Then, later on you—

Mr. POWER. Yes, later on it went the other way.

Senator KENNEDY. It went what way?

Mr. POWER. Well, with the surveillance and the rest.

POWER CONCEDES MARCH 9 STATEMENT WAS NOT CLEAR

Senator KENNEDY. That is what we are talking about. This statement that you put out was on March 9, 1966. We are not talking just about the investigation that was made in November. We are talking about the investigation that was made in January and February.

Mr. POWER. Maybe we should have added after the words, "initiated a routine investigation, which developed into an intensive investigation." That would be about it.

Senator KENNEDY. Let me just see as a period of time, how long did the routine investigation go on?

Mr. POWER. That was on about 5 or 6 days, I think.

Senator KENNEDY. How long was the intensive investigation?

Mr. POWER. That began from January 17 until February 28.

Senator KENNEDY. Do you think when a question is raised regarding the investigation of Mr. Nader and you have a preliminary investigation made for 5 days, and you have another investigation that goes on for 6 weeks, then to put a statement out by General Motors that just covers the 5-day investigation, that this is misleading to the Congress of the United States and the American public?

Mr. POWER. I am sorry if anyone was misled on it. Now I just passed on that one over the telephone.

Senator KENNEDY. Wasn't it quite important?

Mr. POWER. All right, sure it was important, but you can get some of these things, and in looking at it, in the atmosphere I was looking at it, it sounded all right to me. Now I would change it today.

Senator KENNEDY. It is misleading.

Mr. POWER. Well, if it is to you—

Senator KENNEDY. Would you agree that that statement was misleading that you put out March 9?

Mr. POWER. I would rather put it that it wasn't clear.

BRIDENSTINE'S ROLE

Senator KENNEDY. Did Mr. Bridenstine suggest that you put it that way? Mr. Bridenstine, would you like to testify before the committee? Do you have something to add? Can I ask him some questions? Did you suggest that he put "not clear."

Mr. BRIDENSTINE. No, sir, not at all. You mean just now, just mentioned it to him?

Senator KENNEDY. No.

Mr. BRIDENSTINE. Absolutely no, Senator.

Senator KENNEDY. Would you want to have a seat?

Mr. BRIDENSTINE. I will be glad to.

Senator KENNEDY. Did you talk to Mr. Bridenstine over the telephone about the statement?

Mr. POWER. I think he is the one I talked to. Is that correct?

Mr. BRIDENSTINE. Yes, I spoke to you, Mr. Power.

Senator KENNEDY. Who drew up the statement Mr. Bridenstine? Could I ask Mr. Bridenstine who drew up the statement?

Mr. BRIDENSTINE. I will assume responsibility for drawing up the statement, based on my discussions with the people in the office who were working on the Corvair, and who knew about the investigation, Senator.

Senator KENNEDY. Did you know about the fact that there had been the surveillance in these reports?

Mr. BRIDENSTINE. In talking to the men—

Senator RIBICOFF. May I say will you please for the purpose of the record, state your name and your position with General Motors for the purpose of the press?

Mr. BRIDENSTINE. Louis H. Bridenstine.

Senator RIBICOFF. Spell your name.

Mr. BRIDENSTINE. B-r-i-d-e-n-s-t-i-n-e. I am Mr. Power's assistant, assistant general counsel.

Senator KENNEDY. First let me ask you do you agree with Mr. Roche's statement and apologies to Mr. Nader?

Mr. BRIDENSTINE. Wholeheartedly, Senator.

Senator KENNEDY. Do you agree with it?

Mr. BRIDENSTINE. Wholeheartedly.

Senator KENNEDY. And apologies in connection with it?

Mr. BRIDENSTINE. Apologies to this committee, to the Senate, to Mr. Nader.

Senator KENNEDY. Let me ask you then when the statement of March 9 was being drawn up, were you aware of the fact that the investigation had gone beyond the question of routine investigation?

Mr. BRIDENSTINE. I knew only what was in the report, in looking at the copies that had come in.

Senator KENNEDY. That indicated, did it not, that there had been a surveillance?

Mr. BRIDENSTINE. I knew that there was a surveillance because there was an indication that there had been a surveillance; yes, sir.

Senator KENNEDY. If you could just answer the question. You are both lawyers. Just say yes or no.

Mr. BRIDENSTINE. Yes.

Senator KENNEDY. You knew it?

Mr. BRIDENSTINE. Yes, I knew it.

REPORTS ON NADER'S SEX LIFE

Senator KENNEDY. And then did you know that they had inquired into Mr. Nader's sex life?

Mr. BRIDENSTINE. No; I did not.

Senator KENNEDY. Did you know that, sir?

Mr. POWER. No.

Senator KENNEDY. Did you read the reports?

Mr. BRIDENSTINE. Yes, sir.

Senator KENNEDY. But you didn't see anything about that?

Mr. BRIDENSTINE. I didn't know anything about the questions. I read the report. I still don't know what they asked.

Senator KENNEDY. Let me rephrase it. Do you know there had been things in the reports regarding Mr. Nader's sex life?

Mr. BRIDENSTINE. The only thing I read in the report was good about Mr. Nader.

Senator KENNEDY. Now, now, now, now, I am not questioning that Mr. Nader's sex life wasn't good. Can we start again then. [Laughter.]

Mr. BRIDENSTINE. Go right ahead, sir.

Senator KENNEDY. Did you see anything in the report regarding Mr. Nader's sex life? Now you remember that?

Mr. BRIDENSTINE. I saw statements that Mr. Nader was manly. Is that what you have in mind, sir?

Senator KENNEDY. Well, let me just say—you know what I am talking about and you know what we are driving at. Did you find anything in the report that indicated anything about his sex life or the fact that he was normal or abnormal? Did you answer questions like that to Mr. Roche of the General Motors Co.?

Mr. BRIDENSTINE. Senator, I don't—

Senator KENNEDY. Let's get along with it. You know it was in the report.

Mr. BRIDENSTINE. I don't want to be facetious but Mr. Roche doesn't ask me these kinds of questions either.

Senator KENNEDY. It might have helped General Motors if he had?

Mr. BRIDENSTINE. Yes.

Senator KENNEDY. You know what I am talking about now. There were things in the report, were there not, that were other than inquiring into his relationship with Corvair.

Mr. BRIDENSTINE. There are other matters reported; yes, sir.

Senator KENNEDY. This information was available to you when you were drawing up the statement.

Mr. BRIDENSTINE. Yes, sir.

Senator KENNEDY. Why did you then put that it was a routine investigation initiated through a reputable law firm "to determine whether Mr. Nader was acting on behalf of litigants or their attorneys on Corvair" and later on say "it was a limited investigation."

Mr. BRIDENSTINE. That was the purpose of it, sir.

Senator KENNEDY. But that in fact was not the investigation, was it?

Mr. BRIDENSTINE. Yes, sir; that was the purpose of the investigation.

Senator KENNEDY. I understand maybe you say that was the purpose, but the fact is the investigation went far beyond that; did it not?

Mr. BRIDENSTINE. The investigation included matters other than this; yes, sir.

PREPARATION OF MARCH 9 STATEMENT

Senator KENNEDY. Then why didn't you inform the Senate of the United States and the American public that the investigation went in fact far beyond this.

Mr. BRIDENSTINE. I will have to give you the background, Senator, if I may. I was called over and Mr. Roche said, "There is an investigation going on." I said, "I heard it myself. I will check into it immediately." Now I wanted to find out the purpose of the investigation, and this, of course, was the purpose.

Senator KENNEDY. Wait a minute. What investigation are you talking about.

Mr. BRIDENSTINE. I am talking about the investigation of Mr. Nader.

Senator KENNEDY. You mean your investigation of Mr. Nader?

Mr. BRIDENSTINE. Yes, sir.

Senator KENNEDY. And then what date is this that you are talking about.

Mr. BRIDENSTINE. This is the 9th.

Senator KENNEDY. But you already knew about the investigation, did you not?

Mr. BRIDENSTINE. I knew an investigation was going on, but I hadn't followed it all, sir.

Senator KENNEDY. You were aware then?

Mr. BRIDENSTINE. It was in the office; yes, sir.

Senator KENNEDY. And you had seen some of the reports.

Mr. BRIDENSTINE. I saw the reports that day. Went through them.

Senator KENNEDY. You had not before that?

Mr. BRIDENSTINE. I may have looked at one earlier if it crossed my desk. I don't recall, sir.

Senator KENNEDY. If you will just be completely candid as Mr. Roche was before the committee, if you will just be completely candid with us, then we can move along.

Mr. BRIDENSTINE. Fine, sir.

Senator KENNEDY. I don't want to prolong this.

Mr. BRIDENSTINE. All right, sir.

Senator KENNEDY. The fact is you didn't just learn about that investigation. At that moment you knew the investigation was going on.

Mr. BRIDENSTINE. That is correct.

Senator KENNEDY. You read a number of reports and you were called in to report further on it.

Mr. BRIDENSTINE. That is right, sir, I was called in and asked about it by Mr. Roche. I checked with the people in the office, and I said, "Here, Mr. Roche, is what happened." We had initiated, the office had initiated an investigation. It was for the purpose of finding out Ralph Nader's association, the primary purpose, with the Corvair design cases, if he were associated with them.

"And what did the investigation cover?" I inquired. "It covered his qualifications and covered his background, it covered his education, his expertise, and his association with these lawyers." And I wrote the words just that way, sir. They said, "What about these alleged harassment things that are appearing in the newspaper?" So I inquired then, although I had read some myself in the Detroit papers, about them, and went through every one. I had our people call Mr. Danner, to find out if any of this was involved, and they said no, on the newspaper reports, and that is why I told Mr. Roche that this is not true.

BRIDENSTINE AND ROCHE DISCUSSED SURVEILLANCE

Senator KENNEDY. Did you tell him there hadn't been any surveillance?

Mr. BRIDENSTINE. No, sir; I did not.

Senator KENNEDY. Did you tell him there had been a surveillance?

Mr. BRIDENSTINE. I don't know if he had asked. If he had asked I would have told him.

Senator KENNEDY. Did you discuss the surveillance?

Mr. BRIDENSTINE. Yes; we did discuss the surveillance now that you mention it, because the surveillance was mentioned in Philadelphia and I believe in the Senate Office Buildings in the articles in the newspapers.

Senator KENNEDY. Why didn't you put that in the statement?

Mr. BRIDENSTINE. Because, sir, I didn't consider that that was the harassment that Mr. Nader had been complaining about in the newspaper, and I really don't know—

Senator KENNEDY. Let me ask you, wasn't it in the newspaper reports, didn't they cover the fact that he was being followed continuously?

Mr. BRIDENSTINE. Yes; but that was not the harassment he complained about. The harassment was these other items.

Senator KENNEDY. Your colleague just sat there 10 minutes ago and answered the chairman's question and said that he would consider that harassment.

Mr. POWER. Wait just one moment. Pardon me now. Wait just one moment. He has mentioned the following—where did you say were those two places?

Mr. BRIDENSTINE. I mentioned the newspaper articles I saw.

Mr. POWER. He is talking about some newspaper articles. Now what were those two locations?

Mr. BRIDENSTINE. I think there were three.

Senator KENNEDY. Any of the incidents of harassment mentioned by him in newspaper stories, such incidents were in no way associated with General Motors' legitimate investigation of its interest in pending litigation?

Mr. POWER. What were you referring to?

Mr. BRIDENSTINE. I was referring to the newspaper articles, Senator, about harassment on a plane from Philadelphia, about harassment in Iowa.

Senator KENNEDY. Did the newspaper articles include harassment at the time of surveillance?

Mr. BRIDENSTINE. I beg your pardon, sir, did it include harassment what?

Senator KENNEDY. By surveillance?

WAS THE SURVEILLANCE HARASSMENT?

Mr. BRIDENSTINE. Is surveillance harassment, sir? I knew about one item in a newspaper article on surveillance.

Senator KENNEDY. But did it say—

Mr. BRIDENSTINE. That I tied in, and that was in the Senate Office Building here on the day after his appearance. That, I knew about.

Senator KENNEDY. Did I understand it that you met in General Motors and decided surveillance was not harassment and that is why you didn't include it?

Mr. BRIDENSTINE. I didn't include surveillance as harassment. There was no surveillance mentioned in any paper, sir, except the surveillance in the Senate Office Building the day after the hearing, and that, I believe, was surveillance by our investigators. There was no surveillance—this is what I was checking out calling them—no surveillance at all in the newspaper article about a flight from Philadelphia, no surveillance at all in Iowa. These were the articles in the paper that I was limited to.

Senator KENNEDY. Isn't it a fact that it mentioned the fact that there had been surveillance in these newspaper articles, and in the other articles that had been written at that time?

Mr. BRIDENSTINE. The surveillance in the Senate Office Building and the surveillance in Philadelphia and the other one.

Senator KENNEDY. Why did you say there hadn't been any acts of harassment?

Mr. BRIDENSTINE. Any what, sir?

Senator KENNEDY. Any acts of harassment.

Mr. BRIDENSTINE. I didn't consider it harassment, sir.

Senator KENNEDY. Your associate over there just answered the questions of the chairman, that he considered those kinds of activities harassment.

Mr. POWER. I said that I didn't like them and I ordered them stopped.

Senator KENNEDY. Then you considered them, in answer to the chairman, the fact that they were harassment.

Mr. POWER. To me.

Senator KENNEDY. Weren't you talking to one another?

Mr. POWER. No.

Senator KENNEDY. You weren't?

Mr. BRIDENSTINE. Senator, frankly, if my understanding of harassment is different than yours—

Senator KENNEDY. No, it is not a question of mind. I reached the conclusion, let me say, in listening to the testimony of you both, that it wasn't really an effort to be frank, candid, or honest with the public when you put the statement out on March 9.

I will read you three statements:

General Motors said today that following the publication of Mr. Ralph Nader's criticisms of the Corvair in writings and public appearances in support of his book, "Unsafe at Any Speed," the office of General Counsel initiated a routine investigation through a reputable law firm to determine whether Ralph Nader was acting on behalf of litigants in Corvair design cases pending against General Motors.

I think we have established quite clearly this was not a routine investigation in connection with the litigants or attorneys for Corvair, but went far beyond that, isn't that correct?

Mr. BRIDENSTINE. Sir, it has been established it did go beyond that, but it was initiated on that basis.

Senator KENNEDY. Yes, but my point is, and I think in fairness to the committee and in fairness to the Congress and in fairness to the general public, those facts should be clarified, and that you should have given all the facts in connection with that. Don't you agree?

Mr. BRIDENSTINE. Well, sir, if you are called in to make a statement, to work a statement up and get it out as fast as you can, and to say that you will cooperate, you put in the statement everything you can. You don't write an indictment on it, if you are in this thing trying to explain it.

Look, anybody would be entitled to a bill of particulars, to find out the charges. I was working from newspaper reports. I was working from the fact that we had started an investigation and I knew about it, sir. And I wanted to make a statement for Mr. Roche, which was not misrepresentation, and I am sorry it is construed as such. It was certainly not intended as such.

Senator KENNEDY. I don't see even how you could say it wasn't intended as such when you knew, both of you knew there was surveillance. You had these reports and I have got the date of them. The reports were sent to you February 7, February 11, February 18, February 28, and March 4.

Mr. BRIDENSTINE. Yes, sir.

Senator KENNEDY. Detailed reports on what was happening.

Mr. BRIDENSTINE. Yes, sir.

Senator KENNEDY. Your statement was not put out until March 9.

Mr. BRIDENSTINE. That is right, sir.

BRIDENSTINE ADMITS STATEMENT WAS NOT CORRECT

Senator KENNEDY. This is not a correct account of what the facts were. You also say in here, "the investigation was limited." That is the word, that is not my wording, that is your wording, 'only to Mr. Nader's qualifications, background, expertise, and association with such attorney?'"

Mr. BRIDENSTINE. That is what it was intended for, sir.

Senator KENNEDY. But that is not what you said. You don't say the investigation was "intended." You state categorically that it was limited, that it was a limited investigation. And, certainly anybody reading that statement would arrive at the conclusion that it was in fact limited and didn't go into all of these other matters that had been reported in the press. Wouldn't you agree that that was misleading?

Mr. BRIDENSTINE. It certainly can be construed as that, sir, and if it will help us any, I will agree that it was misleading, but I will say it wasn't intended as such.

Senator KENNEDY. And—

It did not include any of the alleged harassment or intimidation recently reported in the press. If Mr. Nader has been subjected any of the incidents of harassment mentioned by him in newspaper stories—and that included being followed into the Senate of the United States—Such incidents were in no way associated with General Motors' legitimate investigation of its interest in pending litigation.

Is that a true or false statement?

Mr. BRIDENSTINE. Read that way, sir, that is not correct. This statement is not correct, read the way you read it.

Senator KENNEDY. The point I am making is I think that your company has a special responsibility.

Mr. BRIDENSTINE. I am sure we do.

Senator KENNEDY. In being candid and accurate, and if it hadn't been for the fact that the chairman had called these hearings, as I said to Mr. Roche, and I think both of you gentlemen have to take the responsibility on this matter, if it hadn't been for the chairman calling these hearings and the facts actually being revealed and developed, then that statement would have stood. Because it was put in the Congressional Record and it would have misled the Congress of the United States and it would have misled the American people.

IN RE SAWYER CITATION

Let me just give you one other small example. I mean reading your statement, you quote from *In re Sawyer*. Have either one of you read that?

Mr. BRIDENSTINE. I have, sir.

Senator KENNEDY. What was the finding *In re Sawyer*? What did they do in that case?

Mr. BRIDENSTINE. *In re Sawyer*, am I correct in saying, sir, it was a civil liberties case in Hawaii?

Senator KENNEDY. Well, let me just say—

Mr. BRIDENSTINE. I can get the case. I think I have a copy of it here, sir.

Senator KENNEDY. I have it right here, but I want to just read this.

Mr. BRIDENSTINE. Was that a Smith Act case?

Senator KENNEDY. *In re Sawyer*, on page 3, and it was used in both Mr. Roche's testimony and Mr. Power's testimony.

They say:

As the Supreme Court has so aptly put it, it is impermissible to litigate by day and castigate by night.

I don't disagree with the statement, but is that in fact a statement from the Supreme Court's opinion in that case?

Mr. BRIDENSTINE. I have it here with me, sir. I think that is the court of appeals in California.

Senator KENNEDY. What happened to the case when it came to the Supreme Court?

Mr. BRIDENSTINE. May I get the case out, sir. You are asking me. May I get it?

Senator KENNEDY. I have it right here. Shall I tell you what happened?

Mr. BRIDENSTINE. Yes, please do.

Senator KENNEDY. It was overruled.

Mr. POWER. Was that the issue that it was appealed on?

Senator KENNEDY. No, but—

Mr. POWER. Was that the issue before the Supreme Court?

Senator KENNEDY. Let me just read what you quoted, what you quoted, Mr. Power.

Mr. POWER. Yes.

Senator KENNEDY. You quoted to the committee.

Mr. POWER. Yes.

Senator KENNEDY. This is what you said before this committee. You said:

As the Supreme Court has so aptly put it, it is impermissible to litigate by day and castigate by night.

The Supreme Court said:

But it is said—

And I read from page 635—

The verbalization is that it is impermissible to litigate by day and castigate by night. See 260 F. 2d at 202.

This line seems central to the Bar Association's argument as it appears to have been to the reasoning of the court below and the dissent here is much informed by it, but to us it seems totally to ignore the charges made and the findings.

That is all, Mr. Chairman.

Senator RIBICOFF. Senator Harris.

BRIDENSTINE'S KNOWLEDGE OF REPORTS

Senator HARRIS. As I understand it, gentlemen, you started receiving these reports, the first one, I believe, is dated January 13, 1966. When did they commence to be received at General Motors and by you?

Mr. BRIDENSTINE. Which report are you talking about, sir?

Senator HARRIS. When did you first receive reports from the investigating agency here in Washington?

Mr. BRIDENSTINE. February 7.

Mr. POWER. Are you talking Washington now?

Senator HARRIS. Yes.

Mr. BRIDENSTINE. February 7. You mentioned January 13, sir. Did you mean January 31?

Senator HARRIS. January 13. Here on the investigation it says on this report, "January 13, 1966 through January 31, 1966."

This is one report.

Mr. BRIDENSTINE. The date of the report that I have in front of me is 1-31 so I thought it was a transposition.

Senator HARRIS. Dated January 31, 1966.

Mr. BRIDENSTINE. Yes, that is right.

Senator HARRIS. I wonder when you first received the reports?

Mr. BRIDENSTINE. February 7.

Senator HARRIS. Sir?

Mr. BRIDENSTINE. February 7.

Senator HARRIS. February 7?

Mr. BRIDENSTINE. Yes, sir; I believe that is right.

Senator HARRIS. But who in the office actually received them?

Mr. BRIDENSTINE. Miss Murphy.

Senator HARRIS. Miss Murphy?

Mr. BRIDENSTINE. Yes, sir.

Senator HARRIS. Had you read any of the reports prior to the March 9 press release?

Mr. BRIDENSTINE. As I said to Senator Kennedy, I believe I read the first group that may have come through, but it was not my activity, and I merely passed them along.

Senator HARRIS. You think you probably read the first group.

Mr. BRIDENSTINE. I would say that, Senator HARRIS, yes, sir.

Senator HARRIS. Probably the January 31, 1966?

Mr. BRIDENSTINE. That could be, yes, sir.

Senator HARRIS. And then you did review the reports again as I understand it prior to the March 9 press release?

Mr. BRIDENSTINE. On the 9th I spoke to the men in the office about the reports and went through them hurriedly, yes, sir.

Senator HARRIS. I was just looking through this report, this first report which you read back when it was received and again before March 9, and I notice that on page 2, which is the first page, except the title page, it says: "Nader definitely never manifested anti-Semitic tendencies" and so forth. And then that subject is repeated in other interviews all the way through this particular report, in circumstances indicating as this one does obviously that the question was asked of this witness, who happened to be a professor in the history department in West Hartford, Conn. That apparently was known to you back from the very first report and was again known to you before the press release.

Mr. BRIDENSTINE. In reading the report, sir, you would certainly come up with the idea that some question along that line was asked. How it was phrased, I don't know, or how it was asked.

Senator HARRIS. There is really no way you could avoid knowing that that was continually questioned, is there, from reading the reports?

Mr. BRIDENSTINE. There was no way of my not knowing it was asked, but I don't know how it was asked.

Senator HARRIS. You know it was asked?

Mr. BRIDENSTINE. Yes, sir.

Senator HARRIS. You don't know if it was over and over volunteered, would you?

Mr. BRIDENSTINE. No, I don't think it would be, sir. It wouldn't be volunteered.

Senator HARRIS. On page 13 of this very first report which you read when it was received, and read again before the March 9 press release, page 13 of the report, and that is still in the very first interview that is recorded by the investigating agency:

We had a lengthy discussion with Athanson about Nader's personality, why he was not married, any possibility that he drank to excess or had any vice. Athanson said definitely Nader did not drink, have any known vice, and said he was the type who did not "have time for girls," no effeminate tendencies, and in fact was "on the manly side."

Now, that same statement is made, I just now glanced at this, probably not nearly so much time as you gave to it, page 13, page 20, page 23, page 26, page 30, page 58, for example, and every time the same answer was given. But the question obviously was asked over and over again of various witnesses. You obviously knew that when the report was first received in your office, and you obviously knew that again just prior to the March 9 press release. And do you now still say that in your statement this was a limited investigation?

And if so, what would you call an unlimited investigation?

Mr. BRIDENSTINE. The investigation went beyond, I assume, based on this, its intention.

Senator HARRIS. You knew that in February when you received this first report, did you not, from reading it?

Mr. BRIDENSTINE. Let's put it this way, sir. I certainly should have known it, but I was not following this matter.

Senator HARRIS. You read the report.

Mr. BRIDENSTINE. I got into this matter on the ninth, sir. Some of it had passed over my desk. I did recall it, but on the ninth—

Senator HARRIS. Do you see any connection between these various questions asked over and over again about this man by people who were obviously wondering why they were asked, and the Corvair case or any other litigation?

Mr. BRIDENSTINE. I wouldn't know why they would be asked, sir. I wouldn't know. It would be no information of value to us.

SURVEILLANCE IN CONNECTION WITH HEARINGS

Senator HARRIS. One other thing. On page 21 of this report, the one you first received and read when it was received, and the one which you read again prior to the March 9 press release, it states, the report states that:

We were informed that Nader is a very busy man and expects to testify before a Committee in Albany, New York, about mid-month.

Then it goes on to say that:

We have looked into that and if we have not located him before then we will establish surveillance on him at that time. If located before then, we will do the same as requested on January 28.

In other words, surveillance was about to be instituted at a time which was in connection with testimony or with testimony before a New York legislative hearing. And then later your testimony is that later surveillance was instituted at a time after the hearings here had been announced and were carried on during the hearings before this subcommittee, and were only discontinued after the investigators had been caught here in connection with this surveillance.

Now, do you see any connection between the surveillance and the New York legislative hearing, and the later surveillance and this hearing, since they both seem to be connected?

Mr. BRIDENSTINE. I would say that if the surveillance was started or they attempted to start it when he was scheduled to appear in Albany, this is a decision the investigator or somebody else made.

Senator HARRIS. Yes.

Mr. BRIDENSTINE. And I think it would be coincidental. It was——

Senator HARRIS. You read this report, did you not?

Mr. BRIDENSTINE. It was not ordered by us.

Senator HARRIS. This report was received in the office and read by you personally back when it was first received, and on page 21 it carries that statement, and also says, "As requested, January 26."

Mr. BRIDENSTINE. Not by us, sir. I don't know who requested it.

Senator HARRIS. You don't know who requested it?

Mr. BRIDENSTINE. Not by us, not by us.

Senator KENNEDY. Did you ask to have that cease then when you saw they wanted to start the surveillance?

Mr. BRIDENSTINE. I beg your pardon, sir?

Senator KENNEDY. When you first heard about the surveillance, when they were going to have the surveillance, did you ask them to call it off?

Mr. BRIDENSTINE. No, sir; Senator, I don't recall even reading this part at that time.

COST OF INVESTIGATION

Senator KENNEDY. Mr. Chairman, could I ask how much did this all cost General Motors?

Mr. BRIDENSTINE. Off the top of my head about \$6,700.

Senator KENNEDY. \$6,700?

Mr. BRIDENSTINE. Yes, sir.

Senator HARRIS. Was it this investigation alone or what about the others?

Mr. BRIDENSTINE. I think the bill up there in Connecticut was \$120 or something in that area.

Senator HARRIS. \$120?

Mr. BRIDENSTINE. \$120, sir.

Senator RIBICOFF. The committee will stand in recess until 2. At that time we will have Mr. Nader and I hope Mr. Nader will be here at 2.

(Whereupon, at 1:05 p.m., the committee recessed to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

Senator RIBICOFF. The committee will be in order. The chances are that within the next half hour we may be voting, so when the bells

ring we will suspend for a vote and then immediately return to resume the hearings.

Mr. Nader, will you please take the witness stand? Mr. Nader, I assume, in keeping with the rules of the committee, you have no objection to taking the oath.

Mr. NADER. No, sir.

Senator RIBICOFF. You do solemnly swear that the testimony you shall give before the Senate subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. NADER. I do.

Senator RIBICOFF. You may proceed, Mr. Nader.

TESTIMONY OF RALPH NADER, AUTHOR

Mr. NADER. Mr. Chairman, members of the subcommittee, I owe you a deep apology for being late this morning. I ought to explain it briefly to you and to anyone else in this room. I usually take no more than 12 minutes to come down from my residence to the Capitol by cab. In this instance I gave myself 20 minutes. And I waited and waited and waited and waited to get a cab, and as my frustration mounted, I almost felt like going out and buying a Chevrolet. But that is the simple reason I am late.

I am grateful for this opportunity to comment briefly on the issues before you and the allegations of General Motors with respect to my declarations concerning the hazards of their automobiles.

I do not intend to present the details pursuant to General Motors' probings, on false pretexts given by their agents, into wholly irrelevant aspects of my personal life. I think that has been elaborated already. It is not easy for me to convey in words what I had to endure and what my family has had to endure, as anyone subjected to such an exposure can appreciate. However I certainly stand ready to reply to questions which the subcommittee may wish to ask.

This is not the first, nor the last, time when issues transcending in importance the particular individual find a focus for serious treatment and resolution through an individual case. This happens frequently in the courts, of course, and it is a refreshing reminder of the unique organization of our Federal Government that it can happen also judiciously, though less formally, before legislative committees.

In the few minutes available, I want to make several observations about the importance of dealing with or limiting the kinds of penetrations into individual lives as engaged in by General Motors in this case. I also wish to reply to General Motors' statement of March 9, 1966—a peculiarly convulsive pre-midnight announcement purporting to explain their investigation.

OTHERS RELUCTANT TO SPEAK OUT ON SAFETY

During the course of gathering materials and information for my book, "Unsafe at Any Speed," I was encountering continually a profound reluctance, in not a few cases it could be called fear, to speak out publicly by those who knew the details of neglect, indifference unjustified secrecy and suppression of engineering innovation concerning the design of safer automobiles by the manufacturers. Such