ACI

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AMERICAN COUNCIL ON CONSUMER INTERESTS

Established in 1953, ACCI is a non-partisan, non-profit, incorporated professional organization governed by elected officers and directors.

ACCI Committees work on issues in such areas as consumer education, consumer research and international consumer affairs. Student chapters are located at various colleges.

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The Journal of Consumer Affairs, an interdisciplinary academic journal, is published twice a year.

Advancing the Consumer Interest, focuses on the application of knowledge and analysis of current consumer issues.

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Advancing the Consumer Interest is designed to appeal to professionals working in the consumer field. This includes teachers in higher and secondary education, researchers, extension specialists, consumer affairs professionals in business and government, students in consumer science, and other practitioners in consumer affairs.

Manuscripts may address significant trends in consumer affairs and education, innovative consumer education programs in the private and public sector, reasoned essays on consumer policy, and applications of consumer research, theories, models, and concepts.

Suggested content may include but not necessarily be limited to:

1. Position papers on important issues in consumer affairs and education.

2. Description and analysis of exemplary education, extension, community, and other consumer programs.

3. Research reported at a level of technical sophistication applicable to practitioners as well as researchers. The emphasis of this research should be on its implications and applications for consumer education, policy, etc. The primary question of the reported research should be, "What does this research mean for practitioners?".

4. Application of theories, models, concepts, and/or research findings to problem solutions for target audiences.

5. Articles summarizing research in a given area and expanding on its implications for the target audience.

The *Guide For Submission of Manuscripts* may be obtained from the Editorial Office.

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EDITORIAL COMMENTARY

GRUMBLINGS OF A NEOMUCKRAKER

A disclaimer that probably should have been mentioned several issues ago: *The opinions expressed in this column do not necessarily represent ACCI.*

All consumer educators should read the lead article by Ron Collins, "Cars and Censorship." In teaching my class in consumer issues, one of the things I stress is the influence of advertising on the media—one of the most salient consumer issues of the 1990s. This topic was addressed in a previous editorial in *ACI* and from what I have read recently, the problem is only intensifying. This past summer, there was a boycott of an Ogden, Utah, newspaper because it published a story extolling the virtues of the Saturn when no dealers in Ogden sold the Saturn. The paper promised the dealers that it would be more sensitive in the future.

Difficulties with censorship occur not only in regard to the auto business, but also in other industries as well. A recent article on the fashion industry points out "... that the Chinese wall between advertising and editorial in fashion magazines is crumbling at an ever faster pace." And, "... readers who believe a fashion editor's canny eye determines what merchandise gets featured are simply gullible." ("Editorial Plugs for Apparel Are in Style," *Wall Street Journal*, October 6, 1992). This article implies that fashion magazines actively court advertisers with promises of positive editorial coverage. Not only are fashion magazines involved in censorship, bridal magazine publishers say, "... that if they were to accept rental and discount ads [for bridal gowns] they would risk an ad boycott by [gown] manufacturers and bridal shops ("Bridal Magazines are Criticized for Ban on Advertising From Gown-Rental Firms," *Wall Street Journal*, April 4, 1992). At times, newspapers themselves are the initiators of censorship. Small-town newspaper editors say that a company's refusal to advertise affects editorial policy ("Small-Town Newspapers Retaliate When Wal-Mart Cuts Advertising, October 14, 1992). Educators must address the issue of advertisers' controlling content for two reasons: to make our students look at advertising with an even more critical eye, and to look for the biases within the editorial content of the newspapers, magazines, etc.

* * *

A new administration takes office in January and a top priority for Clinton should be to rid the White House of that shadow government agency, Dan Quale's Council on Competitiveness. Because this council has so much power in the regulatory sphere, I include it in class discussions along with the FTC, FDA, NHTSA, etc. It's time that national leaders stop blaming economic failings on "over regulation" (it was ironic that George Bush had Harry Truman's famous sign, "THE BUCK STOPS HERE," put into storage). Regulation should be judged on its impact on the citizen, not on the right-wing philosophy that government regulation is bad *per se*, except those regulations that favor supporters of the current administration. A *Time* article ("Need Friends in High Places," November 4, 1991) and a *Wall Street Journal* piece ("Many of Competitiveness Council's Beneficiaries are Firms that Make Big Donations to the GOP," October 13, 1992) point out that the main beneficiaries of the council's regulatory screening were not consumers, but large corporate contributors to the Republicans. Please Bill, do this country a favor; take out your sax and play a marching tune for the Council on Competitiveness.

* * *

I have a consumer problem that bugs the h— out of me. Have you ever realized that the vast majority of greeting cards are sexist? That is, most are made for women to send to men. I find cards that include the sentiments that I want to express, but the wording and/or design is unilateral—for women to give to men (or other women). I have developed the habit of buying a card and then changing the wording so the card is appropriate for a male to send. Also, with this sexist policy, there is an implicit message that women are the ones responsible for maintaining the communications that keep relationships alive. Interesting, I find very few women who are aware of this problem. I call upon those consumers who are trying to eliminate sexism in the marketplace to put pressure on the greeting card industry to catch up with the times. I resent being forced to write my own creative messages for every occasion.

* * *

ACI would like to welcome a new unpaid editorial staff person. Lorna Burton Avritch, Chair, Division of Office Technology, Briarwood College, has volunteered to assist with much-needed proofreading. Lorna is involuntarily my sister.

READERS COMMENTARY

CONSUMER ECONOMICS PROFESSORS SHOULD ACTUALLY PROFESS SOMETHING

The term professor historically described a person who had made a profession of faith, often associated with a religion. Times have changed, however, and today's professors are employed more often at secular rather than nonsecular institutions of higher learning. Currently, professors can be defined as teachers in institutions of higher learning who openly affirm, declare, or claim that they have skill and knowledge in a certain specialized field. To exhibit professionalism, the practitioner should possess a common body of knowledge and meet certain standards established by well-accepted experts in a particular field. In addition, professors should try to provide their students with the most current information in the field.

To profess today also means to make choices. In a recent speech, an official of the International Monetary Fund, Alieu B. Demba, stated that "there is no room for ethical neutrality" for professors in higher education. Demba argues that professors can make choices—first by participating in efforts to transform the social and economic institutions of society, and second, by trying to influence, cultivate, nurture, challenge, and shape the minds of their students. Moreover, to be a professor in the United States is to be responsible for the logical implications of one's teaching.

Professors who make the choice not to offer normative views nor—at a minimum—to frame such problems and issues for academic debate for their students are not professing; they are merely practicing passive teaching. Or, as Demba more harshly suggests (and perhaps more accurately), "such professors do not profess anything."

The field of consumer economics lends itself quite naturally to effective utilization of a normative approach to teaching because the subject matter is fundamental to living in society. It deals primarily with consumption—a basic economic activity virtually all people experience every day. Throughout human history, families, peers, employers, government agencies, educational systems, religious organizations, and many others have offered prescriptions for "better living" (efficiently or optionally). Cultural norms, customs, and ceremonies tend to accomplish similar ends—although consumer utility is not always the goal achieved. With so much free advice floating around for students and other adults to consider, it seems not only logical but also obligatory that the real professionals in consumer economics—the experts, yes, the professors!—do likewise.

Examples of prescriptive areas in consumer economics which professors might consider teaching include proper uses of credit, signals of credit overextension, ratio analysis of financial information, principles of wise buying to help obtain "best buys" for consumers, consumer responsibilities, marketplace ripoffs and misrepresentations (even though many are legal), rational steps in the buying process, efficient saving/spending decisions, societal concerns about the environment, cautions about personal consumption of tobacco and alcohol, housing affordability guidelines, legal tax avoidance, determination of minimal insurance needs, and rules of thumb in retirement planning.[1]

No one among the national professorate seems to be calling for prescribing hard-and-fast rules or dictates for consumers that must be followed lest financial ruin and massive consumption dissatisfaction occur. On the contrary, as they try "to influence, cultivate, nurture, challenge, and shape the minds of students," professors need to support the cultural norm in the United States of helping to empower people to make effective decisions themselves. For consumer economics professors this not only requires the teaching of information and guidelines for consumption, but also presentation of alternative approaches to solving problems and issues that can be used by individuals as well as by society at large. Professors who accept the challenge of teaching consumer economics in a normative manner both responsibly encourage their students to live better lives and advocate that the societies throughout the world do the same.

[1] However, future prospects for the field of consumer economics are poor if history is illustrative because consumer economics professors across the country have yet to agree upon definitions of key terms, scope and sequence of the undergraduate curriculum, targeted employers for graduates, or national accreditation standards for colleges and universities.

E. Thomas Garman
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CARS & CENSORSHIP: HOW ADVERTISING PRESSURE CAN CORRUPT A FREE PRESS

Who controls the press? The answer should be apparent—ultimately, those who control the purse. They typically influence it, often shape it, and sometimes openly dictate its content. The answer reveals a striking dilemma—namely, realism in conflict with idealism. Independence, in all its many forms, is implicit in the very notion of a free press. Yet independence can breed contempt when its message offends those who handle the purse strings.

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In contemporary America, advertisers wield much monetary might, which means that too much press independence stands to be surrendered in their name. How notable is their influence on press freedom? How does it affect what the public does or does not hear? And what, if anything, should be done about the problem? Those questions are the focus of what follows.

Today, our freedom is seriously threatened in ways not envisioned by the architects of the First Amendment. First, private economic censorship now presents a profound threat to the acquisition of information. Second, there is a corresponding threat of corruption of the very *process* of providing information. This occurs when the primary aim of providing information is not to further self-rule, but rather to foster private economic gain—often to the detriment of the citizenry.

Censorship is an old problem that is forever taking on new forms. In our times, the threat of censorship is no longer confined to state control. *Private economic forces* have ushered in another kind of censorship, one believed by some to be beyond the reach of the First Amendment. This new unchecked censorship is potentially as harmful as its governmental equivalent because it, too, denies the public access to knowledge that is indispensable for intelligent decision-making.

What is this new private censorship? How does it work? And what, if anything, can be done to curb it and thereby help to place control of information in the citizenry and its press? That, too, is the concern of what follows.

Sometimes, private censorship is direct and functions as a "prior restraint." For example, some advertising contracts have been known to provide for forms of business control over news content. Another example is advertising pressure, before or after the journalistic fact, designed to change the content of what the public hears. By contrast, often the censorship is self-imposed. This occurs when a journalist (typically an editor, producer or publisher) either suppresses or tinkers with a story that affects commercial interests without formal demands by advertisers. Thus, a broadcaster who is afraid of upsetting a major advertiser might elect to quash a story or to refuse a paid political


WITNESS NEWS

announcement, even though the advertiser never expressly object to the story or announcement.

What is most disturbing in all of this is *not* so much the advertiser's direct or indirect demand. More objectionable is that the demand has been met by supposedly independent journalists or publishers who are accountable to the public trust. Equally troubling is that the demand and its fulfillment occur outside of public purview. That advertisers would make editorial demands is not surprising. But that journalists and publishers would surrender editorial judgments to such special interests is intolerable in a nation where the press is supposed to be "free."

The First Amendment grants the press special protection so that it may assist the people in making informed choices about political and economic affairs. This is its constitutional business. When the mission of the press becomes otherwise, one of the First Amendment's most important purposes is undermined.

Many of the problems I discuss in this article seem inescapable in our advertiser-supported media system, particularly in recessionary times. If so, this presents a disturbing paradox: To save our economic system, we must sacrifice our system of free expression. On the one hand, the economic well-being of the print and electronic media is said to depend on some real commitment to some level of content censorship. That, at least, is the "pragmatist" claim of many editors and publishers. On the other hand, such content censorship represents the antithesis of the Madisonian ideal of free expression. That is the idealist claim many reporters make. It is this paradox, as generalized, with which we must grapple.

CAR DEALERS: A CLEAR AND PRESENT DANGER TO AN INDEPENDENT PRESS?

Local stations and newspapers tend to be particularly sensitive about car dealers—a major source of revenue at the local level (Weisbaum, 1990). As reporter Herb Weisbaum observed:

> *We don't even bother with auto-related stories anymore. (Car ads can account for 30 to 40 percent of a station's ad revenue.) These days, even a simple consumer education story on how to buy a new car can draw the wrath of local car dealers (Ibid.).*

Herb Denenberg, a consumer reporter for WCAU-TV in Philadelphia, echoed Weisbaum, noting that

> *Everyone loves it if you're chopping up the city of Philadelphia, but if you're chopping up car dealers or department stores, [many stations] don't want to touch it (Waldman, 1991).*

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The depressed state of the auto industry, which has already reduced ad revenue for local stations, has made advertisers even more sensitive than they were in the past. A former manager of WCCO-TV in Minneapolis put it this way:

> *As the financial situation in broadcasting has deteriorated and the fight for advertising dollars becomes more fierce, the dealers have come to sense their increasing power, and they know their money can make a significant difference in the profitability of a TV station (Platt, 1991).*

In a late 1991 interview, *Seattle Times* executive editor Michael Fancher pointed out: "Advertisers tend to be more sensitive in tough times. The car dealers' sensitivity is up right now.... The other thing they want is impact... trying to get a position [in the paper] that's more dramatic. Clearly that's going up a lot (Seattle Times, December 16, 1991)." What this means is that local media attention to issues involving car dealers may turn out to be sporadic at best and deceptively silent at worst.

When reporters do take on car dealers, the reaction is often swift—and long lasting. Consider these all-too-common examples:

- KARE-TV in Minneapolis killed an innocuous story by veteran reporter Bernie Grace in April, 1991, because station owners were worried that it would offend car dealers. The story "was hardly a muckraking exposé," wrote Steve Waldman of *Newsweek* (Waldman, 1991). The Grace story reported that several cars had been stolen out of a few dealers' lots. Janet Mason, KARE Vice-President for news, maintained that the piece was canceled not because of fears of alienating advertisers, but because it lacked "key information" and "perspective." When questioned by one reporter, however, she declined to elaborate or give examples (*Daily Spectrum*, December 9, 1991).
- Car dealers in St. George, Utah, boycotted the St. George *Daily Spectrum* in 1990 after the newspaper published an article advising readers on how to bargain for a new car. The article, adapted from an annual "how-to" essay published by *Changing Times* (now *Kiplinger's Personal Finance*), reported that auto dealers expect to make a 7.5-percent markup or more on a new car, but that "hard bargaining can cut that margin in half." It went on to suggest that the buyer's target price be close to dealer cost because the recession had created a buyer's market (Stein, 1991).

Local car dealers complained that the article was unfair and promptly organized an advertising boycott. The *Spectrum* retracted the article, apologized and blamed an editor for exercising "poor judgment" (*Daily Spectrum*,

December 9, 1991). The publisher said an apology was in order because, "[w]hen you start telling someone they should not make a profit, you have a real problem, especially in a small city" (Stein, 1991). "I'm sympathetic with those who ran it" despite the heat said Theodore Miller, editor of *Kiplinger's Personal Finance*, in a recent interview. "But I'm not sympathetic with those who apologized. The information in the article was accurate" (*Kiplinger's Personal Finance*, December 1991).

Silvia Gambardella, a popular consumer reporter for WCCO-TV in Minneapolis, has noted that 80 percent of the complaints she receives from viewers are about cars (Platts, 1991). Yet Gambardella and others allege that she temporarily lost her job with the station in 1990 because local auto dealers were upset about her coverage of car-related problems. Among Gambardella's stories: an exposé of faulty seatbelts; tips on how to save money by buying used cars from rental agencies; and the experiences of a disgruntled Ford owner who took his complaints through the state's "lemon law" arbitration process. "We vote with our dollars," said Tom Bennett of Tousley Ford in White Bear Lake, Minnesota, in reference to the lemon-law piece. "If I'm out trying to tell a good story about what I'm doing and paying $3,000 for 30 seconds, and someone's calling me names, I'm not going to be happy," he added (Platt, 1991).

After Gambardella's stories aired, car dealers demanded a meeting with the station owners, and she was fired. Only after outraged co-workers protested did the station rehire the dauntless reporter. She continued to generate tough exposés on car dealers, protected in part by her high visibility (Platt, 1991; interview with Gambardella, May 1991; Waldman, 1991; Gambardella, 1991). The troubling story of this reporter ended, however, on a far more positive note than those of many of her colleagues who took on local advertisers.

- A few years ago KRMD radio in Shreveport, Louisiana, invited Remar Sutton, a former car dealer–turned consumer advocate, to advise listeners during a morning talk show about strategies for buying a new car. Halfway through the live interview, station manager Gene Dickerson cut Sutton off, saying, "You've just cost me $40,000 in advertising." The show went on without Sutton, and Dickerson later accused the consumer advocate of having "verbally assault[ed]" car dealers (memo from KRMD, May 9, 1989). That same day the station ran repeated apologies for Sutton's remarks and urged listeners to patronize Shreveport's car dealers[1] (FCC Petition to Deny, File no. 890201 WT/WU).

- Noel Morgan was hired as a consumer reporter for WLTW-TV's "Five On Your Side" news segment in Cincinnati in 1984. That year Morgan began work on the first of a series of exposés of car-dealer scams. He focused on one local dealership that was also a major advertiser. (Because of lingering sensitivity, he has asked that it not be named.) "If you asked any car dealer in town who the biggest sleaze was, they'd all point to that guy," recalled Morgan. "All of [the other dealers] were really supportive of my stories about him" (Interview with Noel Morgan, December 18, 1991).

His station manager wasn't. Among the stories that were either killed or toned down were investigations into reported schemes that misled consumers about their credit ratings, resulting in increased costs; bait-and-switch tactics and other kinds of false advertising; and odometer rollbacks. To document the bait-and-switch story, members of Morgan's team posed as car shoppers. The state attorney general went on-camera to say that baiting and switching was illegal. "But the station manager said we could never single out anyone," Morgan recalled.

The same thing happened when Morgan began researching odometer rollbacks by a dealer who purchased cars at auctions. While tracking down car titles, Morgan was called into a meeting with the station manager, the news

director, his lawyer, and the dealer's sister, who was a judge. According to Morgan, the judge claimed: "There is no legitimate reason to mention our family name in conjunction with this story." Morgan countered that the scams "happened at your dealership," but, he recalled, "it was me against all of them" (Interview with Noel Morgan, April 1992). The story ran without any mention of the dealership—moments after the dealer's ad aired.

In 1989, Morgan says dealers were actually given permission to prescreen a story he did on cars that were advertised as factory official cars but that had, in fact, been rentals. "The dealers were allowed to put their responses on cue cards and practice them until they got it right," he said. While the story was being prepared, the dealers organized a boycott. "I made the boycott part of the story, but that was abandoned," stated Morgan (Ibid.). The boycott ran its course, and the dealers returned to the station. "That was my last car dealer story," explained the frustrated reporter.

In the end, Morgan's contract was not renewed. After five years with the station and two Emmy awards, he was out of a job. He put it simply: "They didn't want the kind of thing I did any more" (Interviews with Noel Morgan, April 1991 and December 18, 1991).

Noel Morgan's superiors, like others in the media and newspaper business, were not alone in not wanting that "kind of thing" any more. In all of the examples mentioned, advertiser pressure prevented the press from telling the public what it had every right (and even need) to know. It was as if car dealers and the press had made a pact in which First Amendment values were cast aside when it came to stories about car dealers. The following additional illustrations make the point in even bolder relief.

- At the *Southern Illinoisan* in Carbondale, sports writer Greg Severin and an editor were suspended for three days without pay after car dealers complained about a satiric remark Severin made in his regular column. In criticizing the beleaguered St. Louis Cardinals pitching team, Severin compared the pitching staff to "a bunch of used-car lemons polished up for sale by slick and shady dealers." According to Severin, one of his superiors at the paper told him and his editor, "[t]hey want a pound of flesh for this one." The paper published a 14-paragraph front-page apology to local car dealers (Cooper, 1990; conversation with Greg Severin, December 19, 1991). Some readers protested that the publisher was "buckling under" to advertising pressure. Another called publisher, Peter Selkowe, "Peter Sellout." Severin and his editor left the paper within months after the incident (Letter to the editor, *Southern Illinoisian*, April 11, 1990; interview with Greg Severin, December 19, 1991). Selkowe, too, has suffered from the fallout. "I still get hate mail," he said in an interview (Interview with Peter Selkowe, January 23, 1992).

- In 1986, a consumer reporter at a West Coast NBC affiliate developed a story about flood-damaged cars that were being sold as new by one area dealer. The dealer was also one of the station's major advertisers. Although a story aired advising consumers to watch out for flood-damaged cars, the reporter was told not to name the dealer. The news director warned him that if he aired the story, "people would lose their jobs." The reporter believed that the threat meant his job in particular. No dealer was named. "Advertisers, particularly car dealers, wield a lot of clout in California, a car-crazy culture," he said (Off-the-record conversation, May 1991).

- Dennis Washburn, a longtime columnist with the Birmingham, Alabama, *News*, was fired in 1991 after he was publicly quoted about the influence of auto dealers on his paper. A 23-year veteran and self-described company man, Washburn wrote for the paper's "Auto World," an upbeat advertising section designed to attract local dealers. At his paper, he said, "[e]ditorial would be extra careful about doing an exposé.... They probably would not jeopardize such a substantial portion of our advertisers unless it was really something major, something that affects people's lives. Their pocketbooks are something else entirely." As one Birmingham journalist put it, ironically, Washburn had been "writing advertorials since before the word advertorial was coined. He just shamelessly wrote about the people who would advertise.... The joke around here is, Dennis Washburn told the truth for the first time in 20 years and got canned for it (Singer, 1991; Kuntz, 1991; interview with Dennis Washburn, 1991)." (A spokesperson for the newspaper would not discuss the matter, saying only that Washburn "retired" with full pension and benefits.)

- In 1990 the Hartford, Connecticut, *Courant* published an article by consumer reporter Anthony Giorgianni advising car buyers to beware of hype during the "Presidents' Weekend" sales blitz, but also noting that "experts agree that not all dealers are out to rip off consumers" (*The Hartford Courant*, February 17, 1990). Furious car dealers pulled some of their ads. In response, publisher Michael Davies sent a letter of apology to the dealers, pointing out that throughout the weekend, "there were several stories that were either positive or thoughtful accounts of how dealers are working to offset the bad times" (*The Hartford Courant*,

February 22, 1990 and March 1, 1990).

Some auto dealers and industry spokespersons readily admit to using ad dollars to influence editorial content. For example, at a convention of classified ad managers, Frank Anderson, president of the National Automobile Dealers Association (NADA), told the audience that a perception of antidealer bias could lead to lost ad revenue. While he also urged the ad managers to work with NADA and local dealers to discourage misleading advertising, his message was clear: Reporters had to be more "balanced," or there would be "bottom-line losses" (Stein, 1990). Assuredly, here "balanced" is code for saying biased—in car dealers' favor, of course.

Can the public get the sort of hard-hitting information it needs to make informed decisions about purchasing major price tag items such as automobiles? Yes—at least sometimes. For example, the March 1992 issue of *Kiplinger's* ran a consumer-friendly story about a former car salesman and the tricks of his trade (Henry, 1992). But for every such story, there are dozens upon dozens of examples to the contrary. In June of 1992, for instance, the head of a company that "provides unbiased information to help consumers buy cars" complained that a number of newspapers had refused to run the company's paid advertisements. Such ads, it turned out, "would not be conducive to our market," as one newspaper spokesperson put it. Why? Because "dealers might be offended" (Letter to Editor, *Consumer Reports*, June 1992). Similarly, David E. Davis, editor of Automobile Magazine, apparently had to do nothing more than make a passing remark in a January 17, 1992, speech to the Washington Auto Press Association to offend General Motors bigwigs. The remark, about the desirability of GM cars, resulted in the auto giant's yanking all its ad dollars from Davis's magazine.

A FEW RECOMMENDATIONS FOR A FREER PRESS

Where can we go from here, and what can we do? This essay, with its limited focus, cannot, of course, provide all the answers. Nevertheless, it might help highlight the problems to point to the need for action, including political action. What follows are some recommendations, collected in part from print and broadcast journalists, college and law professors, and from a variety of people in the public-interest community.

PUBLICIZE THE PROBLEM. Once the problems of private economic censorship and the corruption of the journalistic process are exposed, the public can contest them. This move alone significantly increases the social costs of journalistically objectionable practices. Such efforts—in tandem with what is already being done by *Extra!*, the *Columbia Journalism Review*, the *Washington Journalism Review*, *Advancing the Consumer Interest*, and *Consumer Reports*, among others—should draw increased public attention to the problem. Of course, the additional assistance of the mass media in covering such stories is far more important. In addition, the problem—in all its ethical and practical forms—deserves special attention in college and university journalism, communications, and marketing classes.

Once the problems of private economic censorship and the corruption of the journalistic process are exposed, the public can contest them.

There is a corresponding need for those in the journalism and consumer communities to establish a *watchdog group*. The primary mission of such a group would be publicly to expose editors or publishers who sacrifice journalistic integrity for commercial gain. This is especially important when a reporter, editor, or publisher either loses or stands to lose his or her job because of some legitimate complaint. Such a group could voice its public disapproval, organize protests, and even (if possible) take out paid political spots in the print and electronic media. Such a watchdog group would let publishers and editors know that there are real costs to commercial censorship, beyond the obvious ones of advertising dollars.

FURTHER INVESTIGATE THE PROBLEM. In order to further document the nature and magnitude of the problem, a major national survey should be done. The survey would elicit anonymous and other responses from reporters, editors, publishers, and producers. The survey would inquire into the prevalence and character of advertising-related censorship and related practices that undermine journalistic integrity. The results would be published.

ORGANIZE A CONFERENCE. In light of the magnitude and complexity of the problems this report discusses, it would be useful to convene a major workshop-type conference involving reporters, editors, publishers, producers, media owners, advertisers, consumer spokespersons, scholars, and others. The purpose of the conference would be twofold: to further discuss and identify major problems; and to develop appropriate voluntary guidelines for the media. A report of the proceedings would be published.

ESTABLISH VOLUNTARY GUIDELINES GOVERNING THE PRACTICE OF PRIVATE CENSORSHIP. In the spirit of voluntary action, certain clear, forceful, and largely uniform guidelines should be established

to discourage advertiser censorship, whether it is imposed directly by the advertiser or indirectly by editors, publishers, or producers. Various print and broadcast associations could propose such guidelines, with input from academics in the field of journalism. Among other things, such guidelines could provide those who are adversely affected by censorship with a definite referent for legitimate objection. Such voluntary action could supplement, not supplant, regulatory reforms of the kind this report proposes.

CLEARLY IDENTIFY ADVERTISERS' INFLUENCE. The "law should require that any content that an enterprise pays to influence should [clearly and continuously] identify the firm as an advertiser or sponsor." At the very least, this would provide evidence of a definite intent to regulate the presentation of advertorials, infomercials, and product placements. Similarly, video news releases provided by corporate public relations departments should likewise be identified. The same kind of public disclosure would be required whenever advertisers or agents acting on their behalf make content arrangements with an editor, publisher, or producer. Such a law would have to be clearly defined and carefully tailored, aided by regulatory rule-making.

Part of the mission of this article is to help create a public and professional climate more conducive to standing up and speaking out against those who would silence or censor free speech. Just as the press has positioned itself to stand up against unwarranted governmental power, it must now position itself to do something far more difficult: It must prepare itself to stand up against the tyranny of commercialism. Of course, the likelihood of public denial is great, and the possibility of well-financed opposition is even greater. Indeed, the prospect of retribution against insiders who speak out is greater still. It is against this backdrop that the old Madisonian struggles to survive in our new commercial world.

"Auto dealers pull ads to protest news story." *The Hartford Courant.* Sect. D. p. 2.

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* There may be a certain irony in the press's critically reporting on the very thing that occurs within its own editorial walls. Still, this healthy development shows that we have not yet reached the state of some grand cadal when it comes to private economic censorship.

[1] The media Access Project, a Washington-based advocacy group, filed a petition to deny the station's license renewal on the grounds that it failed to serve the public interest when it removed Sutton from the air.

COUPONS: ARE THE SAVINGS AN ILLUSION?

Price reductions offered via coupons have been criticized on the grounds that they discriminate against certain groups of consumers who face high time pressures. Furthermore, they have been criticized on the grounds that they increase prices, create demand surges, and provide only illusionary savings.

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However, many consumer educators have recommended and endorsed the use of cents-off coupons. This study uses data collected in Columbus, Ohio, during 1990 to describe the net savings accruing to consumers from using coupons. The results indicate that most consumers realize real net savings from using coupons. For the light to average coupon user, these savings are relatively modest. For the heavy coupon user, these savings may account for as much as 14 percent of weekly grocery expenditures.

For decades consumer educators and advocates have been recommending purchasing practices that enable consumers to reduce the cost of grocery market transactions. These practices include the use of unit pricing, buying on sale, buying goods featured in special offers, buying generics, and using coupons. However, little attention has been paid to the extent to which consumers have benefited from this advice. A review of the most recent literature indicates that the use of coupons is a highly popular purchasing strategy, with approximately 80 percent of households using coupons on a regular basis.

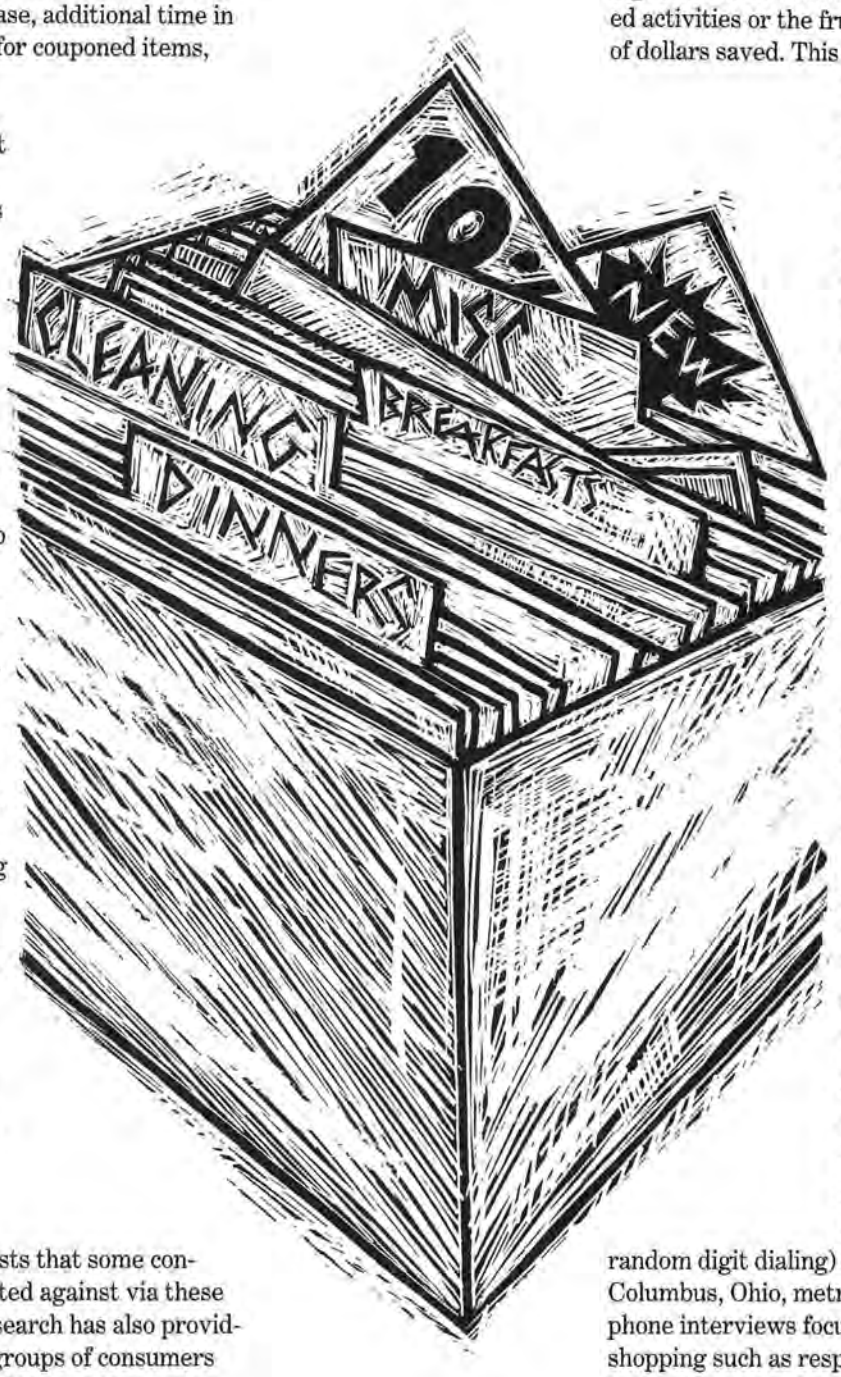
The growing importance of coupons and other forms of price promotion in consumer markets has sparked considerable interest in the area of marketing, examining the comparative effects of coupons and other promotional forms on overall consumer response. The popularity of coupons among consumers has sparked fierce competition at the retail level. Marketers have responded to consumer demand for coupons by offering double and even triple face-value reductions on some products in order to ensure store patronage. In addition, retailers are now dispensing coupons in the store (e.g., in an on-shelf dispenser) to encourage purchases. This empirical evidence seems to suggest that coupons appear to meet the market test of satisfaction and value in that they are widely used. In addition, the continued growth in coupon distribution and redemption offers strong evidence of consumers' high level of interest in coupons. (Bawa and Shoemaker, 1987; Blattberg et al., 1978; Levedahl, 1988; Neslin and Clarke, 1987).

However, since the early 1970s a group of consumer researchers and advocates have debated the virtues of this form of promotion from the individual consumer's perspective and, more broadly, in terms of social welfare. (Uhl, 1982; Antil, 1985; Peckham, 1978; Cotton and Babb, 1978; LaCroix, 1983; Varian, 1985). They note that what is striking about this type of market activity is the complicated mechanism by which price reductions are offered via coupons, as compared with other price promotional efforts. Coupons are issued at some real cost to the manufacturer/retailer, which is passed on to the consumer in the form of a higher price (albeit a trivial amount, according

to Antil, 1985). The consumer then expends some amount of money, time, and energy in redeeming coupons. Antil (1985) holds that while coupon redemption may appear to be a trivial and mundane task, it often requires a nontrivial investment on the consumer's part in setting up a system to process coupons, i.e., the purchase and scanning of print media for coupons, the clipping, organization, and storage of coupons prior to purchase, additional time in the store to scan shelves for couponed items, and coupon redemption (Shimp and Kavas, 1984).

While consumers do not appear to view their active involvement in this type of market transaction process negatively, the true (net) monetary benefits of this type of activity are complicated and difficult to estimate. Uhl (1982) holds that coupons contain a built-in bias. Consumers have a clear financial incentive to redeem coupons and, in fact, are penalized if they don't use them, but these incentives distort perceptions by creating the illusion that one is getting "something for nothing." Uhl (1982) also holds that for many consumers this may well be an accounting error, and that the time and energy cost invested in the activity of redeeming coupons are an economic dead weight loss resulting in consumer's donating their time and energy cost in service to the coupon sponsors.

With respect to the time cost of using coupons, the potential exists that some consumers will be discriminated against via these types of transactions. Research has also provided evidence that certain groups of consumers are significantly more likely to use coupons than other groups (Zeithaml, 1985). Furthermore, it has been suggested that the "thrill of dealing" (Antil, 1985) or feelings of being a "good shopper" (Schindler, 1984, 1988a, 1988b) that result from coupon redemption in fact lead consumers to undertake economically irrational behavior. Some researchers suggest that coupons are attractive to consumers because they provide an additional psychological element of gaming, as well as feelings of beating the system and of achieving control over the price paid for consumption goods (Schindler, 1984).



To date, there has been no empirical evidence to resolve this debate. Little is known regarding consumers' time and effort in coupon-related activities or the fruits of this labor in terms of dollars saved. This paper attempts to address this issue. The empirical analysis focuses on describing the real savings accruing to consumers from coupon use, net of consumer "cost" in terms of time and monetary outlay devoted to coupon redemption. In addition, the analysis investigates whether or not these savings vary systematically with the time constraints faced by consumers—which would provide tentative evidence of discrimination in the market.

METHOD

DATA AND SAMPLE. Data for this analysis were obtained in Columbus, Ohio, during 1990, as part of a larger study of grocery shopping behavior designed and funded by Ohio State University's Department of Marketing and collected by Spencer Research Associates of Columbus. The study consisted of a telephone interview and follow-up mail survey administered to a random sample (generated by random digit dialing) of households in the Columbus, Ohio, metropolitan area. The telephone interviews focused on aspects of grocery shopping such as respondents' store patronage, reasons for store patronage, weekly expenditure on groceries, time spent grocery shopping (including traveling time) and various buying strategies—including price comparisons, purchasing items that are on special, and coupon use. The mail survey contained a battery of statements about consumers' attitudes regarding the functioning of the grocery market, per-

ceptions about the quality of service in this market, perceptions about price dispersion in the market, and attitudes toward coupon usage.

Telephone interviews and mail surveys were completed by the primary grocery shopper in each household. Six hundred telephone interviews were completed, and the response rate to the the mail survey was 62 percent (N=373). An observation was used in the analysis if it had complete information from both the telephone interview and mail survey—this resulted in a sample of 373 respondents. Missing data and other data-related problems further reduced the final sample size to 358 respondents.

DESCRIPTION OF THE SAMPLE. The characteristics of respondents who were light coupon users (who clipped fewer than eleven coupons per week) and heavy coupon users (who clipped eleven or more coupons per week) are as follows: Primary grocery shoppers in most households (85 percent) were female. Nonusers of coupons were more likely to be male. The average age of respondents in the sample was 46.2 years. Mean age and educational level were not found to differ significantly according to coupon use intensity. Coupon users differed from non-coupon users in that a significantly higher proportion of nonusers were unmarried. Coupon users were more likely to have young children in the home and to have larger families. Average household size was 2.1 for non-users and 3.0 for heavy users of coupons. Heavy coupon users were more likely to be in the labor force and working full-time. Mean yearly household income for the sample was $41,500. As a category, heavy coupon users were found to have a slightly higher mean yearly household income ($46,100). On the average, coupon users spent more money on groceries per week ($73.90 for heavy, users compared with $52.50 for nonusers), and more time in the grocery store (107.9 minutes for heavy users, compared with 79.4 minutes for nonusers).

As may be expected, heavy coupon users were found to have higher estimated average weekly savings from coupon use ($10.60 for heavy users, compared with $4.80 for light users), to spend more time in coupon clipping per week (29.1 minutes for heavy users, compared with 15.3 minutes for light users) and, to spend more time in the supermarket each week redeeming coupons (10.7 minutes for heavy users, compared with 5.0 minutes for light users). Heavy coupon users were more likely to spend out-of-pocket for coupon source material. Light coupon users, on the other hand, were found to be more discriminating in their choice of which coupons to clip and redeem. Light coupon users had a mean threshold value of 19 cents on a coupon whereas heavy coupon users were prepared to clip the coupon for a 15-cent savings.

With respect to the time cost of using coupons, the potential exists that some consumers will be discriminated against via these types of transactions.

EMPIRICAL MEASURES AND ANALYSIS

NET COUPON SAVINGS. In the telephone interview respondents were asked if they used coupons in their weekly grocery shopping. In addition, coupon users (defined as those who clip at least one coupon per week) were asked to estimate the dollar amount saved each week by using these coupons, their estimated weekly grocery expenditure, and the time and money expended in processing and redeeming coupons (i.e., money spent on coupon sources such as magazines and newspapers bought especially for their coupon inserts, and time spent searching for, clipping, filing, and redeeming coupons). A variable was created to measure the proportion of the consumer's weekly grocery expenditure saved by using coupons, and the net of the "cost" to the consumer (money and time cost) of processing the coupons. The variable was calculated as follows:

$$CSAVE = \frac{SAVE - [COST1 + (COST2 + COST3 + COST4)^{*}W)]}{GEXPEND + SAVE}$$

where:
- CSAVE = Net proportional saving from coupon use
- SAVE = Reported dollar amount saved per week by using coupons
- COST1 = Weekly dollar cost of coupon sources
- COST2 = Amount of time spent scanning print material for coupon sources each week
- COST3 = Amount of time spent handling coupons each week (clipping, sorting, filing, etc.)
- COST4 = Amount of extra time in store to redeem coupons each week
- W = Dollar value of consumer's time in coupon activity
- GEXPEND = Reported weekly grocery expenditure (in dollars)

Of course, the value an individual places on his or her time in using coupons (W) is highly subjective. The most commonly used measure for the value of time in the literature is an individual's wage rate, i.e., an individual's "price" of time in the labor market. However, it could be argued that coupons are clipped, handled, and redeemed at times of the day other than prime work time, e.g., while watching television or after work in the supermarket. In this case the consumer's price of time in coupon-related activities may be subjectively valued at less than his or her market wage rate (or potential market wage rate if the individual does not work for pay). Because the specific measure chosen for the consumer's price of time has a significant impact on the estimate of the cost of using coupons, a fairly conservative estimate of

the price of a consumer's time was used—the minimum wage rate ($3.65). If, in fact, the value that a consumer places on his or her time in these activities is greater (or less) than this minimum value ($3.65), the estimate of net proportion of weekly grocery expenditure saved via using coupons is at best a lower (upper) bound estimate of this proportion.

FACTORS PROPOSED TO AFFECT COUPON REDEMPTION AND SAVINGS. In order to test for possible discriminatory effects of coupons against consumers who face time constraints, four variables were created to measure the degree of time pressure the primary grocery shopper in the household experienced. The first of these variables (HHSIZE) indicates the number of individuals in the respondent's household. Larger household sizes are assumed to be associated with larger food expenditures and greater time needed for shopping in general. The second time variable was a dummy variable created to indicate the presence of children under six years of age (KIDS6) in respondents' homes. The presence of preschool children in the home is assumed to be associated with specific time pressures and shopping constraints. The primary grocery shopper's participation in the labor force can severely constrain the time available for household production, including grocery shopping. A dummy variable was created to indicate whether or not the primary grocery shopper was employed in the labor market (EMPSTAT), and an additional variable indicated their actual hours of labor market work per week (LFPHRS).

Additional time constraints may be experienced by individuals who engaged in specific types of occupations. For example, professional workers may be expected to work at home after hours, in which case their work responsibilities encroach on their home activities. While a measure of the occupation of the primary grocery shopper was not available in the data set, a proxy measure, the market wage rate of the individual, was used in the analysis. The wage rate of the primary grocery shopper (LWRATE) was entered into the model in its natural logged form.

CONTROL VARIABLES. The marketing literature reports several demographic characteristics that have been associated with coupon use. In order to study the relationships of interest we have mentioned, demographic characteristics were controlled for in this analysis. They include total household income (LHHY), availability of personal transportation (CAR), marital status (MSTATUS), age (AGE), and sex (SEXF). An additional variable (AGESQ) was included in the model to capture the reported non-linearities between coupon use and age (Lee and Brown, 1985). In addition, based on findings from previous research, which provides evidence of a non-linear relationship between coupon use and household income, household income was entered into the model in the natural logged form. The following model was estimated using the SAS general linear models algorithm:

CSAVE = f [(HHSIZE, KIDS6, LFPHRS, EMPSTAT, LWRATE); (LHHY, CAR, MSTATUS, AGE, AGESQ, SEXF)]

RESULTS

Results indicate that the mean *net* proportion of grocery expenditure saved by using coupons varies from 1.83 percent for light coupon users to 14.5 percent for heavy coupon users. These results indicate that, even after taking into account the "cost" of couponing, savings from coupon use are real rather than *illusory*. However, for light to moderate coupon users (those who redeem fewer than eleven coupons per week), these savings tend to be modest in size. On the other hand, consumers who engage intensely in using coupons (those who redeem more than eleven coupons per week) can accrue fairly significant savings, even after the "cost" of their engaging in this activity is taken into account.

Results indicate that the mean *net* proportion of grocery expenditure saved by using coupons varies from 1.83 percent for light coupon users to 14.5 percent for heavy coupon users.

Table 1

Summary of results of regression on net proportion of weekly grocery expenditure saved by using coupons.

	Sign of Effect	Significance of Effect
HHSIZE	+	N.S
KIDL6	+	.05
LFPHRS	+	.01
EMPSTAT	−	.01
LWRATE	+	N.S
LHHY	−	.05
CAR	−	N.S
MSTATUS	−	N.S
AGE	+	.05
AGESQ	−	.01
SEXF	+	.01

Primary household shoppers who were employed were found to accrue significantly lower savings from coupon use. (See Table 1.) This result may indicate that employment outside the home creates time pressures that constrain home production activities such as using coupons. However, contrary to what was expected, respondents who worked longer


10% OFF
2 FOR

hours in the labor force were found to accrue significantly higher net savings from the use of coupons. In addition, neither type of occupation (as indicated by the wage rate) nor household size was found to be significantly related to coupon savings. These results seem to indicate that coupons do not unambiguously discriminate against consumers who face high time pressures.

Contrary to predictions, respondents who have families with children under six were found to accrue significantly higher net proportional savings from coupon use. It may be that there are more coupons for products purchased for younger children (e.g., diapers, baby food, etc.) than for other products, and that these coupons are, therefore, more readily available to consumers—and that they thereby reduce the cost of their redemption.

DISCUSSION

The results of this study are encouraging for consumers. They indicate that, according to a conservative estimate of cost of time in using couponings, consumers do in fact realize real benefits from coupon use. For light to moderate coupon users, the savings are relatively modest, but intensive coupon use appears to render significant savings in the supermarket.

In evaluating the results of this study we should also point out that the estimates of coupon savings are highly dependent on the price of time chosen in such an evaluation. Assuming rationality on the part of the consumer, it would appear that consumers perceive a "cost" of their time well below their market wage rate (even perhaps below the minimum wage rate). It is highly likely that even the minimum wage rate estimate used in this study overestimates these costs, and that time invested in coupon clipping and redemption may be "cheap" time to the consumer in the sense that there are few alternative opportunities for such time. If this is indeed the case, then the estimates of coupon savings reported in this research are grossly *underestimated*. In addition, it should note that coupon savings are in some sense better than ordinary income to the consumer in that they represent "pre-tax" real income. This fact would further inflate the savings estimates presented in this research.

The overwhelming popularity of using couponings over other purchase strategies suggests that, aside from the economic costs and benefits, the process by which coupon savings are generated offers additional benefits to the consumer. These benefits relate to enjoyment of the activity itself, the sense of control in determining the outcome of market transactions (intrinsic benefits), or some higher-level extrinsic benefits such as success in individual role fulfillment (i.e., perceiving oneself as a smart shopper, a knowledgeable consumer, or an efficient homemaker) as suggested by Schindler (1988a).

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TURNING THE EBBING TIDE OF CONSUMER STUDIES ENROLLMENTS

In the Autumn 1991 issue of ACI, W. Keith Bryant and Edward J. Metzen issued a challenge to ACCI members to begin a dialogue in the pages of the ACCI publications about the possible causes of the vulnerability of consumer studies programs—as well as possible cures. Bryant's and Metzen's thesis is that consumer studies programs are in trouble because the programs typically fall in the "crack" between disciplines and because administrators, who increasingly face budget pressures, fail to recognize the worth of such interdisciplinary programs. Bryant and Metzen(1992) also argue that because of these fiscal pressures the "crack" is closing, even though enrollments in the majors have increased over the past decade (p.5).

But are consumer studies enrollments generally increasing around the country? Bryant and Metzen touch on consumer studies enrollments and curriculum issues only in passing. As a continuation of the dialogue they began, we will take a closer look at enrollments and curriculum issues.

Undergraduate level enrollments play a crucial role in the stability of any academic program. Programs that are under attack can better defend their position if they have large numbers in their undergraduate programs. In this article, we present information on trends in undergraduate degrees awarded in the consumer field and outline some strategies faculty in contracting programs might use to bolster low enrollments.

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EVIDENCE OF ENROLLMENT PROBLEMS

What are the trends in consumer studies enrollments? The absence of good time-series data makes it difficult to answer this question. However, the data we were able to find suggest that enrollments in consumer studies programs are declining rather than rising.

We obtained data on undergraduate degrees awarded for 1977-78 and 1984-85 and enrollments for 1991-92 from the Association of Administrators of Home Economics and the

National Council of Administrators of Home Economics (AAHE/NCAHE). From these data, we calculated mean and median degrees awarded per program each year, (These figures appear in the table.) The figures we present should be interpreted with some caution for several reasons. First, AAHE/NCAIIE may not survey all of the undergraduate consumer studies programs in the country. Second, the names of specialization categories in the AAHE/NCAHE data base changed across time; thus, we had to make judgements about how best to standardize categories (see Table, Footnote b). Finally, because we had only enrollment data (i.e., stock data) for 1991/92, we had to make estimates of how those figures would translate into numbers of graduates (i.e., flow data) for 1991-92 (see Table, Footnote c).

Trends in Bachelors Degrees Awarded

	1977/78[a]	1984/85[a]	1991/92[b]
Number of Programs Graduating > 1 Student	40	47	38
Number of Graduates	466	527	413[c]
Mean Graduates/Program	11.7	11.2	10.9
Median Graduates/Program	8	7	5

[a] Data are derived from the Association of Administrators of Home Economics, *Selected Home Economics Degrees for September 1, 1977–August 31, 1978 and Enrollment Data for Fall, 1978* and *Selected Home Economics Degrees for September 1, 1984–August 31, 1985 and Enrollment Data for Fall, 1985.* In 1977-78, the degree category used was "Home Management, Family Economics." (None of the twelve degree categories included the term "consumer.") In 1984-85, the degree category used was "Home Management, Family Economics, and Consumer Studies."

[b] Data come from the Food and Agricultural Education Information System (FAEIS), *Fall 1991 Enrollment in Colleges of Home Economics and Academic Year 1991/1992 New Faculty Profiles in Home Economics.* Two enrollment categories were combined for 1991/92 data: "Family/Consumer Resource Management, General" and "Consumer Economics."

[c] The 1991-92 data we had access to listed *enrollment* rather than *degrees awarded.* To project numbers of degrees awarded from enrollment data, the bachelors enrollment numbers were divided by four under the assumption that the average student would complete his or her bachelor's degree in four years.

Although the figures in the table should be viewed with caution, they do reveal some tentative and sobering pieces of information. For example, they show that the average undergraduate consumer program is extremely small.[1] In terms of trends, the data also reveal that the number of undergraduate degrees awarded per program in the "consumer/family economics/home management" field declined somewhat between 1977-78 and 1991-92.

Looking at the mean number of graduating students tells only part of the story. We get additional insights by calculating the median number of graduates with BA or BS degrees per program. In 1977-78, the median was eight. By 1984-85, that figure had fallen to seven. And in 1991-92, the median number of bachelor's degrees granted in any program that awarded a degree to at least one student was only five. The fact that the median is lower than the mean suggests that the majority of schools are graduating very few students (i.e., the distribution of graduates is skewed toward zero). Indeed, in 1977-78, 37.5% (15) of the programs awarded five or fewer bachelor's degrees. By 1984-85, that figure had risen to 46.8% (22 programs). And in 1991-92, 57.9% (22 programs) of the programs that awarded a degree to at least one student graduated five or fewer students.

This preliminary evidence suggests that student (and perhaps employer) interest in traditional consumer studies programs is waning. Left to its own accord, this "market" will eventually reach a new, lower equilibrium. Speculation on what this new equilibrium might be is a risky endeavor. Nevertheless, if only the programs that awarded 20 or more degrees per year survived, then based on the 1991-92 figures, only *five* of the thirty-eight undergraduate programs listed in the AAHE/NCAHE data base would remain viable.

Looking at the mean number of graduating students tells only part of the story.

WHAT CAN BE DONE?

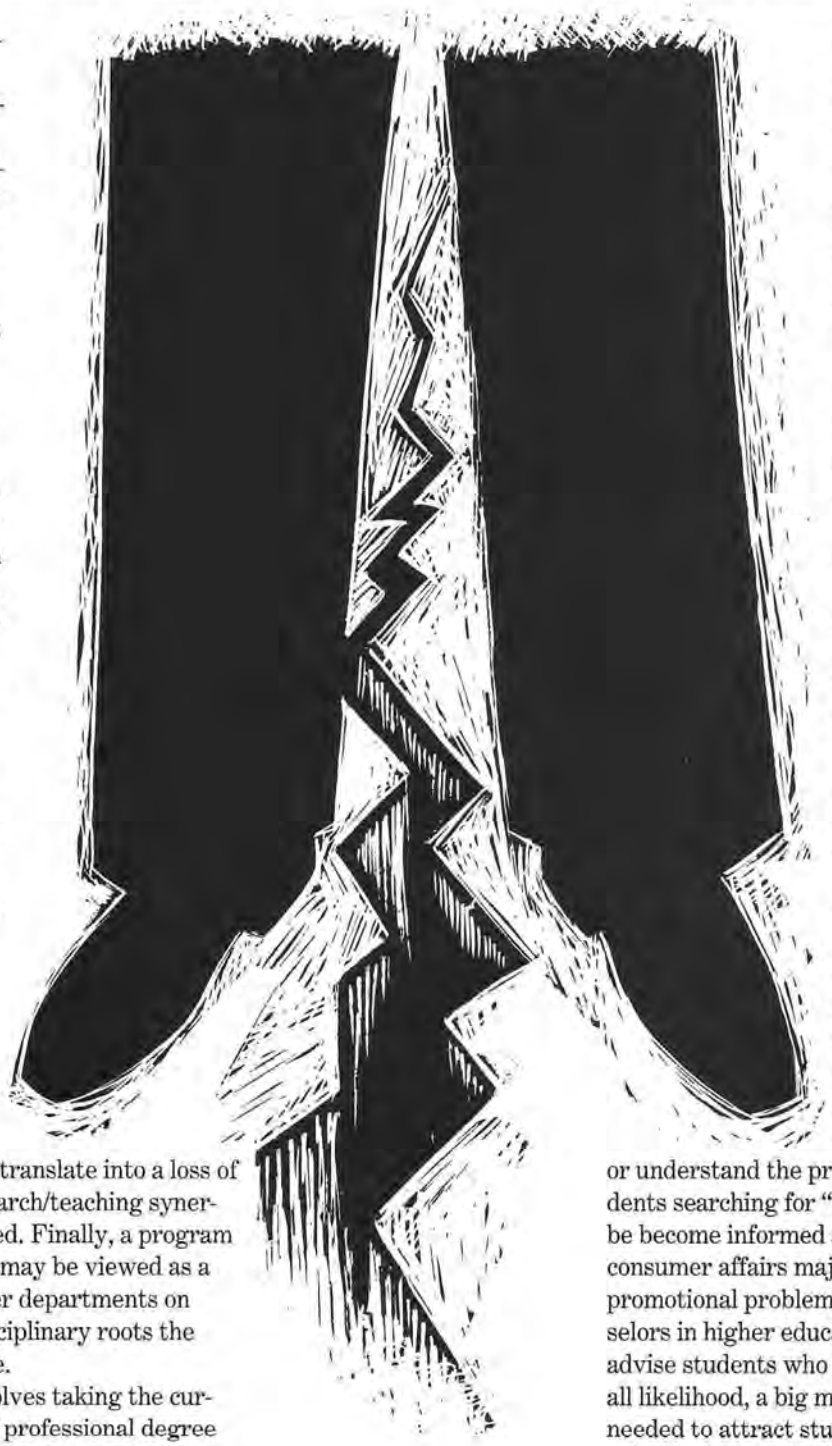
While the forecast is quite pessimistic, it is important to remember that it is based on the assumption that departments remain passive. Actions can be taken to alter the scenario. Departments that want to survive and grow during this transition must take a critical look at their undergraduate and graduate curricula. They need to assess the extent to which their current program meets changing market conditions and if it doesn't, what they can do to adapt.

We believe that programs may take one of three different directions as they attempt to respond to the changing marketplace. First, a program may move in the direction of developing large undergraduate service courses that fulfill general education requirements. This may bolster a program's student credit hours in the short run. However, for many programs this could be a risky strategy in the long run, since department resource allocations are usually closely linked to the number of majors in the department.

Second, a program may move its curriculum away from the "crack" areas of the interdisciplinary programs Bryant and Metzen (1992) identified and move toward a root discipline. In

most instances, this would mean moving toward offering students training in economics, with applications focusing on consumer and family issues. The model for such programs can be found in agricultural economics departments where the curriculum centers on economic theory with the applications drawn from farm production, agribusiness, and international development.

There are a couple of advantages in moving a curriculum toward a root discipline. Students and faculty find it easier to describe such a curriculum to potential employers because the terminology is more familiar. In addition, a program heavily invested in a particular disciplinary framework will find it easier to build a viable graduate program because its students can draw on a common theoretical core. A final advantage of this type of program is that it would result in the development of some basic disciplinary courses (e.g., Introduction to Consumer Economics). Such courses can also service general education requirements of students in allied fields (e.g., business or communications) and thus may increase overall class enrollments.



Moving a curriculum toward a root discipline may have some disadvantages. A department/school may not have the critical mass of faculty needed to offer a disciplinary based program; as a result, new faculty may need to be recruited. In addition, such a shift may translate into a loss of any interdisciplinary research/teaching synergies that previously existed. Finally, a program that adopts this approach may be viewed as a competitive threat to other departments on campus that share the disciplinary roots the program seeks to embrace.

The third approach involves taking the curriculum in the direction of professional degree programs such as those offered in business, family therapy or restaurant and hotel management. Degree programs can be targeted in these directions and marketed to new students using adjectives like "vital" and "leading edge" (Garman, 1992). For those of us in consumer studies, two developments in the professions appear to be natural options for new directions in programming: consumer affairs in business, and financial counseling and planning.

1. CONSUMER AFFAIRS IN BUSINESS. Perhaps one of the most striking developments of the 1980s was the relative rise of consumer affairs in business. At the same time employment prospects in the consumer public sector (traditional target of much of the teaching in consumer studies undergraduate courses) were drying up, the Society of Consumer Affairs Professionals in Business (SOCAP) reported meteoric rises in membership, implying implication that jobs for graduates were out there for the asking. Colleges and universities responded. To date, six programs have set up student chapters of SOCAP, and a recent solicitation from SOCAP's Resource Center for information concerning degree programs in consumer studies received replies from 32 programs.[2]

There is temporal friction in the market for consumer affairs students. On the supply side, expect word about the program to spread slowly among potential students. High school counselors and parents may not hear about or understand the program. As a result, students searching for "the right degree" will not be become informed about the existence of a consumer affairs major very quickly. Similarly, promotional problems may occur among counselors in higher education institutions who advise students who want to change majors. In all likelihood, a big marketing effort will be needed to attract students to the program.

Likewise, the derived demand for students in terms of jobs may not be as evident as the rise in SOCAP membership may lead one to believe. In

filling new consumer affairs positions, there has been a marked preference for recruitment within companies. This is partially because of the need for "job-specific human capital," but also because graduates of consumer studies programs don't necessarily possess the kinds of skills required for the positions. This problem is disappearing as the profession defines its skill needs and undergraduate programs adjust, but one can argue that even with the few programs that target themselves to this market, the supply of bachelor's degree graduates currently exceeds the demand. In sum, there may be long-term potential in this area, but not the rapid response that programs looking for new avenues of development might want.

2. FINANCIAL PLANNING. There is much less temporal friction in the financial counseling and planning market. Programs in this area have hit the right chord in terms of supply. There appears to be a ready interest among undergraduates in financially-oriented programs that offer an alternative to business schools, particularly for those who want a career with a more "personal," "human" touch. This is reflected in the experience of the few home economics schools that have offered such programs. Among the five programs that reported having a financial counseling and planning program in the 1991-92 AAHE/NCAHE data, average undergraduate enrollment was 91 students.

Derived demand for graduates of financial counseling and planning bachelor's degree programs appears to be buoyant, with certain caveats. One is that some employers prefer to hire fully or partially on a commission basis—a tough row for a new graduate to hoe. Another, which follows to some extent from the first, is that starting salary levels fluctuate widely.

From the internal labor market perspective, a departmental focus on consumer affairs may represent a better prospect than a focus on financial counseling and planning. The skills consumer affairs majors need to learn can be acquired from service courses in business, computer science, or communications, and in specialist courses from consumer studies faculty who have made an effort to network with SOCAP members and attend SOCAP conferences. Effective teaching in financial counseling and planning, however, may require substantial upgrading of faculty's skills, including faculty completing the accreditation process with professional organizations in the area. Even then, to meet the needs of the profession, it may be necessary to negotiate for students to attend upper-level classes in other programs (e.g., risk management or employee benefits courses that may only be offered in the business school).

CONSIDERATIONS WHEN CONTEMPLATING A NEW CURRICULUM DIRECTION

The above kinds of considerations (and others) emerge whenever a new direction is contemplated, but a program's survival may well require that new avenues be tried. Perhaps the key consideration that needs to be weighed is whether the effort to go in a new direction will strengthen the position of the department/school concerned, or fragment it. Hanna (1992) and Deacon (1992) have pointed out the need to maintain a strong identity if a field of study is to survive. A move in a new direction has risks; it may form a break with tradition, creating stress that may eventually lead to an unhappy realignment of programs within the department/school or even a splitting off of programs from the department/school.

In these times of limited resources, it may be difficult to mount both a disciplinary-based program and a professional program at the undergraduate level. Both strategies have merit, and some tough choices about direction may have to be made. In making these choices it is important to keep two criteria in mind: (1) the new direction should be firmly grounded conceptually within a discipline represented within the department/school, and (2) the moves in a new direction must be carefully planned.

For those contemplating a new direction, we offer the following five-point strategic plan for building new programs:

1. Create a network within the new field so you are sure the program you are developing will produce students who have the skills valued by potential employers. Use your network to set up an advisory board for the program to make sure you keep current with new skill needs in the area.

2. Build the new program on the blocks

already there in the school, and promote it to existing faculty. Take maximum opportunity for cross-listing of courses within the school. Explore avenues for cooperative research with faculty in related disciplines.

3. Promote the new program among people within and outside the college who counsel potential new students. The program is not a "Field of Dreams;" just because you build it doesn't mean they will come.

4. Get involved with professional organizations. Promote your program, and show its viability by your presence and role in the organizations. Use the contacts you make to develop internships for students and consulting/research opportunities for faculty. Set up a student chapter of the organization. Develop links with local and regional members of the organization, and invite them to campus.

5. Maintain links with graduates of the program. Use them to find out whether you are doing a good job of preparing students for their future careers. Facilitate mentor roles for past graduates with current students.

None of this will happen overnight. Those on the lookout for a panacea to counter threats to the survival of their program need to recognize that entering into a new program in haste runs the risk of a more strident ax being wielded down the line if the program fails to establish itself and gain credibility. Furthermore, if, in the process of adopting a new program, the faculty becomes more fragmented the whole department may become more vulnerable to outside interference. New directions should be understood and approved by the faculty as a whole, and the faculty must feel ownership of programs in order for the programs to succeed. If such a consensus can be reached, the department/school itself may in the process become better able to deal with outside detractors.

CONTINUING THE DIALOGUE

Bryant and Metzen raised the question of whether consumer studies is slipping down a closing crack between disciplines. Follow-up presentations at last year's ACCI and Southeast Regional Home Management/Family Economics Conferences began to address the question of what needs to be done to ensure that the fields of consumer studies and family economics can survive. In this article, we have tried to assess the reality of the enrollment situations facing consumer programs and to present possible strategies to improve their viability.

The enrollment picture we have put together from a variety of puzzle pieces is not a pretty one. But has the puzzle been put together properly? Can the picture be changed? Or will the whole picture—puzzle pieces and all—be thrown out by administrators who are pursuing ends they feel we do not contribute to, regardless of what we do? These are big questions, and we feel they need continued discussion.

We will conduct a general session at the ACCI Conference in Lexington to consider these questions. The session will be titled "Widening the Crack," and its theme will be "Strategies for Survival of Consumer Studies Undergraduate Programs in the 21st Century." The session will be introduced by a report from the ad hoc Strategic Planning Committee of ACCI, to put the issue in the context of the future of ACCI itself.

We hereby solicit the contribution of persons who feel they have pertinent evidence or expertise to offer that would point to fruitful new directions or strategies for the survival of consumer studies curriculum. In particular, we are interested in hearing from those individuals who have successfully "turned the ebbing tide" in their own undergraduate programs. Interested session contributors are invited to contact either of the authors of this piece as soon as possible, so that we can determine the final format for the session.

In these times of limited resources, it may be difficult to mount both a disciplinary-based program and a professional program at the undergraduate level.

Bryant, W. K. & Metzen, E. J. (1991). "Is the crack closing?" In *Advancing the Consumer Interest* 5,39.

Deacon, R. E. 1992. The future of family resource management. Presented at the Southeast Regional Home Management/Family Economics Conference, Columbus, Ohio.

Garman, T. E. 1992. The future of family resource management. Presented at the Southeast Regional Home Management/Family Economics Conference, Columbus, Ohio.

Hanna, S. 1992. The future focus of family resource management. Presented at the Southeast Regional Home Management/Family Economics Conference, Columbus, Ohio.

[1] Figures at the graduate level are also quite low. In 1991-92 twenty-two programs reported graduating one or more master's students, and nine programs reported graduating one or more Ph. D. students in the consumer studies field. The average number of master's students graduating per program was 2.9, while the average number of Ph. D. students graduating per program was 2.3.

[2] The six student chapters of SOCAP are located at California State Long Beach, California State Northridge, Howard University, Purdue University, Syracuse University, and the University of Wisconsin at Madison.

The authors would like to thank W. Keith Bryant, John R. Burton, Jeanne Hogarth, and Edward Metzen for the helpful comments they made on an earlier version of this paper, Turning the Ebbing Tide of Consumer Studies Enrollments.

A CONSUMER PROTECTION MODEL FOR REGULATING LAWYERS

[T]he public incorrectly perceives the disciplinary system as a consumer protection agency which it is not.—State Bar of Texas, to a legal consumer[1]

DEBORAH M. CHALFIE
Attorney

More than twenty years ago, the American Bar Association (ABA) made its first-ever national study of lawyer discipline systems. It concluded that the state of lawyer discipline was "scandalous."

[T]his Committee must report the existence of a scandalous situation that requires the immediate attention of the profession. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically nonexistent in many jurisdictions....[2] The ABA further concluded that "[t]he profession does not have much time remaining to reform its own disciplinary structure. Public dissatisfaction is increasing."[3]

Since that time, numerous reforms have been adopted. Funding for discipline agencies has increased. Professional personnel have largely replaced all-volunteer staffs. Enforcement, once the domain of local grievance committees, has become increasingly centralized in statewide agencies. Non-lawyers have been added to agency governing boards and grievance panels. These and other subsequent reforms, however, have not quelled public criticism of the lawyer discipline system.

If anything, that criticism has intensified, because from consumers' point of view, nothing has really changed. In most states, the entire discipline process still takes place in secret, unless and until public (vs. confidential) discipline is imposed. The discipline rules still don't cover most consumer complaints. Of the more than 100,000 complaints registered against lawyers each year, more than 90-95% are dismissed. These consumer castaways are told to go hire another lawyer and sue. When a complaint is not dismissed, the lawyer receives almost all of the procedural rights of a criminal defendant. Long delays and huge backlogs are still common. Even when misconduct is found, secret discipline and light penalties prevail. Finally, the whole system is still designed, run, and overseen by lawyers. The public is given only a token role in discipline policy-making and enforcement.[4]

As a result, consumer advocates have called for changing the entire model on which lawyer regulation is based. The main problem is not that discipline systems aren't working "well enough" and just need to be improved. Rather, the entire model on which discipline is based—its regulatory assumptions, goals, rules, responses, processes, and structure—is itself the problem. That is, even if discipline agencies operated perfectly, the discipline model largely ignores consumer concerns. Public discontent with lawyer discipline stems from the fact that discipline systems are indeed *not* consumer protection agencies.

This article explains why discipline will never work for consumers, and what kind of regulatory scheme should replace it. Part I of the article briefly describes and critiques the current system, the so-called "discipline model" of lawyer regulation, from a consumer point of view. Part II outlines an alternative model for regulating lawyers that is solidly grounded in consumer protection principles. It identifies the concrete rights consumers need and deserve, the responses and remedies that should be available, the process by which consumers should obtain these remedies, and the kind of structural reforms needed to make the new system effective.

THE DISCIPLINE MODEL

THE WRONG OBJECTIVES: MAINTAINING ETHICS.[5] Every study conducted to date has concluded that lawyer discipline agencies are unresponsive to consumer complaints. Although lenience—treating misconduct lightly—is a big problem, it is not the primary cause of agency unresponsiveness to client complaints. The chief reason discipline agencies ignore most consumer complaints is that there is a huge disparity between the kinds of complaints clients make to discipline agencies versus the kinds of complaints on which the agencies are empowered to act.

The overwhelming majority of complaints made to discipline agencies are filed by clients,

and what they complain about most are overcharging, neglect, and incompetence. In other words, clients tend to complain about the contractual aspects of the lawyer-client relationship: Was the work performed well? Was it performed on time? Was it performed at the agreed-upon, or a reasonable, price?

Yet, discipline agencies dismiss more than 90% (more than 95% in many states) of these complaints because they are considered outside the agency's jurisdiction. That jurisdiction is confined to enforcing the ethical rules that govern lawyers. Thus, even if all the complaints about overcharging, neglect, and incompetence are true, they state no violation of the ethical rules and are therefore dismissed.[6]

Obviously, the primary concern of legal ethics, hence discipline, is not on bad treatment of clients. What, then, prompts lawyer discipline agencies to act? Based on the 3-5% of the cases in which lawyers are actually disciplined, it is "bad apples"—wrongdoers and heretics who make the whole profession look bad, from the profession's point of view. Convictions for crimes in general, such as for tax evasion or drug offenses, and criminal-like conduct, such as stealing client funds, are among the most common bases for the imposition of discipline.[7] Lawyers who solicit cases (ambulance-chasing) and run "distasteful" advertisements are also frequently disciplined. By weeding out what are perceived as the few bad apples, discipline keeps the rest of the profession ethically "clean."

Clients understandably think "ethical" means treating clients well. After all, the ethical rules contained in state codes of professional responsibility are the only regulatory rules that lawyers must follow. In addition, virtually all of the rules are phrased and justified in terms of public protection. However, when one looks at the content of the rules and how they are interpreted, "ethical" amounts to little more than proscriptions against crime, a form of protection consumers already have, and anti-competitive restrictions that protect the profession at the *expense* of the public. Moreover, the rules that really do address the treatment of clients are so vague that they are interpreted as proscribing only the most blatant, extreme instances of abuse: the neglect must be repeated or intentional, the overcharge must be unconscionable, and the negligence must be gross.

Consumers complain when a lawyer bills more per hour than the client makes in a day or even a week, and then fails to do the work, forcing the client to find and pay another lawyer to do the same preparatory work the first one was already paid to do. They complain when lawyers never call to update them on the case, return their calls, or make time to meet. Consumers complain when they receive a final bill of 50-500% more than the original estimate. They complain when they learn that the lawyer never followed-up on suggestions for sources of relevant evidence, or when the lawyer keeps asking for continuances and never seems prepared to move forward. Although these complaints go to the essence of the buyer-seller contract, they are routinely trivialized and discredited by discipline agencies as mere "communications" problems.

Keeping the profession "ethical" in some lofty sense may arguably be a worthwhile one from the legal profession's perspective, but it is one that is practically irrelevant to consumers' needs in the context of the lawyer-client relationship.

Keeping the profession "ethical" in some lofty sense may arguably be a worthwhile one from the legal profession's perspective, but it is one that is practically irrelevant to consumers' needs in the context of the lawyer-client relationship.

THE WRONG RESPONSE: LICENSE-TINKERING. Because the discipline model starts out with the wrong objective—maintaining minimum ethical standards—it ends up making the wrong response: "discipline." As the name suggests, "discipline" does more to punish a bad lawyer than to resolve and remedy a client's complaint. Besides ridding the profession of one more bad apple, the severity of the punishment—temporary or permanent revocation of a lawyer's license to practice law—is also intended to deter others from misconduct. Even the much-used penalty of a reprimand or admonition is punitive in nature, like a scolding or a demerit on the attorney's record (or off-the-record, in the case of private reprimands).

These license-tinkering mechanisms aren't totally devoid of public benefit. To the extent that public menaces are indeed disciplined, discipline does help protect consumers from future acts of wrongdoing in the same way that putting a criminal in jail helps prevent that criminal from harming future victims.[8] But, just as jailing a criminal does absolutely nothing of consequence for the criminal's past victims, the discipline system does nothing of consequence for a lawyer's past victims.

Absent within the discipline model are two key features of any adequate consumer protection system: dispute resolution and redress. The discipline model is ill-equipped to provide either. Most complaints are thrown out and therefore go unresolved. More to the point, restitution, specific performance, damages, and the other kinds of relief consumers need rarely accompany the imposition of discipline.

Instead, consumers who want redress are typically told to go find yet another lawyer and sue for malpractice. But, the difficulty of finding

new counsel to take on a malpractice case against a fellow lawyer, the time involved, the cost of bringing suit in comparison to the amount at stake, and the complexity and risk that must be overcome to actually win,[9] all combine to make malpractice litigation a non-option for most consumers.

Because of the public criticism that flowed from the system's lack of remedies, most states now have lawyer-client fee arbitration programs to deal with the huge number of fee disputes they receive, and almost every state has a client security fund, a special fund financed by lawyers' dues to reimburse clients who've been victims of lawyer theft. Such programs are better than nothing, but they are too limited in scope. Further, because all these programs are lawyer-controlled and lawyer-dominated, they are intimidating for consumers and partial toward lawyers.

Any good occupational regulation scheme should include options like "disbarment" and malpractice lawsuits. But these should not be the *only* responses. The discipline model's abdication of responsibility to make sure that consumers harmed by lawyers have a meaningful remedy is the model's greatest failing.

THE WRONG PROCESS: QUASI-CRIMINAL. The discipline model's focus on unethical "bad guys," as opposed to lawyers who just don't keep their end of the bargain, is also reflected in the quasi-criminal apparatus and process used for acting on complaints. The respondent-attorney has practically all of the procedural due process rights of a criminal defendant. These usually include the right to a hearing, the right to hear all testimony, the right to cross-examine the client, and the right to appeal. The complaining client, on the other hand, is reduced to the role of "complaining witness," just like the victim of a crime in the criminal system. Clients are so marginalized that agencies often neglect to inform them of important agency actions such as dismissal of their complaints or imposition of discipline.

From a consumer perspective, however, there are a few significant deviations from the criminal process that are worth noting. Unlike the criminal justice system, most states screen complaints, hold hearings, and make discipline decisions in secret. Case records and information become public only if and when public discipline is recommended to or imposed by the state's highest court. Half to three-fourths of all states impose upon complainants a "gag rule" that forbids them from talking with anyone about the existence or substance of their complaint. Complaints that are dismissed, and those that end in private reprimands, are kept confidential from the consuming public. Nothing comparable to secret acquittals or secret sentences exists in the criminal system.

Also, unlike the criminal justice system's requirement for a speedy trial, discipline proceedings can often drag out for years. Meanwhile, the lawyer is out "on bond" free to continue practicing and potentially harming more consumers. Finally, lawyers facing discipline get to have their cases heard by a jury of their occupational peers—grievance panels are composed of all lawyers or a majority of lawyers. It is no accident that those who share too much in common with a criminal defendant are routinely struck from juries—their ability to be impartial is questionable.

It would seem, then, that complaining clients suffer all the liabilities of the criminal process (marginalization, fewer procedural rights), yet reap none of its benefits (openness, speed, or impartiality). From consumers' perspective, the criminal justice system is not the model lawyer regulation ought to follow.

THE WRONG REGULATORY STRUCTURE: SELF-REGULATION. In every state, lawyers are regulated solely by other lawyers. In many states, the discipline agency is run by the state bar association; in others, it is structurally independent of, but still heavily influenced by, the state bar association. In all cases, however, lawyers dominate the governing boards that make the rules, the staff that screen complaints, and the hearing panels that decide whether to recommend discipline. Finally, it is lawyer-judges on state supreme courts who decide whether to impose discipline.

In every state, lawyers are regulated solely by other lawyers.

The legal profession is the only occupation that is largely untouchable by the public's elected representatives in state legislatures. Through constitutional amendment and constitutional interpretation of the separation-of-powers doctrine, state supreme courts in almost every state have made the power to regulate lawyers an exclusive power of the courts.[10] Thus, consumers have no input in or control over discipline policy-making and enforcement.

There is a built-in conflict of interest in any system of self-regulation. Lawyers' trade associations cannot simultaneously advance the interests of lawyers and advance the interests of consumers without sacrificing someone's interests. Unfortunately, it is usually the consuming public who loses. Lawyers may be able to judge other kinds of disputes between other kinds of parties impartially, but "[n]o licensed vocation is well situated to assess the points at which public and parochial interests diverge."[11]

Aggrieved legal consumers should not be expected to take their complaints to a panel of lawyers any more than aggrieved tenants should be expected to take their complaints to a panel of landlords.

Discipline, and therefore most discipline reform, is not only beside the point for consumers. It is often anti-consumer, because its focus is on minimizing consumer complaints to protect the profession's image. Adding insult to injury, the bar then points to the mere existence of lawyer discipline, and the cosmetic reforms it makes, as a justification for resisting, distracting, and ultimately preventing the development of a real, pro-consumer regulatory scheme.

THE ALTERNATIVE: A CONSUMER PROTECTION MODEL

Under a "consumer protection" model for regulating lawyers, the regulatory objectives, response, process, and structure would be radically different. What should this new system look like? Although no state currently has such a consumer model in place, the key attributes of any adequate replacement are already clear.[12]

THE RIGHT REGULATORY STRUCTURE: PUBLICLY-DOMINATED, INDEPENDENT AGENCY. The pivotal first step in creating a new system for regulating lawyers is to take all consumer protection functions away from lawyers—as individuals, as organized into bar associations, or as supreme court justices—and invest them somewhere else. This could be a new agency or an existing agency, but non-lawyers should dominate the entire regulatory process, from making the policy that governs the system to hearing and resolving complaints.

The same kinds of agencies and officials that now regulate auto mechanics, such as state consumer protection agencies and state attorneys general,[13] are obvious candidates to handle lawyer regulation. Although some of these agencies have been criticized as ineffective in protecting consumer interests, much of the time this is because they are operating on the same professional discipline model as lawyers! Placing lawyer regulation firmly within the legislature's power to control would provide a measure of public accountability which is currently absent. Independent regulation of lawyers may not guarantee consumers a perfect system, but it would guarantee recourse to the legislature if reforms are needed. Consumer advocates and the public can decide whether to reform an existing agency or create a new one.

Similarly, in pressing for legislation, advocates can decide whether existing consumer protection statutes could simply be amended to cover legal services,[14] or whether to start anew. To the extent that state "unfair and deceptive acts and practices (UDAP)" laws aren't adequate to cover the full range of consumer needs, specially-tailored provisions could be adopted, or the agency could adopt specific regulations.[15] Whether a new law is created or an old one is amended, new rules for defining and governing the lawyer-client relationship are necessary.

Aggrieved legal consumers should not be expected to take their complaints to a panel of lawyers any more than aggrieved tenants should be expected to take their complaints to a panel of landlords.

THE RIGHT OBJECTIVES: CONSUMER RIGHTS. Obviously, it is possible to have pro-consumer laws against theft, fraud, or misrepresentation without a code of professional ethics. After all, consumers have secured important rights in their transactions with banks, auto mechanics, and others without ethical codes. Instead of trying to identify and weed out unethical behavior, then, the prime objective of a consumer protection model should be to articulate and enforce legitimate consumer expectations about cost, promptness, and quality of service. In other words, the lawyer's performance and treatment of the client should be treated less like faith-healing and more like a business transaction.

To begin, legal consumers cannot be expected to make intelligent hiring decisions unless they know all the facts up front. By law, they should receive full disclosure of pertinent information in advance of making the "bargain." Thus, even before consulting a lawyer, consumers should be able to find out (from the lawyer and/or the consumer protection agency) the price of an initial consultation, the lawyer's qualifications, and the lawyer's consumer complaint record.

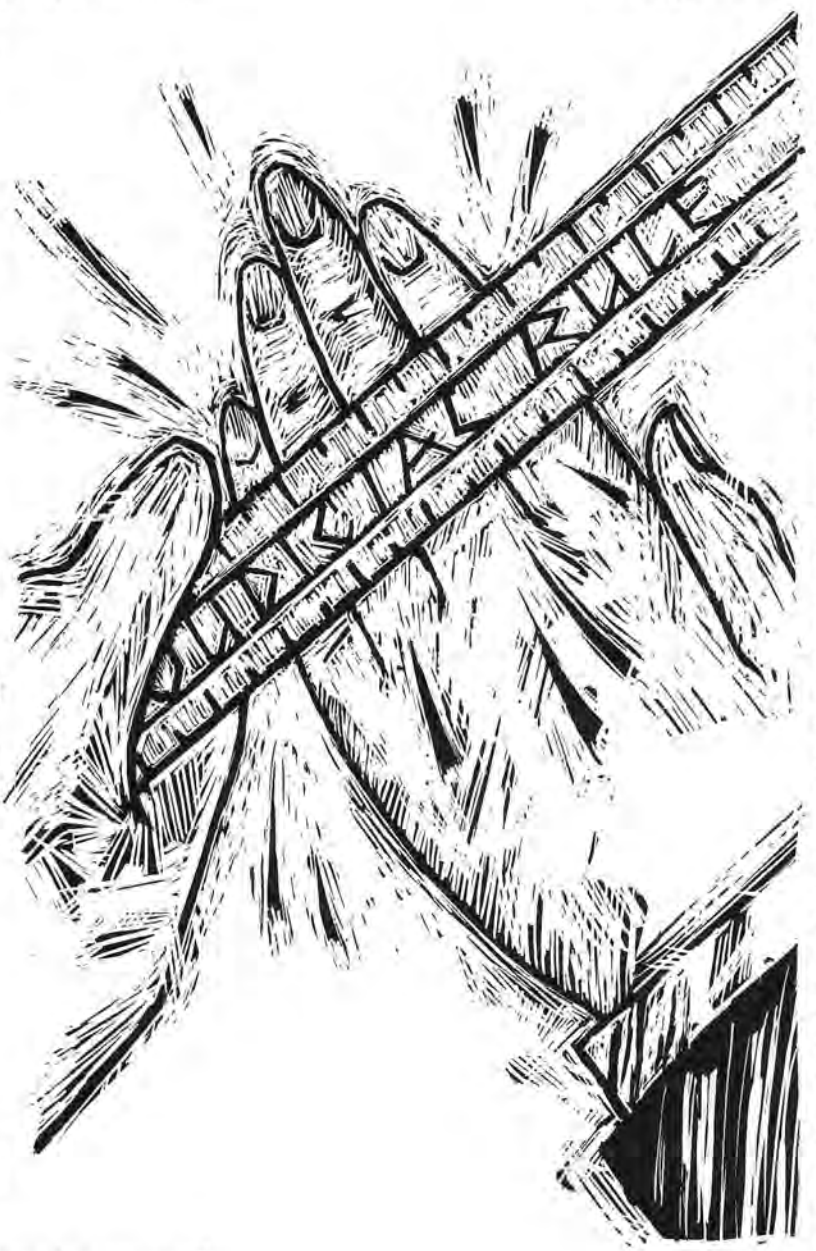
Lawyers themselves should also be required to make several disclosures to potential clients before being retained: the client's options for attaining her or his objectives[16] and the estimated time, cost, and chances of success associated with each; how fees and other costs are to be authorized, calculated, and billed; and the specific services to be performed and who will actually perform them. Although much of this information might initially be given verbally, all disclosures and decisions should be put into a plain-language, written contract[17] soon after the lawyer is retained.

Further, customers should have and be made aware of their rights to ongoing control of their legal matters. For instance, consumers should have the right to: make all important decisions; set parameters on time, cost, and courses of conduct (thereby requiring the attorney to obtain the client's permission before exceeding them); and fire an attorney or file a complaint without retaliation or other adverse action. Just

as airlines must notify customers about their rights in the event of overbooking, and credit card companies must tell customers how to dispute a charge, lawyers likewise should be required to inform their clients of their rights and to provide or post information on how and where they can register complaints.

The law should also address attentiveness and quality of service. For instance, the consumer should have an enforceable right to receive regular progress reports, and even to have phone calls returned within a specified reasonable time.[18] Beyond the most obvious kind of neglect (missing a filing deadline), less egregious inattentiveness, such as dragging out a legal matter, should also be prohibited.

Statutory prohibitions on negligent and incompetent service, in particular, would be a boon for consumers. However, to be meaningful to consumers, the "standard of care" to which lawyers are held accountable would have to be redefined.[19] Deviance from consumer expectations about quality, instead of deviance from prevailing lawyer practice, should be the touchstone.[20] If the courts can now posit how the reasonable attorney exercising due care should act, agencies and courts should also be able to posit the expectations of a reasonable client.



THE RIGHT PROCESS: ALTERNATIVE DISPUTE RESOLUTION. To make the remedial system genuinely responsive to consumer needs, several important features would be required. First and foremost, consumers of legal services need access to an out-of-court forum for handling their complaints. Besides being hard to bring and win, lawsuits give lawyers the unfair advantage of playing on their home court. Lawyers possess knowledge of the players and the rules, a cost advantage by being able to represent themselves, and the leverage that flows from knowing that your opponent—the client—has none of these advantages.[21]

Second, this out-of-court forum should have the power to mediate disputes on an informal basis. In mediation, the parties have an opportunity to work out a solution themselves, quickly and inexpensively. Because of these and several other advantages, mediation is now widely used to resolve consumer disputes.

In the event that no agreement can be reached, however, consumers need access to an effective, fair, and final solution to their problem. A special branch of the consumer protection agency should thus be empowered to conduct mandatory and binding arbitration: the lawyer would be required to participate at the client's option, and the result would be binding on both parties, appealable only for procedural irregularities.[22]

Like mediation, arbitration is also widely available to resolve consumer disputes. However, because many of the available programs have been sponsored by the industry against which consumers are lodging their complaints, consumers haven't always found them to be fair and effective. Consumers deserve a neutral, if not an overtly pro-consumer, forum in which to resolve their grievances. The process should be lodged in a neutral, third party agency, using lay arbitrators.[23]

THE RIGHT RESPONSE: REMEDIES FOR HARM. Clients need and should have ready access to an hospitable forum in which their grievances can be aired and a serious effort is made to resolve and remedy them. "To the aggrieved consumer, the important personal remedy is neither the preventing of future deceptive acts and practices nor the punishment of the misfeasor, but rather restitution for his particular injury. The injured consumer wants either his money's worth or his money

back with a minimum of expense and time."[24] The availability of quick remedial action for the kinds of problems clients most often experience constitutes one of the most significant advantages of the consumer protection model.

Certainly, when a lawyer's poor performance harms the customer, damages should be available. In addition, the arbitrator should be empowered to adjust fees for poor service that doesn't result in a concrete loss. Just as consumers can expect to receive a discount on a dented but otherwise usable appliance, legal consumers should be able to receive a discount if, for instance, the attorney fails to complete the work on time. Refunds of overcharges, fee reductions, or cancellation of fees may be sufficient for many cases.

Further, in contrast to reprimands for "minor misconduct," the agency should be authorized to "ticket" lawyers and impose fines with minimal procedural hassles. Fines for relatively minor violations of consumer protection laws, especially in cases where the client has suffered aggravation rather than economic loss, are a potentially useful enforcement tool worth exploring.[25]

The power to yank a lawyer's license for very egregious conduct should continue to be a part of the agency's panoply of regulatory responses. But, with the addition of responses (remedies) besides license-tinkering, such action should be rare.

CONCLUSION/EPILOGUE

In 1989, the ABA formed its second lawyer discipline study commission (the Commission on Evaluation of Disciplinary Enforcement, or "McKay Commission") to evaluate the progress made since the first study and to recommend further reforms. And this time, unlike during the ABA's first study, consumers were there—in droves. In five public hearings around the country, hundreds of consumers told horror stories about their experiences with the discipline system, and consumer advocates called for changing the entire model on which lawyer regulation is based. The impact of consumer participation was dramatic.

In May, 1991, the ABA's issued a report of its findings and recommendations in which it adopted roughly 75% of the reforms consumers had urged, including:

- An open disciplinary process—opening up complaints from the moment they are filed, abolishing the "gag rule" on complainants, making hearings open to the public, increasing public representation on grievance panels, and getting rid of private reprimands.
- Improved complainants' procedural rights—granting consumers absolute immunity from retaliatory lawsuits, giving them an opportunity to rebut the lawyer's story, and giving them the right to appear and testify at hearings.
- Expanded remedial protections—proposing to add mandatory fee arbitration, voluntary malpractice arbitration, and mediation.
- Ouster of bar associations from discipline—but it did not support abolishing lawyer self-regulation. Instead, it adamantly endorsed giving state supreme courts "direct and exclusive control" over discipline. Further, it suggested that continued bar involvement in remedial programs, such as fee arbitration and client security funds, would be wholly desirable and appropriate.

Although the Commission made several pro-consumer recommendations, it certainly did not "dump discipline" as the model for regulating lawyers. It left consumer protection functions firmly within the hands of lawyers, and made it very clear that ethics and license-tinkering—not consumer protection and remedies—should remain the chief objective of lawyer regulation. When the Commission's proposals went for a vote to the ABA House of Delegates, the ABA's policy-making body, the recommendations to abolish secrecy were catapulted.

How many of these reforms will actually be adopted by state supreme courts and bar associations remains to be seen. What is clear, however, is that consumers will not be satisfied with anything less than a real consumer protection agency. The consumer model for regulating lawyers is the reform blueprint that consumer advocates should continue to pursue, regardless of what the organized bar does.

The power to yank a lawyer's license for very egregious conduct should continue to be a part of the agency's panoply of regulatory responses.

This article is a condensation and revision of the article, "Dumping Discipline: A Consumer Protection Model for Regulating Lawyers," 4 Loy. Consumer L. Rptr. 4 (1991) (excerpted with permission), which in turn was based on testimony the author wrote when she was the Legislative Director of HALT—An Organization of Americans for Legal Reform (1985-1991). That original testimony was presented to the American Bar Association Commission of Evaluation of Disciplinary Enforcement in 1990.

HALT is the only national organization of legal consumers working to make the legal system more accessible, and lawyers more accountable, to the public. The articulated flaws with lawyer discipline and the reforms on which the analysis here is based come from HALT's policy and advocacy work on lawyer regulation over several years. The author gratefully acknowledges that work, and particularly the contributions of former HALT staffperson Kay Ostberg, in building the foundation for these articles.

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[1] *Letter from General Counsel of the State Bar of Texas to Ray Dittmar*, (Feb. 3, 1989) (attached as Appendix 1 in HALT, *Report on The State Bar of Texas for The Texas Sunset Advisory Commission* (1989).

[2] ABA Special Committee on Evaluation of Disciplinary Enforcement, *Problems and Recommendations* in *Disciplinary Enforcement*, at 1 (Final Draft, June, 1970) (Tom C. Clark, Chairman).

[3] Id., at 8.

[4] These flaws are discussed in more detail in HALT, Attorney Discipline: National Survey, at 13 (1990) [hereinafter HALT Report]. This report, as well as other materials on lawyer regulation, are available directly from HALT, 1319 F St., NW, Washington, DC 20004, 202-347-9600.

[5] Although HALT developed its critique of the discipline model independently, based on consumers' actual experience, we discovered that some commentators had articulated the problems with discipline in very similar ways. In particular, see, F. Marks & D. Cathcart, "Discipline Within the Legal Profession: Is It Self-Regulation?," 1974 U. Ill. L. Forum 193 (1974) [hereinafter Marks & Cathcart]; E. Steele & R. Nimmer, "Lawyers, Clients, and Professional Regulation," 1976 Am. B. Found. Res. J. 917 (1976) [hereinafter Steele & Nimmer]. The author is particularly indebted to these commentators for their conceptualization of discipline's focus on "deviance" as a way of thinking about what is wrong with the discipline model.

[6] In fact, sometimes agencies don't even label these nonjurisdictional matters as "complaints," thus vastly understating the number of client complaints and dismissals, and overstating the frequency of discipline. Steele & Nimmer, supra n. 5, at 979. See, e.g., State Bar Act, Texas Gov't Code, § 81.075(a) (1988). Further evidence of undercounting client complaints is found in the fact that very few clients who experience problems actually complain, Steele & Nimmer, supra n. 5, at 957, and the few that try are often unsuccessful. See, e.g., R. Fellmeth, *Initial Report to the Assembly and Senate Judiciary Committees and Chief Justice of the Supreme Court of California on the Performance of the Disciplinary System of the California State Bar*, at 33 (1987).

[7] "An impression gained from reading appellate decisions is that courts most often impose significant disciplinary sanctions on lawyers who have already been tried and convicted in a separate criminal proceeding." C. Wolfram, *Modern Legal Ethics*, at 90 (1986) [hereinafter Wolfram].

[8] In the case of lawyers, that prospective protection may be very temporary. "[A]lmost every disbarred lawyer in the nation may reapply to practice law [apply for "reinstatement"] after a few years." *HALT Report*, supra n. 5, at 19.

[9] Recent data from the ABA indicate that: fewer than 30% of all malpractice claims filed between 1983 and 1985 led to lawsuits; clients received no compensation in more than 63% of the claims; clients who don't settle win only 1.2% of the time; and extremely few clients ever receive compensation over $1,000. K. Ostberg & T. Rudy, *If You Want to Sue a Lawyer*, at 27 (1991) (citing ABA, Profile of Legal Malpractice: A Statistical Study of Determinative Characteristics of Claims Asserted Against Attorneys (1986)).

[10] Although the power to regulate lawyers has long been viewed as an "inherent" power of the judicial branch, it is only within the last century, and especially the last fifty years, that courts began interpreting this inherent power as an exclusive power, ousting state legislatures of their historical power over lawyer regulation. See, Wolfram, supra n. 7, at 22-31; T. Alpert, "The Inherent Power of the Courts to Regulate the Practice of Law: An Historical Analysis," 32 Buff. L. Rev. 525 (1983).

[11] D. Rhode, "The Rhetoric of Professional Reform," 45 Md. L. Rev. 274, 293 (1986).

[12] HALT has drafted and introduced several legislative proposals that set forth the details of its proposals for the regulation of both lawyers and nonlawyer legal technicians. See, e.g., S. 916, Ill. Legis. (intro'd 1989) and HB 1293, Tex. Legis. (intro'd 1990) (lawyers). See also, AB 168, Calif. Legis. (intro'd 1990) and SB 1068, Or. Legis. (intro'd 1991) (nonlawyers).

[13] It is true that attorneys general tend to be lawyers! However, two built-in features help to minimize the likelihood of anti-consumer bias by these particular attorneys. First, attorneys general are routinely charged with consumer protection duties, understand what that means as it relates to other kinds of consumers, and therefore are likely to have an institutional commitment to consumer protection. Second, the vast majority of attorneys general (43) are directly elected by the public, Telephone Inquiry to Mr. Rob Biesenbach, Nat'l Ass'n of Attorneys

General (Nov. 13, 1991), making them far more accountable to the public than the lawyers appointed to discipline boards and panels.

[14] See, generally, R. Hesse & M. Simon, "Serving the Needs of Both the Consumer of Legal Services and the Profession Through the Application of Consumer Protection Statutes to Lawyers, 3 Loy. Consumer L. Rptr. 116 (1991); T. McMahan, "Tolling the Death Knell on the 'Learned Profession' Immunity Under the Consumer Protection Act: Short v. Demopolis," 21 Willamette L. Rev. 899 (1985). Although only a few states specifically exempt lawyers from their statutory scope, many others immunize lawyers under the auspices of an exemption for practices or occupations that are comprehensively regulated by other means. See, J. Sheldon, *Unfair and Deceptive Acts and Practices*, (2d ed. 1988) (published by and available from the National Consumer Law Center, Boston, MA) [hereinafter UDAP].

[15] For instance in Florida, under its UDAP authority, the Dept. of Legal Affairs has adopted numerous specific regulations concerning auto mechanics. These regulations require mechanics to: provide consumers with price estimates and repair orders; get the customer's consent before performing repairs that would exceed the estimate; tell customers they have the right to keep or inspect replaced parts; provide detailed, itemized invoices; disclose whether other-than-new parts were used; and disclose the nature of the guarantee. Mechanics cannot: falsely claim repairs are necessary; charge for unnecessary, unauthorized, or unperformed repairs; or perform repairs in an unworkmanlike manner. *UDAP*, supra n. 14, at 179-181 and accompanying footnotes.

[16] The Colorado Bar Association recently proposed adopting a disciplinary rule that would require lawyers to inform and advise their clients about alternative dispute resolution and alternatives to litigation. "Colo. Bar Mandates a Choice," *NLJ*, at 9 (May 27, 1991).

[17] Although several states require contingency fee agreements to be in writing, only a few states require lawyers to use written contracts for noncontingency cases. HALT, "Does Your Legal System Make the Grade?," *The Legal Reformer*, 14, 18 (July-Sept., 1990).

[18] Laws that enforce legitimate and reasonable consumer expectations as to service exist in other business contexts. For example, California recently enacted a law which requires repair services to estimate their arrival time and actually show up within a limited time period or be liable for the damages to the customer. Cal. Civ. Code § 1722(a)(1) (West Supp. 1992). In L. Lerman, "Lying to Clients," 138 U. Pa. L. Rev. 659, 756 (1990), Prof. Lerman proposes a disciplinary rule requiring a lawyer to "respond to a client call within two business days after receiving it," or make arrangements for someone else to respond. The requirement is unfortunately framed as an ethical obligation rather than as a straightforward legal right, but Prof. Lerman is definitely on the right track in her attempt to make the rules governing lawyers meet consumer needs.

[19] "A consumer perspective ... will require a reevaluation of the [standard of care and] system of remedies for malpractice." B. Garth, "Rethinking the Legal Profession's Approach to Collective Self-Improvement: Competence and the Consumer Perspective," 1983 Wisc. L. Rev. 639, 675 (1983). But see, *Steele & Nimmer*, supra n. 5, at 932: "The basic distinction between the deviance and contract perspectives lies more in the rationale of regulation and the remedies created than in substantive standards. A deviance orientation emphasizes ... a sanction.... A contract perspective would emphasize remedial action.... "

[20] There is at least one precedent for a consumer-oriented standard of care in the law of professional malpractice. See, *Canterbury v. Spence*, 464 F.2d 772 (D.C.Cir. 1972), cert. den'd, 409 U.S. 1064 (1972) (adequacy of disclosure by doctor is judged by determining what a reasonable patient would want to know before making medical treatment decision). See, also, Martyn, "Lawyer Competence and Lawyer Discipline: Beyond the Bar?," 69 Geo. L.J. 705, 732-33 (1981) [hereinafter Martyn] ("common law malpractice standards seem to be moving away from exclusive reliance on professional definitions of the requisite standard of care.").

[21] For these reasons, exclusive reliance on lawsuits of any sort to enforce consumer rights is problematic for consumers. One of the problems with the strategy of just extending UDAP statutes to lawyers is that lawsuits are often required in order to enforce them. Frequently, the consumer can bring a private action, but some statutes require the consumer to rely upon a government agency to bring the action, further diminishing the chances that the consumer's complaint will be addressed. A similar problem arises with just extending the jurisdiction of existing consumer protection agencies to handle complaints about legal services, rather than creating a new agency. Some agencies, especially Attorneys General, aren't set up to handle alternative dispute resolution. But see, J. Cooley, "Alternative Dispute Resolution and Consumer Protection: An 'Odd-Couple' Thriving in the Offices of State Attorneys General," 1 Loy. Consumer L. Rptr. 1 (1988).

[22] The constitutionality of mandatory and binding lawyer-client fee arbitration has been repeatedly upheld. Arbitration programs in which the lawyer's participation is voluntary, or the result is non-binding, don't work for consumers. Lawyers can too easily force the client into court merely by refusing to participate or by appealing the decision afterward.

[23] Other features that increase arbitration's responsiveness and user-friendliness for consumers include strict deadlines for holding hearings and issuing decisions, and a ban on using formal rules of evidence or procedure in arbitration hearings. For a fuller discussion of these features, see HALT, *Fee Arbitration: Model Rules and Commentary* (1989).

[24] R. Mussehl, "The Neighborhood Consumer Center: Relief for the Consumer at the Grassroots Level," 47 Notre Dame Law. 1093, 1129 (1972).

[25] Fines have been suggested by several others, including *Martyn*, supra n. 20 at 732, and the Chicago Council of Lawyers, *Report on Investigation of the Operation of the Attorney Registration and Disciplinary Comm'n*, at 39-40 (Feb. 1978). In addition to other enforcement tools, fines might be appropriate for lawyers who fail to: make required disclosures, return client calls, or use a written contract. Fines have the additional advantage of helping to finance the operations of the consumer protection agency.

CONSUMER ORGANIZATIONS

CENTER FOR THE STUDY OF COMMERCIALISM

Rampant commercialism is transforming Americans from citizens into consumers. We are raised in a torrent of slick, seductive advertising that screams at us constantly to buy, buy, buy. America's sense of civic responsibility and community involvement is falling prey to commercial values.

The Center for the Study of Commercialism (CSC) aims to help set limits on commercialism and turn America back to its founding values. CSC was established in 1990 to research, publicize, and oppose the invasion of commercial interests into practically every corner of our society. Through public information campaigns, legislative and regulatory efforts, and direct advocacy, CSC helps to immunize citizens against advertising's siege.

CSC defines *commercialism* as "ubiquitous product marketing that leads to a preoccupation with individual consumption to the detriment of society." Everything from "noncommercial" television to the Constitution has become part of a marketing campaign. But commercialism's harm reaches far beyond just wasteful spending.

Take advertising's effect on children, for example. According to one recent survey, young people consider it "extremely important" to have at least two cars, the latest clothes, an expensive stereo, and a vacation home. They dismissed helping others and correcting social and economic inequities as unimportant.

Clearly, commercialism is well-backed. Businesses spend more than $130billion a year convincing us to solve our problems by shopping. Ever-more insidious and intrusive marketing techniques appear on television, radio, and billboards; in magazines, books, and even public bathrooms; on T-shirts,taxis, and race cars.

Some advertisers sneak into traditionally noncommercial environments by underwriting museum exhibits or "donating" to public institutions in exchange for marketable associations. Others disguise advertisements in program-length "infomercials," in "video news releases," and in deceptive "product placements" in Hollywood movies. Our children's class time has been auctioned off to businesses who advertise on classroom televisions and in student magazines and other educational materials. Even our "independent press" now bows to censorship by advertisers who demand a comfortable editorial climate for their products.

CSC exposes this creeping commercialism and works to divert the wealth reserved for consumerism to social good. Madison Avenue advertisements must be balanced by promotions for voting, volunteerism, recycling, and charity.

Since 1990, CSC has worked toward these goals by:

- Helping win passage of a 1991 law banning "junk telephone calls"—those unsolicited computerized sales pitches that invade the privacy of your home.
- Publishing a landmark report about how advertisers undermine the "free press" by pressuring editors and reporters to kill unwanted stories.
- Opposing Whittle Communications' "Channel One," a commercial news program millions of high school students are required to watch daily. Channel One's news also contains ads for deodorant, sneakers, candy, and other products.
- Alerting the public to "product placement," the practice whereby advertisers pay studios to feature brand-name goods in movies. CSC has petitioned the Federal Trade Commission to require movies to be preceded by notices alerting audiences to the ads within the films.
- Sponsoring the "Heroes and Zeros of Commercialism" awards. Ralph Nader and Vance Packard "dishonored" marketers for using obnoxious or deceptive techniques, and honored individuals who fought back against commercial pressures.
- Becoming *the* group reporters turn to for information, insights, and opinions about commercialism and consumerism.

CSC's work has been featured in the *New York Times*, the *Wall Street Journal*, the *Los Angeles Times*, the *Washington Post*, the *Christian Science Monitor*, *Advertising Age*, and *Utne Reader*, as well as on CNN, the NBC Nightly News, "Entertainment Tonight," and National Public Radio.

CSC's action plan for change includes:

- Sponsoring public-service ads to moderate consumption and to generate greater charitable giving.
- Opposing corporate promotions in schools as part of a larger campaign for commercial-free zones.
- Serving as a clearinghouse for journalists, scholars, activists, and policymakers.
- Organizing a "No-TV Week" to focus attention on the powerful influence of television in our lives.
- Developing curricula about commercialism.
- Reducing tax breaks for advertising.
- Exposing corporate censorship in the media.
- Opposing sexist advertising.
- Promoting action-oriented volunteer programs for teens.
- Publicizing the adverse effects of hyper-commercialism by producing videos, pamphlets, and articles.
- Evaluating the impact of corporate donations on civic groups.

CSC's six-member Board of Directors and 50-member Board of Advisors are made up of respected consumer advocates, professors, and writers. A membership organization, CSC is supported by foundation grants and individual contributions.

For a $20 contribution, CSC members receive the quarterly newsletter *AdVice*, which updates members on Madison Avenue's latest tricks, as well as access to all CSC publications. *Dictating Content: How Advertising Pressure Can Corrupt a Free Press* is available for $10. To receive these publications or more information about CSC, call or write to the Center for the Study of Commercialism, 1875 Connecticut Ave, NW, Suite 300, Washington, D.C. 20009-5728; (202) 797-7080.

CONSUMER EDUCATION

IMPROVING CONSUMER EDUCATION: A JOINT CONCERN

When consumer researchers and consumer educator practitioners develop joint research ventures, they improve the chances of making a significant impact on the quality of consumer education. This article discusses practitioners' and researchers' differing cultures, identifies practitioners' needs, and offers research priorities that support the improvement of consumer education.

As any field develops, its practitioners and academic researchers have a tendency to move apart. In the early stages, practitioners *are* the researchers. And as academic programs emerge, practitioners and academics are closely linked. But as the field advances, the drift begins. Academicians have less and less direct field experience, and practitioners may operate in a world quite different from that of academics. Each group begins to relate to a different culture. Their differing skills, interests, and perspectives influence both practitioners' education and the systematic collection of research data.

In an integrated view, practitioners' experience should help frame the questions that are basic to good research. What are these questions and issues? What are the resulting research priorities? Researchers should inform practitioners about matters that ultimately affect practice. This article explores aspects of the two cultures and proposes research directions.

TWO CULTURES—RESEARCHERS AND PRACTITIONERS

Researchers are largely academics who conduct research and teach people who are or will become consumer educators. Researchers are usually only indirectly involved in the actual consumer education. Consumer education practitioners include educators in schools and adult learning situations; consumer affairs professionals in business, government, and media; and others who alter the socialization process through education.

One might think that practitioners and researchers would work closely together because both groups are interested in producing well-educated consumers. However, separate cultures develop when academics have limited practical experience and when they conduct research and publish for other academics, as well as when practitioners see little relevance of researchers' findings to their immediate work.

Differences between the two cultures include the following:

Researchers tend to think about consumer education in long-term dimensions, while practitioners think in shorter time frames—such as a year. Practitioners are acutely aware that their audiences are continually changing and are less predictable than more static academic work would suggest. Not only do consumers change, but program budgets and priorities also change, so that an educator must adjust and revise programs regularly in order to stay current.

Researchers tend to ignore the politics of a situation, while practitioners are often driven by the political dimensions of their work. Theoretical considerations dominate one, while pragmatic tests concern the other. While partisan interests are part of everyone's life, they are not usually the subject of consumer research. But because education is an option in the pursuit of social policy, it has strong political dimensions.

Researchers tend to overestimate the practical importance of their data, and practitioners tend to underestimate the value of statistical and methodological concerns. Researchers have confidence in data collected in controlled ways, while practitioners trust their own experience and recognize that research data is used in a political environment, regardless of the quality of research.

Researchers tend to study broad variables in consumer education; practitioners must make focused decisions about a specific target group at a given time. Intervals between data collection and publication are sometimes long, and the teachable moment can be gone by the time related research is available. Researchers often prefer statistical data, while practitioners may prefer anecdotal data.

Researchers tend to see research as an ongoing process that builds on a growing body of knowledge, while practitioners see it as a single event. Practitioners want research to help them make a better decision now. Once the decision is made, they are less interested in ongoing research.

Researchers tend to downplay budget problems when they are designing research methods, while practitioners tend to weigh the budget carefully when they are choosing a research approach. Researchers tend to give greater weight to factors such as reliability, validity, sample size, and selection. Practitioners may recognize the importance of the researcher's interests, but may also give greater weight to political interests. For example, a practitioner may insist on securing data from a remote region despite less confidence in the data than in that from a more populated region—all because such data is perceived as politically important.

RESEARCH INTERESTS OF PRACTITIONERS

What questions would practitioners like to have answered by researchers? Informal discussions with practitioners in education, business, and government suggest that the following six topic areas are important:

How should a consumer educator

approach a specific consumer learning situation in order to increase the chances of success?

This question points to the need for a practical form of needs assessment. It is a request for an effective way to do a job, given the nature of the task and the environment in which it must be done.

How does a consumer educator evaluate the impact of an educational effort on the target group?

This question involves research designed to measure impact, but it also involves standards for setting expectations and interpreting results. The question of impact is particularly important, in view of the nature of education as a preventative activity. One impact may be the absence of certain events or problems, such as fewer credit problems or fewer unsatisfactory purchases in the future.

How does a consumer educator convince educational policymakers that consumer education is worth the budget requested?

Consumer education has been touted as a consumer right and, therefore, a social responsibility. Yet it has received scant attention as a unique contributor to various educational and organizational goals. Its unique contributions can help convince senior management and educational policymakers of the value of consumer education.

Who should be responsible for consumer education?

People learn about being consumers in at least four ways: socialization, formal education in schools, special adult learning projects, and marketplace experiences. There is ample opportunity for many people to take responsibility for consumer education—but not all in the same way or at the same time.

How do consumer educators motivate people to seek or accept the use of offered consumer education?

A better match between what is offered and what consumers are willing to use is part of the issue. But motivation is often a question of a relationship between the consumer and the educator. Each of the four broad forms of consumer education involves different relationships—and thus differing possibilities for motivation.

How do consumer educators relate to new or alternate technologies?

The answer to this question can help convince management and educational policymakers that consumer education is being done well. Educators with a working knowledge of the learning process are more likely to use technology appropriately. Without such knowledge, practitioners are guided largely by the use of whatever technology is currently fashionable.

While for each of these questions, some theoretical and empirical research has already been done, there are no firm answers.

RESEARCH PRIORITIES

STANDARD APPROACHES. Consumer education needs standard procedures to ensure that programs build on and contribute to the broad base of experience in the field. Models exist (such as needs assessment) that could become "standard" for consumer education programs. For example, we could draw upon marketing and health education models. Needs assessment research methods that are relatively quick and inexpensive are needed in consumer education. While significant education literature exists on the general level, there is not a model for consumer education that is generally useful in understanding processes and relationships.

EVALUATING IMPACT. A simple monitoring system that systematically collects data as part of the activities of an organization is important for decision-making. Evaluators measure impact at three points in the educational program. These measures are labeled summative, diagnostic, and formative evaluations.

Summative measures are taken at the end of the program to see what has been accomplished. They provide accountability to those who support the program.

Formative measures document what is happening as the program is going on, so that program managers and educators can make necessary adjustments. The less research done before the program is designed, the more a manager will want formative measures to ensure expectations are met.

If summative measures are the easiest to assess, *diagnostic measures* are the most difficult. Diagnostic measures seek to explain why things are as they are. Diagnostic research is the most expensive because of the need to control each variable judged to be important. Of the three forms of measurement, summative measures usually receive the most interest and attention.

When measuring impact, it is important to have a clear definition of the possible outcomes. John Knapp's publication *Benefits of Consumer Education* for example, lists general benefits to individuals, to society, and to business. (A single copy of this publication is available free from the National Institute for Consumer Education, 207 Rackham Building, Eastern Michigan University, Ypsilanti, MI 48197.) Knapp provides a start, postulating some hypotheses about what impacts might be expected.

CONVINCING MANAGEMENT. Documentation is needed for the various claims regarding the benefits of consumer education. For example, claims could be based on economic, social, or marketing criteria. However, effectiveness in one domain does not ensure effectiveness in another. Political questions will not be answered by this documentation, but political factors can often be isolated by documenting the objective impacts of consumer education.

An understanding of the processes by which people learn will also help support the hope that a program will deliver what is expected. If the link between what consumer education does and an organization's or school's goals can be demonstrated, there is a greater chance that the organization or school can increase consumer well-being and obtain other benefits.

WHO SHOULD DO WHAT? Relative strengths and weakness of educational delivery systems and management approaches should be studied. Research might examine existing programs to see who can best do particular things to support consumer education. For example consumer education is sometimes thought to be like mathematics—if the schools do a good job, that is all that is needed. In

fact, though, consumer education is more like literature. The schools can teach some skills and whet students' appetites, but if consumer well-being is to be enhanced, reinforcement has to happen throughout students' lives.

CONSUMER MOTIVATION TO LEARN. Educators sometimes underestimate the total costs to consumers of consumer education. Furthermore, consumer educators, convinced of the usefulness of the information, are tempted to rely solely on that information to motivate consumers to seek and accept it. Marketing researchers, aware that one cannot fully rely on the "better mousetrap" approach, study consumer motivation far more than consumer educators do. Theories and research methods are available to use in investigating what motivates consumers to seek and use consumer knowledge and skills.

MOVING AHEAD. Four steps that offer promise for strengthening the effectiveness of consumer education are:

Identify and build on existing consumer education research literature.

Replicate studies, particularly those on impact and learning processes.

Develop joint ventures in which the research team actively involves both practitioners and academics.

Change the reward system for researchers, practitioners, and academics.

Systematic research that deliberately constructs real-world situations is urgently needed in order to improve the effectiveness of consumer education in schools, workplaces, and communities.

The author is indebted to Carolyn Lentz, consumer education coordinator for the Ontario Ministry of Consumer and Commercial Relations, and to Linda Routledge, consumer education adviser for the Canadian Bankers' Association for comments from the view of consumer education practitioners.

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CONSUMER ACTIVIST

TRUTH IN SAVINGS ACT: ACCOMPLISHED, YET UNFINISHED

Informed choice from among fully disclosed and understood alternatives is not only a consumer right, but a prime requisite for consumer sovereignty to drive a competitive, efficient market economy.

I have been involved with the issues of truth in savings for twenty years, and I was involved in helping the Truth in Savings Act get passed last December. I had worked for ten years to get the Truth in Lending Act passed, and working toward the passage of the Truth in Savings Act was the logical next step.

The need for such an act is illustrated by an experience I had with a bank in New York City. I had twin $500 savings accounts—same rate, same date of deposit and activity, same New York City bank—but I was paid a different amount of interest on each account. The posted balances were $548.20 and $543.22. Obviously, there was an error in one or both, but which? How was the interest figured? Would I have recognized an error had I not had twin accounts? As a professor of family economics, responsible for teaching about savings and finance, I felt a professional responsibility to ask questions. I knew the cost of questioning would far exceed the measurable benefit of $. (So much for cost/benefit analysis!) But the opportunity provided to learn and discover why the amounts of interest varied, while admittedly not measurable, might provide results that could be beneficial beyond measure, at least beyond measures acceptable to modern research analysts. (Benefits of exploring the unknown tend to be shunned by economists.)

So I asked such questions as "What do you mean by *compounded daily, credit monthly*?" If the banks compounded the interest daily, surely that meant that they paid interest each day, so what was that daily rate? And when they quoted me the daily rate factor, I compared it with that used by another bank and discovered that different banks use different daily rates for the same quoted annual rate! That caused me to question what role, if any, the regulatory authority exercised. Wondering what the "correct" rate should be, I asked the FDIC. The people I spoke with at the FDIC answered that regulations prohibited "unfair and misleading" advertising and other practices by financial institutions, then admitted the FDIC had no standard by which to evaluate the accuracy of quoted rates! This was the first in a series of my disappointments with the policies of regulators.

I decided that this deficit needed professional attention, so I engaged the assistance of computer experts to produce daily interest factor tables that were accurate to within one cent for principal amounts up to one trillion dollars. To eliminate printing columns of zeros and to make the tables consumer-friendly, I departed from the conventional percent or decimal formats by printing daily values in cents per $100, reasoning that all persons would readily understand cents and easily identify $100 units of principal. The tables for daily and continuous compounding on 365- and 360-day bases were published in 1977 as a Kansas Agricultural Experiment Station Research Paper.

I thought it a waste to print four sets of tables when one would suffice. Much to my surprise, Federal Reserve Board Chairman Arthur F. Burns wrote to advise me that consumers benefit from

the opportunity for competition and that it was to the consumer's advantage to have interest figured on a 360-day base and paid out over 365 days. I thought him naive to think that consumers could appreciate and comprehend the complexities of 360- and 365-day years when his own Federal Reserve Board staff, after more than three years, had been unable or unwilling to answer my letters asking how they interpreted such day configurations. This brought forth the information, but no change in FRB policy until the Truth in Savings Act. Who but a persistent professor would take the time and patience to pursue such details?

The process of achieving passage of Truth in Savings Act has required persistence, both in research to determine what "truth" can be related in an effective manner (which I discuss in my 1988 article in the *Journal of Retail Banking*) and in avoiding the temptation to accept compromises merely to claim success.

The major obstacle to the act's passage has been the refusal of persons at all levels to recognize that they do not know what they do not know. The cliché "If it ain't broke, don't fix it" so angered me that when I went onto the Consumer Advisory Council to the FRB, I nailed the banker whose witticism I had read in the transcript of a previous meeting and then devoted a couple of years to educating him and the others about the problems I and others had experienced. The result was gratifying support for resolutions basic to Truth in Savings.

Another serious obstacle was the vested interest of bureaucrats—that is, staff of regulatory agencies—who were shielded from the public and who defended themselves with their skilled interpretations of complex regulations they had written.

In my recent book *Truth in Savings* (1992), I document the history of the act as well as research publications and congressional hearings, but I do not include personal experiences. On a personal level, my first advantage was that I was not inhibited by parochial professional restraints; as a newly appointed full professor of family economics in 1947, I found myself teaching about credit and savings, and I was forced to learn about interest rates and how to make them teachable. This led to persistent questioning, testing of answers and researching of market, political, and legal forces.

By training, I am an economist, having studied at Oberlin, Wisconsin, Chicago, and Iowa State. I am micro- (consumer-) oriented and obsessed with the conviction that people need the truth to make good choices in the market (the principle of consumer sovereignty), in governmental affairs (the principle of political sovereignty), and in human relations (in the realms of ethics and family). Hence, I was ready with support from home economists for the Truth in Lending Act when Senator Paul Douglas first introduced the legislation. As chair of the consumer credit committee of the Consumer Advisory Council under President John F. Kennedy, I developed the concepts of *periodic percentage rate* and *nominal annual percentage rate.* These carried over to the Truth in Savings Act, with the addition of APY (annual percentage yield) for the yield.

I also had the good fortune of working with graduate students who were willing to undertake original investigative research. Jackie Pinson's study of banks' methods of figuring interest triggered the 1971 article in *Changing Times* that caught the attention of Senator Vance Hartke, who then invited my assistance in drafting the first Truth in Savings bill, which he cointroduced with Representative Bill Roy in 1971. This explains how I got involved in legislation, bill drafting, testifying, and educating policymakers.

The battle for the Truth in Savings Act was a lengthy one, but many made significant contributions along the way. Among these were journalists Bob Harvey, editor of *Changing Times*, Jane Bryant Quinn, John Dorfman, Craig Stock, and Jerry Heaster; presidential consumer advisors Betty Furness, Esther Peterson, and Virginia Knauer; Senators Vance Hartke, John Sparkman, John Tower, and Christopher Dodd; Representatives Bill Roy, Henry Gonzalez, Esteban Torres, Richard Lehman, and Jim Slattery; Ed Mierzwinski of U.S. P.I.R.G.; and Tom Clark, Deputy Superintendent of the New York State Banking Department, which since 1979 has had an exemplary act that tracks my Model State Act (1980) and incorporates my tables.

In addition to the sporadic support along the way, there was also opposition. The banking industry routinely testified that the Truth in Savings Act would cost consumers, that consumers had not complained nor requested the information, and that if it were available, it would be confusing and would force small banks to close their doors. More disappointing was the lack of any genuine support—and, in fact, some opposition—from consumer groups.

One has to wonder whether the act would ever have passed if the bank insurance fund had not desperately needed congressional action, or if a major Virginia bank that was widely used by senators, representatives, and their staffs had not adopted a policy of paying interest on only the "investable balance"—that is, on about 84 percent of the principal balance. Consequently, lawmakers became personally aware that the system was "broke and needed fixing."

The act was finally passed on December 19, 1991. But my efforts have not ended. The Federal Reserve Board has written deficient regulations for the act's enforcement, so we all must make every effort to ensure that the law's full intent is implemented and enforced.

Maybe we need "truth in savings," too. (1971, February). *Changing Times*, 7-11.

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BOOK REVIEW

TAKE IT BACK!

Singer, A. & Parmet, K. (1991). *Take It Back! The Art of Returning Almost Anything.* Bethesda, Md: National Press Books, $9.95

Amid the current deluge of self-help books, it should not be surprising to find a guide for consumers who are unable to adequately exercise their right to return unsatisfactory purchases. But this step-by-step manual for self-diagnosed "returnaphobes" may make even consumer activists stop and take notice. The authors define a returnaphobe as a consumer with closets and drawers full of shopping mistakes and who has a fear of store clerks and procrastinates returning items. The suggestions the book provides for making successful returns are for the most part practical and helpful. However, at times the authors border on being too idealistic; their statement that "everything is returnable" may not be realistic in today's marketplace.

Neither author reports having had any formal training in resolving consumer disputes. Consequently, they rely primarily on personal observations and experiences as the basis for their book. Arlene Singer has a B.A. in psychology from American University and has been a professional buyer for fifteen years in the field of advertising. On a personal level, she is responsible for the purchases and returns of goods and services for an active family. Karen Parmet earned a B.A. in sociology from UCLA and lists her credits as having shopped and returned purchases at every major and many minor stores on both coasts.

Historically, consumers have had a poor record of exercising their right to redress. Experts often cite lack of formal consumer education as the primary reason many consumers lack the skills necessary to complain effectively. The authors have taken this lack of consumer skill one step further; they claim selected psychological traits such as excessive insecurity, feelings of guilt, and being easily intimidated are reasons many consumers don't stand up for their rights in the marketplace.

This basic premise is expanded by subdividing such consumers into four personality types. "Straight-laced shoppers" can't return unsatisfactory merchandise because of their upbringing, which taught them that when they make a mistake they should pay for it. "Macho-mentality" consumers never admit to making mistakes and never return anything. "Guilt-ridden" shoppers make purchases because they feel obligated for the amount of time a salesperson spends helping them; returning the item would increase their guilt. According to the authors, "wimpy wonders" do not return items because they are afraid someone will reject their request. The theory that personality type determines specific complaint behavior does not fall beyond the realm of believability, considering research on other forms of consumer behavior that include decision-making, brand loyalty, and psychographics.

If you accept the authors' basic premise that the way a person seeks (or does not seek) consumer redress is a function of specific personality characteristics, then the need for a self-help guide for consumers with such personality characteristics is apparent. If you do not accept this premise, the book is still valuable; its format is readable and its step-by-step process outlines how to resolve disputes about unsatisfactory merchandise.

Featuring 160 pages of easy-to-read material and clever graphics, the book emphasizes the right to seek redress and provides helpful hints to shoppers, short case studies, checklists, action plans, and a wide variety of techniques consumers may follow to return merchandise successfully. The book's most helpful features are likely to be the sample complaint forms and letters—a consumer can just fill in the blanks to adapt them to a particular situation.

The book's content and presentation is appropriate for older teenage consumers and readers with limited resources, as well as more traditional adult readers. The book would be an interesting text or valuable resource guide for use in high school- or freshman-level consumer economics courses. Youth participating in the 4-H Consumer Judging program would benefit greatly by a follow-up lesson on returning unsatisfactory merchandise utilizing the techniques the book outlines. Adult education programs based on this text would also be interesting and marketable for consumer interest groups', agencies', and Cooperative Extension agents' special interest programs.

The book contains nine appendices to aid consumers in their quest for product satisfaction. They include: mailing addresses of presidents of major retail stores, Call for Action affiliates, Better Business Bureaus, state consumer protection offices, Federal Trade Commission offices, United States Product Safety Commission offices, automotive company addresses, and auto consumer action programs. Nevertheless, the appendices are limited in scope, lack depth, and the accuracy of the addresses and telephone numbers listed is questionable. A far more comprehensive and accurate source of such consumer information is the *Consumer's Resource Handbook*, which is available free from the Consumer Information Center, Pueblo, CO 81009. This handbook is updated yearly by the United States Office of Consumer Affairs.

Take It Back! could be used as a unique tool in teaching consumers how to make effective complaints. Light, entertaining reading, it provides helpful suggestions for consumers. In these times, it is of utmost importance for consumers to exercise their consumer rights in order to get the best-quality goods and services available to successfully meet individual needs and expectations.

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BOOK REVIEW

ADS AND OTHER "PITCHES"

Rank, H. (1991). *How to Analyze Ads: The Pitch* (2nd ed) Park Forrest, Il.: The Counter-Propaganda Press

This slim 156 page paperback is published by a group with a cause. The Counter-Propaganda Press is an independent small press whose purpose is "to help the average person analyze better the common patterns of persuasion as used today by the sophisticated, organized persuaders, whether commercial or political, left or right, domestic or foreign." At least in this particular volume, the publisher lives up to its mission statement.

How to Analyze Ads: The Pitch, written by English professor Hugh Rank, is used in his college communications class. It is thus understandably devoid of jargon from disciplines such as psychology and marketing in which advertising techniques are often topics of research and discussion. An advantage of this standard English approach is a potentially wider audience, including interested nonacademics as well as high school students.

In addition to the book's nontechnical language, consumers and consumer educators should also appreciate its consumer information/education perspective. Instead of using the usual "how to persuade" approach written for would-be persuaders, this volume is written for ad recipients, encouraging them to recognize, evaluate, and respond appropriately to persuasive attempts. The approach is thus not only consumer-oriented; it also emphasizes enlightened individual responses and responsibility rather than pleas for further government protection.

The only substantial deviations from this emphasis on personal understanding of and response to commercial advertising occur in the concluding sections. The first raises some standard social issues concerning advertising's alleged "harmful effects," such as its over-emphasis on materialism. Also, despite the implications of the title, commercial advertisers are not the only persuaders the book discusses. Short concluding sections address how "pitch" principles may apply to political, war, and cause propaganda. The author contends that these principles are used not only by advertisers, but by *any* sophisticated persuader—including politicians of every ideological stripe, as well as successful charities and social cause groups.

Major sections of the book are organized around the author's particular version of the "pitch" as it applies to commercial advertising. Chapters cover each of the phases of the process: attention-getting, confidence-building, desire-stimulating, urgency-stressing, and response-seeking. The author discusses techniques used for each phase, as well as "key words" used in certain phases. In the attention-getting chapter, for example, "association" is among the many techniques included. It is defined as the continued linkage between the product and something the intended audience already views as positive (e.g., good-looking people). The product is thus presumed to elicit eventually some of that same positive response. Note that such academic terms as "target market" or "classical conditioning" are not used to describe this phenomena. As for the key words used, those for the confidence-building stage include such assuring terms as "expert," "informed," "reputable," "trustworthy," and "guarantee."

The book's content is not particularly original, but it is a well-written and interesting presentation for a lay audience. Much of the same information is covered in communications, marketing, sales, and advertising texts under such rubrics as the AIDA approach (i.e., *A*ttention, *I*nterest, *D*esire, and *A*ction). However, such sources typically differ from *The Pitch* in the following ways: they are written from the point of view of the message's composer rather than that of the recipient; they do not cover the "pitch" as thoroughly as Rank does; and they present such material using discipline-specific terminology, while Rank uses nontechnical prose.

On the other hand, potential readers should be aware of the volume's limitations. Among them is a slighting of the campaign context of individual ads—that is, most ads only present a part of the total pitch. Furthermore, different media carry ads that typically concentrate on certain parts of the total pitch. For instance, national TV ads normally focus on the attention-getting, desire-stimulating, and confidence-building phases. Newspaper ads, on the other hand, almost exclusively pursue the urgency-stressing and response-seeking objectives.

Perhaps the most important limitation of this book is its relative lack of discussion (i.e., one page) of *self-analysis* in conjunction with its emphasis on *ad-analysis*. Even if individuals can identify the techniques and key words used in ads, can they rationally evaluate their own responses to them? Or do their ideal self-concepts, biases, or defense mechanisms impair their objectivity? Are individuals aware that they are probably more consistently susceptible to certain appeals than they are to others? And what are some of the personal attributes (e.g., values, motives, and personality traits) that can account for such susceptibility? What approaches can a consumer use to methodically control such impediments to making effective decisions?

Readers interested in the above self-analysis issues may find it valuable to consult consumer education texts, most of which address at least some of them under such topics as "value clarification" and "rational decision making." Without such supplementary discussion, the ad analysis in *The Pitch* may prove to be more a didactic exercise than an effective aid to consumer decision-making.

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