6-1-1972

Neighborhood Consumer Center: Relief for the Consumer at the Grass-Roots Level

Robert C. Mussehl

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation

Robert C. Mussehl, Neighborhood Consumer Center: Relief for the Consumer at the Grass-Roots Level, 47 Notre Dame L. Rev. 685 (1972). Available at: http://scholarship.law.nd.edu/ndlr/vol47/iss5/1

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
Mister Jones, this car you sold me/ Isn't all that I desired/ You swore it was young and healthy/ Now I find it's old and tired./ But a deal's a deal you tell me/ And there's nothing to be done/ Mister Jones I'd like you better/ If you robbed me with a gun./ You're a Sunday morning Christian, sir;/ Singing louder than the rest . . .

country-western song by
Harlan Howard

I. Introduction

The marketplace in America today resembles less an honest exchange of goods and services than it does a trap for the unwary, the poor, and the uninformed. Exploitation of the consumer, both petty and grand, is costing the public billions of dollars annually, while the price in terms of human suffering and frustration is incalculable. Through ignorance, apathy, or design, a "tolerance policy" toward those who deceive the consumer exists in many parts of the country. The shadings of such deception involve not only fly-by-night operators, but industrialists who lobby against the consumer's interests, merchants who com-


The author wishes to acknowledge the assistance of Ms. Elizabeth Taylor in the preparation of this article.

2 The President's Crime Commission in 1967 estimated that the nation's economic loss due to fraud is $1,350,000,000 annually, or more than 1/3 of the nation's total "crimes against property." By contrast, crimes such as burglary, auto theft, larceny, and robbery, are thought to represent a $600,000,000 loss to the American public, or less than half the loss due to fraud. The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 125 (1967) [hereinafter cited as The President's Commission]. Other estimates of the economic impact of consumer fraud include the costs of industrial crimes as well: "[E]asily 30 percent of all consumer spending is wasted . . . [perhaps] as high as 40. In other words, $174 to $231 billion [which] consumers spend each year may buy no product value." Senator Philip Hart, Congressional Consumer Investigations: What Do They Tell Us? Address to the New York Consumer Assembly, Mar. 7, 1970, as quoted in Oligopoly Investigation, 3 Ant. L. & Econ. Rev. 12 and n.5 (1969). "Monopoly pricing in one form or another accounts for the bulk of this consumer loss, particularly price-fixing conspiracies and the economic collusion or nonindependence inherent in the high concentration ratios found in certain segments of American manufacturing." Id. (Footnotes omitted.)

One of the problems, according to Ralph Nader, is that:

Corporate fraud and other economic crimes . . . escape the normative perception that would be applied, for example, to a pickpocket by most people. From educational to media systems, people are not afforded adequate opportunities to learn about and ethically evaluate price-fixing, adulterated citrus juices, hams, and poultry, deliberately fragile bumpers, unperformed but billed-for services, suppression of life-saving innovations, and other crimes which bilk the consumer . . . .


monly and flagrantly bilk the poor, and regulatory agencies which fail to protect the health and welfare of the public. Consumer abuse is egalitarian; it cuts across social, economic, and political boundaries\(^4\) to harm everyone, including the ethical businessman. Clearly, the national interest mandates that viable programs be implemented to protect and to educate all consumers.

Despite its pervasiveness, the true dimensions of the consumer’s problems have not been fully appreciated. Neither the law nor public awareness has kept pace with the vast changes taking place in technology, business, and promotional activities. Whereas the consumer once bargained with his neighbors over openly displayed merchandise, today he faces a market which is impersonal and highly sophisticated.\(^5\) The corner grocery store with its friendly shopkeeper has given way to the supermarket and its rows of packaged foods; small town advice-giving has been replaced by the urban environment, where auto mechanics, door-to-door salesmen, and department store clerks are all strangers. It is indeed a confusing time for the consumer, made more confusing by such factors as a mobile population, easy credit, and mass production. Although he has been blessed with the abundance of a progressive economy, the consumer is bewildered by the size and the sophistication of the marketplace, encountering problems that didn’t even exist a generation ago.\(^6\) Intimidated by the complexity of products and estranged by distance from the firms that made them, he is too often ignorant of his rights or, when cheated, where to turn for help.\(^7\) As Senator Gaylord Nelson has noted, “the American consumer is in grave danger of becoming a casualty of bigness.”\(^8\) He is an amateur, while the producer—whether he is honest or not—is the expert.\(^9\)

In response to the consumer’s distress, the Consumer Affairs Committee of the Young Lawyers’ Section of the American Bar Association is proposing the establishment of a network of Neighborhood Consumer Centers throughout the nation, the first to be located in Seattle, Washington. Unlike existing governmental and private consumer agencies which concentrate their limited resources

\(^6\) The President’s Crime Commission noted that:

> During the last few centuries, economic life has become vastly more complex. Individual families or groups of families are not self-sufficient; they rely for the basic necessities of life on thousands or even millions of different people, each with a specialized function, many of whom live hundreds or thousands of miles away. The manufacture and distribution of goods and the provision of services at low cost and high quality has resulted in great business enterprises with billions of dollars in assets and in unions with hundreds of thousands of members.

_The President’s Commission, supra note 2, at 156._

\(^7\) U.S. President’s Committee on Consumer Interests, *Suggested Guidelines for Consumer Education 1* (1970).

\(^8\) _The Government as Referee_, in _The Consuming Public_ 37 (G. McClellan ed. 1968).

\(^9\) Theodore Levitt, Professor of Business Administration at the Harvard Business School, describes the inequities between buyer and seller:

> The consumer is an amateur, after all; the producer is an expert. In the commercial arena, the consumer is an impotent midget. He is certainly not king. The producer is a powerful giant. It is an uneven match. In this setting, the purifying power of competition helps the consumer very little — especially in the short run, when his money is spent and gone, from the weak hands into the strong hands.

on large-scale frauds, the concept behind the Neighborhood Consumer Center is to provide aid to consumers on a local level, where meaningful legal redress has traditionally been lacking. As the pilot program for this project, the Seattle Center would operate as a grass-roots organization, addressing itself to the more immediate, but less financially substantial, everyday complaints of the average consumer.

To acquaint the reader with the nature of these problems, Chapter I of this article focuses on consumer deceptions which occur locally and which demonstrate the intended purpose of the Neighborhood Consumer Centers. Because of the length required to describe these frauds, it has been necessary to exclude complaints that demand solutions through federal means. For example, we have omitted deceptions that affect the health and safety of the consumer, such as the low standards and the poor engineering practices sometimes found in the drug, meat, fish, automobile, and toy industries. Also omitted are deceptions that occur within the advertising industry and antitrust activities that cheat the public by reducing competition between companies. While it is important to recognize that consumer problems exist in the "respectable" arenas of the marketplace and are perpetrated by big businesses as well as small, such issues extend beyond the scope of this article and beyond the jurisdiction of the proposed Neighborhood Consumer Center.

Chapter I concentrates on consumer grievances that occur in the local market. Beginning with the consumer's right to an informed choice, we discuss the failure of merchants today to provide adequate information about the goods they sell, resulting in trial-and-error shopping by even experienced buyers. Next the myriad tricks used to defraud consumers are analyzed, some so subtle and widespread that, given their variations and applications, virtually everyone is vulnerable to being deceived. Following this, we examine the entangling web of credit, focusing on the legal intricacies which can bind an unwitting consumer to a lifetime of needless debts and hardships. We also describe in Chapter I the special problems of low-income consumers: their victimization by ghetto merchants, their gullibility because of high aspirations and poor education, their frustration at being continually cheated and made to pay more, and their continuing plight because of the failure of the reputable business community to provide them with meaningful marketplace alternatives.

In Chapter II, we turn to a review of the various governmental and private remedies which are available today to aid the aggrieved consumer. As the weaknesses of these programs unfold, we find that most lack the commitment, the funding, and the staff necessary to uphold the consumer's right to fair trade or to protect the reputable businessman from unscrupulous competitors, particularly in the local market.

After defining the problems and describing the inadequacy of present-day solutions, we explore in Chapter III the goals and operations of the proposed Neighborhood Consumer Centers. Designed to meet the educational and legal needs of the average consumer, the Neighborhood Consumer Center would serve as a community focal point for consumer grievances and redress, as a negotiating agency between buyer and seller, and as a major research and edu-
ational resource for further improvements in the marketplace. It is our contention, given the cynicism and frustration among consumers today, that such a program is needed and would be instrumental in helping to restore the integrity and vitality of the American economic system.

II. The Scope of the Problem

A. The Right to an Informed Choice

In keeping with the demands of a high-consumption society, American industry has provided consumers with a vast array of products, packages, and prices, yet it has excluded the information necessary for making intelligent purchasing decisions. Lacking facts about price/quality relationships, product content, safety, care and performance, the consumer must gamble his money on merchandise which he hopes, rather than knows, will satisfy his needs. How, for example, is a shopper to choose rationally between six brands and three grades of gasoline, an innumerable variety of television sets, and eight kinds of orange juice? Without a computer, who can tell that one tube of toothpaste selling at 51¢ for 3.25 ounces is equal to a second brand selling at 61¢ for 4.6 ounces? Similarly, what are the ingredients in competing face creams? How long will a particular washing machine last? What does a “lifetime guarantee” mean? And how does one care for a new synthetic sweater?

By failing to answer these important questions at the time of the purchase, industry’s deception is not one of committing a crime, but of omitting critical information. Without guidance, it is impossible for the average consumer to make distinctions between virtually identical, but complex and sophisticated, products. Indeed, any attempt at comparison shopping is merely an illusion, as an experiment conducted by Eastern Michigan University demonstrates.

10 President Kennedy, in his 1962 special message to Congress on consumer protection remarked on the high degree of decisionmaking required for daily living: “Many of the new products used every day in the home are highly complex. The housewife is called upon to be an amateur electrician, mechanic, chemist, toxicologist, dietician, and mathematician....” 108 Cong. Rec. 4263 (1967).

11 Actual prices and sizes of two competing toothpaste brands, Crest and Fact, noted by J. Bishop, Jr. & H. W. Hubbard, Let the Seller Beware 167 (1969) [hereinafter cited as Bishop & Hubbard].

12 “Any large manufacturer can tell how long his appliance will last, what part will likely age first, and how much repairs will cost in each succeeding year, and when the crossover point between repairing or replacing is reached.” Id. at 170. In a speech to the American Marketing Association in December, 1967, Betty Furness, former Special Assistant to the President for Consumer Affairs, suggested: “Why shouldn’t the housewife know that there are ‘X’ number of hours of service in her washing machine or that the life expectancy of a toaster falls short of a golden wedding anniversary? The manufacturer knows, and the marketer knows, what the design life of their product is. Shouldn’t the consumer know also?” Id.

13 Indeed, the educational level of the consumer may have little to do with the wisdom of certain purchases, whereas occupational factors may be more important. For example: “Car mechanics and appliance repairmen are probably the people most qualified to buy used cars and appliances.... Under most circumstances.... a mechanical engineer would be no more adept than a lawyer at choosing a used car.” President’s Comm’n on Consumer Interest, The Most for Their Money 5, cited in Note, Consumer Legislation and the Poor, 76 Yale L.J. 745, 752 n.39 (1967).

14 112 Cong. Rec. 12774-12776 (1966) (study conducted by Monroe P. Friedman of Eastern Michigan University). In another study:

College-educated women recruited by a California survey were given $10 each
order to test the ability of people to shop economically, thirty-three college-trained young women were instructed to select the least expensive package for each of twenty food items at a local supermarket. Given three times the normal amount of shopping time, they were unable to identify the lowest cost per unit for 43% of the items, and thus they spent 9.14% more than was necessary or economical. If most people are similarly unable to identify the best buys on the grocery shelves because of packaging confusion and deception, it is estimated that American families waste $4.5 billion a year. In the absence of facts, the consumer must base his purchasing decisions on advertisements, package size, name familiarity, and esthetics—all irrelevant indicators of the quality and the reliability of any product, whether a can of peaches or an automobile.

In the interests of fair trade, then, both the producer and the merchant must recognize the consumer’s right to know what he is buying. Nationally, more descriptive labeling, less deceptive packaging, and more informative advertising between competitors would be meaningful first steps towards this goal. Even further reaching would be the adoption of Representative Benjamin Rosenthal’s bill twice introduced in the House, which would provide for the testing and the labeling of consumer goods by an independent organization. The buyer would be given such information as product performance, content, safety, and maintenance characteristics. Considered “almost revolutionary by U.S. standards,” Representative Rosenthal’s “Info-Tag” system is similar to the British “Teltag” plan which was implemented in Great Britain in 1969. “Grabbing even the laziest shopper by the eye-balls,” the Teltag system is proving to be an effective simple tool in the consumer’s quest for information, one that warrants application in America.

Equally pervasive changes could be achieved on the local level by instituting

16 BISHOP & HUBBARD, supra note 11, at 163-81.
17 Experimental nutritional labeling programs are now being conducted in conjunction with the Food and Drug Administration to determine what kind of nutritional labeling is most useful to the consumer. One of the programs, at the Jewel Food Stores in Chicago, involves eight private label canned items. The label identifies the food as a “good source” of a nutrient if the food contains ten or more grams of that nutrient, and it also provides information as to caloric content. Giant Food Stores in Washington, D.C., lists several nutrients on its labels, giving the amount of each, along with calories and grams of carbohydrates, fat, and protein for ten private label canned foods. The Giant program includes in-store charts giving nutrient content of bakery, dairy, meat, and produce items. Of Consuming Interest, September 10, 1971, at 2.


The tags tell prospective purchasers a number of product-related facts: where the specific model fits into Maytag’s line, what features it has, how much electricity it uses, what is needed for installation, special safety precautions to be followed, and information on warranty coverage.

Id.
unit pricing and shelf-life information in retail stores. Rather than choosing a product for its packaging or name familiarity, consumers would be able to shop by identifying each product's cost per unit and its length of time on the shelf. These important remedies, plus improvements in the pricing of drugs, will soon be recommended for legislative action by the Office of the Attorney General in Washington State; if passed, they would obviously go far to resolve many of the problems, similar to those noted in the supermarket experiment above, which face Washington consumers today. Although providing the consumer with product information would not necessarily cure his failure to use it or prevent him from ever being cheated, it would at least insure his right to make an educated, rational choice. It would be one attempt to balance the odds against him, representing only the first of many skirmishes in a long and overdue battle.

B. Outright Frauds

Before outlining the various tactics used to defraud consumers, two popular fallacies deserve mention because their currency detracts from the importance of establishing viable protection for consumers. One fallacy holds that middle-class and upper-middle-class persons are rarely victimized by consumer fraud; that it is mainly the poor, the ignorant, the mentally defective, and the immigrant who fall prey to deception. The second fallacy denies the intensity of the problem by belittling the complainant and his grievances. According to this theory, complaining consumers are usually neurotics who by nature grumble and protest, or they are people who have made foolish purchases and later seek release from their responsibilities.

Like most fallacies, there is a small amount of truth in these beliefs, but a great deal more myth and error. Unfortunately, neither seems to recognize that consumer fraud does indeed exist and that it exists with a vengeance. While the poor are frequently deceived in the marketplace and while some citizens blame merchants for their own mistakes, crimes against the consumer are widespread and subtle enough to entrap people of all educational and economic backgrounds. The volume of registered complaints, as well as the cultural bias which compels people to complain, however, clearly favors the middle class. To the extent that such grievances are exculpated by a complacent business and governmental community or resolved through vigorous enforcement, the public's faith in the integrity of the law and private enterprise is affected. Thus, it is not enough to dismiss consumer complaints as merely the minor afflictions of a few; rather, they must be recognized as comprising a problem of national proportion, one that requires swift legal remedy on behalf of all. Although the cases of


22 Specifically, the disclosure of drug prices in advertising and the publishing of trade and generic names of drugs to help consumers pick the most economical pharmacies and brand names when filling their doctors' prescriptions.

23 "It seems clear that the vast majority of the country does not exert itself to make informed and rational purchasing decisions." Note, Consumer Legislation and the Poor, 76 YALE L.J. 745, 768 (1967).
deception described in this chapter are true, they represent only a sampling of the virtually limitless variety of frauds concocted for today's consumer.

1. Deceptive Advertising

A common scheme in the swindler's repertoire is known as "bait and switch" advertising. Basically, a seller seeks to attract customers by advertising a product, which he does not intend to sell, at an extremely low price. When a customer responds to the ad, the seller discourages him from purchasing the "bait" and instead tries to "switch" him to a higher priced, more profitable item. To qualify as a bait and switch scheme, an advertisement might create a false impression about the size, the model, or the general condition of the product so that, upon disclosure of the true facts, the customer would switch to another product. Or the seller might discourage a sale by refusing to demonstrate a product or to sell it, by disparaging it through words or acts, or by discrediting its guarantee, its credit terms, and the availability of service, repairs, or parts. The primary aim of such methods is to obtain leads to persons who are interested in buying the type of merchandise advertised. Since customers are psychologically prepared to spend their money once they're inside a store, it is merely another step for the salesman to convince them to purchase a "better" product than the one advertised, but at a higher price. "I don't know how they do it," one New York merchant commented. "They advertise three rooms of furniture for $149 and the customers swarm in. They end up buying a $400 bedroom set for $600, and none of us can believe how easy it is to make these sales."

A classic example of bait and switch tactics is that of an appliance store which advertises "For A Limited Time Only," a 1970 Touch and Sew Singer sewing machine selling for $86.40. Inquiring at the store, the customer discovers to his disappointment that the machine described in the ad is actually an old, beaten-up Singer about 25 years old. The salesman, admitting his "mistake," saves the day by bringing out a sparkling new, off-brand sewing machine priced at $289. By the time the sale is made, the customer has usually bought a poorly made appliance, minus a guarantee or repair services, and costing far more than a machine manufactured by a reputable firm.

Although salesmen are sometimes threatened with the loss of their jobs if they do indeed sell the bait, an occasional sale of an advertised product does not preclude the existence of a bait and switch scheme. It may only be an incidental by-product of the fundamental plan, intended to provide a screen of legitimacy to the over-all operation. Because of the difficulty in proving cases of bait and switch in court, such practices are flourishing in most states, their vari-

---

24 Carpenter, Consumer Protection in Ohio Against False Advertising and Deceptive Practices, 32 Ohio St. L.J. 1, 8 (1971).
25 FTC, Guides Against Bait Advertising, 16 C.F.R. § 238.2 (1967) [hereinafter cited as FTC Guides].
26 Id. at § 238.3.
28 MAGNUSON & CARPER, supra note 5, at 9-10.
29 Id. at 11. According to the FTC, it is unlawful to use a sales plan "designed to prevent or discourage...[salesmen] from selling the advertised product." Supra note 25, at § 238.3.
30 FTC Guides, supra note 25, at § 238.4 (textual note).
ations sometimes so subtle that many victims fail to realize they are being deceived. As the following examples will show, bait advertising covers a multitude of items, including furniture, carpeting, automobiles, auto parts, appliances, repair services, and products at discount stores.

Sometimes a bait advertisement can be found in the classified section of a newspaper, where an individual represents himself as a private party intent on selling a few household goods. In one case, a man who lived in a houseboat rented a small warehouse across the street, where he stored a surplus of new lawnmowers and vacuum cleaners. Advertising in the Sunday papers, he would spend his weekends showing his dull, old lawnmowers and an equally useless vacuum cleaner to the people who answered his ads. When they were obviously dissatisfied with the merchandise he had advertised, he would display a new vacuum or lawnmower which he “just happened” to be willing to sell. His game was discovered only because a woman working for the newspaper became suspicious about his weekly use of the classified section.  

In another case, a woman noticed a newspaper advertisement, placed by a wig salon, which promised to recondition old wigs for $1 with a coupon. Since the price was regularly $3.95, she took her wig to the store but was told that the advertised service was rendered only in connection with a $5 styling. When she insisted that she wanted only the reconditioning, the store refused to comply.  

In Washington State, the practice of refusing to sell an advertised product or service unless coupled with another product or service is considered to be a bait and switch tactic and, as such, is a violation of the law.  

In still another instance, an automobile repair company advertising by newspaper and radio, boasted that it supplied and installed rebuilt automatic transmissions for the unusually low price of $114, complete with a two-year guarantee. After investigation, it was found that the company had hired four people to make “rebuilt” transmissions in a basement by gathering and using old parts from junk yards. According to the Transmission Rebuilders Association, this practice constitutes the reconditioning or cleaning up of used transmissions, but it does not rebuild them. As part of the bait and switch scheme, the advertised $114 price did not include labor, which brought the real cost to $170; nor did it provide a true guarantee, since the customer was given only a 15% discount for any work that was later required.  

Advertising which uses “something for nothing” gimmicks is invariably a sign of deception. Someone who subscribes to a food-freezer plan, believing he will receive a free freezer, usually discovers that the food he is buying is low quality and over-priced, while his food payments amply cover the cost of the freezer. Another victim might find a card in his mailbox or attached to his

34 Example on file in the Office of the Attorney General, supra note 32.
35 MAGNUSON & CARPER, supra note 3, at 17.
door congratulating him for having been selected to receive one of several prizes. All he has to do to learn whether he has won a color television, a radio, a "surprise bonus" gift, or a vacation to Las Vegas is call a certain number. The card promises "no purchase necessary, no obligation." Making the call, he discovers that in order to find out what he has won, he must first help a vacuum cleaner company conduct a "survey" in his home, which in fact is a demonstration of the company's product. Unless he consents to this, he is refused his prize. A study of such a case in Washington State showed that the most common gift was the vacation to Las Vegas. As long as the "winner" provided his own transportation to and from Las Vegas, he would receive a certificate for two nights in a motel, compliments of a real estate company that obligated him to tour a land development while he was there.36

Coupon "specials" found in newspapers or sent through the mail can also signal consumer fraud. A common ploy among unscrupulous photographers is to advertise an 8" X 10" color family portrait for just $4.95 ("worth $24.95") when accompanied by a special coupon. After the consumer sits for his picture, he is shown his proofs on slides, a method guaranteed to hide most technical imperfections. Thus assured that his pictures will turn out well, the photographer convinces the buyer to purchase several more photographs in addition to the original coupon "special." When they are completed, the photographer mails the final pictures C.O.D., requiring the customer to pay the Post Office in full before he is allowed to open his package. When he discovers that his family portraits are blemished, off-center, and totally unacceptable, he also finds that the photographer, like most fraudulent businessmen, follows a policy of refusing to refund a customer's money, even for obviously defective merchandise.37 Aside from hiring an attorney, the customer usually has no recourse in such a case.

Another method of deception is to advertise spurious "fire" or "liquidation" sales. According to the Municipal Consumer Protection Office in Seattle, "During the last ten years, a furniture store in Seattle has 'quit' business five times. Each time the company purchases a [quitting business] license and each year the same company is still in business. Once the name of the company changed, but the store itself, as well as its personnel, remained in the same location."38

Or a merchant might advertise that he charges his customers a "cut" from a manufacturer's list price, although in reality the list price is seldom, if ever, followed.39 One clothing store in Seattle is known to sell items continually at "32% off," but apparently never offers them for the "regular," or 100% price. During a special "George Washington's Birthday Sale," this business advertised items for "$\frac{1}{2} price." However, the "$\frac{1}{2} price" referred to the fictitious "regular" price and not the "32% off" price for which the store usually sold its merchandise.40

36 Example on file in the Office of the Attorney General, supra note 32.
37 Id.
38 CONSUMER PROTECTION REPORT, supra note 3, at 15.
39 Carpenter, supra note 24, at 9.
40 CONSUMER PROTECTION REPORT, supra note 3, at 12.
Direct sales, or door-to-door selling, provides a major portion of consumer complaints. Misrepresentation by the salesman of either himself or his product is a common trick used to fool consumers. Introducing himself as an advertising representative, a survey-taker, a member of the school board, or a veteran just back from Vietnam, a door-to-door salesman can readily gain the consumer's confidence. For instance, in his book, *The Dark Side of the Marketplace*, Senator Warren Magnuson describes how the wife of an attorney in New York was tricked into subscribing to three children's magazines under the impression that it was a “service” of the Board of Education. In another case, the sociologist, David Caplovitz, testified that he had met “Puerto Rican parents who cannot read English who, nonetheless, agreed to purchase on credit $400 sets of encyclopedias, simply because they believed the salesman’s story that their child would otherwise be forced to drop out of school.”

Posing as government officials or safety inspectors, some fly-by-night operators use scare tactics to convince homeowners to buy new furnaces, to have perfectly healthy trees cut down, or to exterminate termites which do not exist. The Holland Furnace Company, operating from the 1930's until January, 1965, collected $30 million a year from the American public by inspecting, condemning, and replacing thousands of normally functioning, safe home furnaces. Located in 500 offices throughout the country, its 5,000 employees would commonly dismantle a furnace, then refuse to reassemble it, stating that the furnace was so dangerous that they did not want to be “accessories to murder.” Sufficiently frightened, the homeowner would agree to buy a new furnace for an enormous price, unaware that neither the expenses nor the installation was necessary.

Other door-to-door salesmen scour the country, displaying gruesome photographs of families burned to death in home fires, their object to sell home fire alarm systems which are invariably over-priced or unworkable. In 1965, a Washington buyer successfully defended an action to recover the purchase price of such a system but only after 137 families in Yakima County had purchased radio intercoms and fire alarm systems for $1,187 each, systems which cost the manufacturer $225 to make. Initially, a salesman for Lifetone Electronics,  

---

41 Eric Geller describes the tactics of many door-to-door salesmen who are employed by several well-known encyclopedia publishers:

The salesmen have to memorize patter carefully devised to wear down prospects within 30 minutes. Every statement, gesture, smile is carefully prescribed and designed to make the family feel inferior . . . , and also to play on young suburbanites' desire for status and recognition: “Like I said before, I’m not a salesman. My job is merely interviewing young families in different areas, and placing a few of these encyclopedias in homes where they would be appreciated . . . If a family we talk to honestly doesn’t realize the importance of a major work of this type, then I’m sorry. I’m not a salesman, and I’m not trying to educate such a family. My job is merely to place these encyclopedias with people like yourselves who truly appreciate and respect education as it is in this fast-changing world of today.”

42 MAGNUSON & CARPER, *supra* note 5, at 17.  
44 MAGNUSON & CARPER, *supra* note 5, at 21-22.  
45 Id. at 22-23.  
46 Id. at 21-22.  
THE NEIGHBORHOOD CONSUMER CENTER

Inc., would appear at a customer's door, representing himself as part of the advertising division at General Electric. After frightening the consumer with descriptions and pictures of home fires, the salesman would assure him that, simply by furnishing Lifetone with a list of prospective purchasers, the consumer would receive enough commissions from the resulting sales to cover the purchase price of a new fire alarm system. Thus, Lifetone promised buyers something-for-nothing via the "referral selling" scheme. In truth, however, for the consumer to receive a free alarm system, 12 of his referrals would have to purchase fire alarms, providing him 12 commissions of $100 each. Assuming that his referrals, too, would want to earn commissions, each of them would have to find 12 more people to purchase fire alarms, and by the 5th round, fully 248,832 people would have had to purchase fire alarms in order for the chain referral system to work. But the market becomes saturated long before this point, and the consumer, having signed a contract for $1,187, has to pay the full amount. As the trial court found, chance permeates the entire referral selling scheme in that the consumer takes a chance that the referrals might not be interested, the salesman might not adequately make his presentation, the referral might have already been referred by someone else, the market might be saturated, and the salesman might not even contact the referral. (In fact, consumers were told not to contact their referrals before the Lifetone salesman had made his presentation.) Such a scheme, the Washington Supreme Court ruled, represents a lottery, and by Washington State law, the referral selling agreement and contract made by Lifetone were illegal and unenforceable.

Referral selling tricks are used to sell a variety of other products as well. In one case, a door-to-door salesman was demonstrating a vacuum cleaner, costing $395, to two sisters who had just moved into their first apartment. Insisting the young women call him by his first name, "Roy" said that if they could provide 30 names of friends who would listen to his demonstration, they would receive $10 a person, which would enable them to purchase the vacuum. Reluctant to sign a contract, the women said no. At this point, Roy called his boss to get permission to lower the price, leaving the phone off the hook to prevent interruption, while he argued with and cajoled the young women for hours. Finally they agreed to sign a contract on the condition that after three days, he would call them to make sure they still wanted the vacuum. If they had changed their minds, he promised, he would cancel the contract but would give them $10 for each of their friends who agreed to view his demonstration anyway. Three days later, the sisters waited for Roy to call, having decided they couldn't afford the machine under any circumstances. When he failed to phone, they called Roy's office, but found him out and talked to the manager instead. Becoming belligerent, the manager refused to take back the vacuum and hung up after exclaiming that his salesman's promises were not his problem. Their friends were never contacted for a demonstration, and the sisters were forced to pay for the vacuum cleaner according to the contract terms.

Home construction or improvement schemes represent a large source of

48 Id.
49 Example on file in the Office of the Attorney General, supra note 32.
consumer complaints, particularly those sold door-to-door. Having no permanent crews of workmen, many “general contractors” hire salesmen to merely attract and sign customers; then they sub-contract the work to anyone who will bid for the job. Consequently, high-pressure selling methods and misrepresentation are common, while quality control is poor; taking the form of sub-standard work, failure to complete the contract, and failure to make the necessary corrections after the work has been completed. A typical example of home repair fraud is the case of the salesman who introduced himself at one house as the representative of a well-known aluminum siding company, when in fact he worked for a home improvement firm which sometimes used the aluminum siding company’s product. In the course of his sales pitch, the salesman claimed that aluminum siding could save 40% on a homeowner’s heat bill, that it eliminated further exterior maintenance, and that the price he offered was good for only a week. His victims, a middle-aged couple, said they could not afford aluminum siding because they had other bills, but the salesman persisted. He promised that if they would sign a contract, his company would absorb the cost of the work by advertising “before” and “after” pictures of their home. Still unconvinced, the couple said no. One week later, a new salesman representing the same firm knocked on their door. This time, the second salesman promised that the siding would cut their heat bills by 60% and that it would add $2,000 to the value of their home. Asking the couple to merely fill out a “credit application,” the salesman said there would be no obligation, and the couple complied. They then signed a paper which purportedly listed materials to be used should they later change their minds. At 8:30 the next morning, the couple awoke to the sounds of two men hammering, sawing, and nailing up their new aluminum siding. The “credit application” they had signed had, of course, been a contract binding them to a new $2,500 debt, while the aluminum siding they were forced to buy was cheaply constructed. Like many homeowners, they had been victims of a door-to-door salesman who used deceit and misrepresentation, not quality, to sell his product.

3. Mail Order Frauds

Mail order difficulties account for the largest number of complaints lodged by consumers in the Attorney General’s Office in Washington State. Among these, computer billing errors and the nonreceipt of goods—involving both reputable and disreputable firms—comprise the bulk of the problem. Should a magazine subscriber move, a record club member return a scratched record, or a gasoline credit card holder receive an incorrect billing, the chances are good that the company’s computer will hopelessly entangle the customer’s records. After ordering and paying for an item through the mail, a consumer might receive dunning notices for months, warning him of legal action if he does not pay the

51 Example on file in the Office of the Attorney General, supra note 32.
52 Staff Manual, supra note 50.
bill. Unfortunately, a letter to the company to explain the situation often fails to elicit a response, because many large corporations are simply not prepared to deal with individual problems. Unless the consumer can attract human attention in the billing department, however, he will likely be sued and his credit rating damaged.53

The nonreceipt of prepaid goods represents the second major category of mail order difficulties.54 When it involves a company of honest intent, the problem is often attributable to the sloppy handling of orders, a high backlog of orders due to insufficient stock or personnel, or mail theft of the check en route to the company. Experience indicates that reputable companies respond to such complaints eventually, although some require a special “reminder” from a governmental or private agency acting on behalf of the aggrieved consumer. In cases involving dishonest or nonexistent companies, however, solving mail order fraud is extremely difficult. Because of the anonymous nature of the transactions and the meager resources devoted to consumer protection in most states, mail order swindlers operate with few restraints, crossing state boundaries at will. If they advertise in national magazines or send out blanket mailings, their volume of business is usually lucrative and quickly gained, allowing them time to escape before the suspicions of their customers or the authorities are aroused.

In 1970, the Arrow Greeting Card Company, operating from an office in Minnesota, mailed two million brochures describing its product to prospective customers throughout the country; thousands of people responded by sending the company their orders for greeting cards, accompanied by their payments. When the cards were not delivered, the Attorney General in Minnesota discovered that the company had not even purchased an inventory of its products before or after its initial mailing, and that there were insufficient funds with which to reimburse customers whose checks had already been cashed. With a permanent injunction against it, the company’s doors were padlocked and its business was put into temporary receivership—but not before the company’s president had mailed an additional 300,000 brochures to consumers around the country.55

Several months later, an office in another state began mailing brochures to thousands of people, brochures which were remarkably similar to those sent by the Arrow Greeting Card Company. The merchandise being offered was only sketchily described, yet ranged from “gifts and gadgets” to religious or everyday greeting cards. Claiming to carry the endorsement of the local chamber of commerce and several banks, the new company offered a “money back guarantee” to customers who were not completely satisfied. There were even excerpts from

---

53 Interview with a staff member in the Consumer Protection Division, Office of the Attorney General, Washington State, August 19, 1971.
54 In a recent five-city survey of more than 8,800 consumer complaints over a six-month period, the FTC found that “failure to deliver merchandise paid for” was the largest single category, accounting for more than 14 percent of consumer complaints. “Even customers of well known department stores sometimes have trouble getting deliveries following mail or phone orders, although their bills for the merchandise, if charged, generally come through promptly,” Fowler, Buyers Urged To Report Gyps, Seattle Post-Intelligencer, Sept. 15, 1971, at 21, col. 1.
several letters written by unidentified, but "satisfied" customers. Encouraging the buyers to order early, the company promised that those who ordered within five days would receive a bonus "Pearls for Promptness Prize." 56

While the corniness and the aura of gimmickry surrounding this type of scheme might seem amusing, it is less amusing to realize that vast numbers of people respond every day to the allure of mail order "bargains." Opening most magazines and newspapers, readers discover an array of solicitations covering an almost inconceivable variety of goods, from weight-reducing fads to camping equipment. In a typical case, consumers sent one company their checks for $3.95, ordering electric digital clocks that had been advertised in their newspapers. They received their cancelled checks a few months later, but no merchandise, and their letters of inquiry to the company were returned by the Post Office, stamped "Address Unknown." 57

Thousands of children responded to another company's ads by ordering junior-size baseball caps, hockey pucks, practice jerseys, and other athletic equipment emblazoned with the names and emblems of professional teams. Sending in small amounts of money with their orders, they were told to "allow 4 to 6 weeks for delivery." When three months of anxious waiting had passed and still their goods had not arrived, many of the children's mothers wrote the company, but again received no response. 58 Similar tales of mail order fraud at the expense of children are not uncommon. In a letter to Senator Warren Magnuson, 10-year-old Jeff Spellman, son of King County Executive, John Spellman, described his victimization as a consumer: "Sometime ago I sent in for some zoo animals to the Frito Lay Company of Texas, and they never came. In May I sent for the Boston Bruins hockey team game and one hockey puck. I am very tired from my long wait. Only once have I received anything I have sent in with coupons and my own money." 59

At the opposite end of the age spectrum are elderly consumers who, because they lack mobility and access to stores, are particularly vulnerable to mail order frauds. One man, retired five years, noticed a two-line ad in the classified section of a magazine advising would-be poets of an opportunity to sell their work. When he sent the company eight of his poems, he was delighted to learn that it had chosen his poem, "Daybreak," for publication. According to the company's brochure, each selected poem would be published in a "handsomely illustrated, professionally edited, soft-cover book." Although the company could not pay the author for his work, he was assured that "the most outstanding contributions" would compete for over $500 in prizes and awards and that his poetry would be reviewed for possible publication by an unidentified, but distinguished, national publishing syndicate. To receive a copy of the book containing his poem, the company suggested that the man order it directly from them since the book was not yet available to the general public. Eagerly the man sent the company a

56 A consumer complained to the Attorney General's Office in Washington State, after having received advertising brochures from both the Arrow Greeting Card Company and its look-alike in another state. Example on file in the Office of the Attorney General, supra note 32.
57 Id.
58 Id.
check for $20, ordering three additional copies to give his friends and relatives.
After a month of waiting, he wrote the company asking about his books; receiving no answer, he wrote again, this time demanding a refund plus the return of his poetry. When he still heard nothing, he finally realized he had been fooled and his publishing dreams shattered.60

4. LANDLORD-TENANT PROBLEMS

The landlord’s lot in life has traditionally been a risky one—as has the tenant’s—for the nature of both positions allows for mutual harassment and abuse. In court, however, the advantages are disproportionately one-sided. Having no legal rights or recourse, the tenant functions in a market in which the property owner controls the price, the conditions, the contents, and the very existence of the tenant’s “goods.” Should a legitimate problem arise and the tenant attempt to pursue his case through legal channels, he soon discovers that the law invariably favors his landlord. Indeed, “so medieval are our landlord-tenant laws that only a handful of states now require landlords to provide a ‘place fit for the occupation of human beings.’”61 Thus, a tenant must continue paying rent for his house or apartment even though his landlord refuses to heat it, to make necessary repairs, to keep the building safe, or to replace faulty appliances.62 The withholding of rent as a means of inducing a landlord to make needed adjustments is grounds for immediate eviction.63 Given the 1970 census figure that one in 15 houses and apartments (4.7 million) in the United States lacks basic plumbing facilities, and that for black households the proportion is one in six,64 such legal inequities can obviously be used as weapons to perpetuate slum housing and to protect unscrupulous landlords.

One of the most frequent problems between landlord and tenant is the failure of a landlord to return his tenant’s damage deposit at the time the tenant moves out, regardless of the premises’ undamaged condition.65 Some cases in this category involve legitimate disputes of fact, while other landlords hold on to the deposits in an attempt to out-wait the tenant, hoping he will give up or forget the $25, $50, or $100 owed him. Oftentimes, landlords fail to inspect their property prior to a tenant’s occupancy, so that when the tenant vacates, he is charged for all damage, whether or not he inflicted it.66 Similarly, during economic recessions, it is not unusual for large apartment complexes which go bankrupt to lose every tenant’s deposit in the process.67 Since deposits are com-

---

60 Example on file in the Office of the Attorney General, supra note 32.
62 Interview with a staff member in the Consumer Protection Division, Office of the Attorney General, Washington State, August 19, 1971.
63 But “in a recent landmark decision, a U.S. Court of Appeals in the District of Columbia upheld the right of striking tenants to put their rents in escrow while housing code violations by their landlords were being settled in court.” Porter, supra note 61.
64 Id.
66 Examples on file in the Office of the Attorney General, supra note 32.
67 Id.
monly regarded by landlords as petty cash rather than funds in escrow, the money is often unavailable to repay the tenant when he moves.

In order to obtain overdue rent, a landlord might violate a tenant's basic rights by confiscating his property and holding it until the rent is paid—or keeping it regardless of payment. Although such a practice is legally questionable, even when written into the tenant's agreement, the seizure of property for overdue rent continues, entailing the entering of a tenant's apartment during his absence, rifling through his drawers and closets, and collecting any or all of his clothes, appliances, personal possessions, and furniture. In one case, a tenant in Seattle who had recently lost his job notified his landlord that he would move, since he would be unable to pay his rent. The landlord assured the man that there was no hurry and that he could delay the rent until he had another job. Three months passed and the tenant was still unemployed. Notifying his landlord a second time that he would move, he was again assured of his welcome. Three days later, the tenant came home and found that his landlord had stripped his apartment bare, taking possessions valued at $1,500, turning off his electricity, and leaving him with an eviction notice and a bill of $380 for back rent. Homeless, the tenant borrowed clothes from friends and continued looking for work. When he finally found employment, his wages were garnisheed, because the landlord had turned his bill over to a collection agency. A year later, with his bill paid, the tenant returned to the landlord to collect his property but discovered that the landlord had lost or sold everything. For a relatively minor debt, the tenant had paid a high price.

Certainly not all landlords are guilty of cheating their tenants; nonetheless, a one-sided legal system which benefits landlords tends to create and perpetuate a milieu favoring dishonesty and leaving tenants open to blatant abuse. Where housing is scarce, particularly in low-income areas, people who are desperate for shelter often have no choice but to accept tenancy from known crooks. Compounding the problem is the fact that landlords are legally permitted, if they choose, to keep their identities secret. By using apartment-house managers as shields, they can remain anonymous, while their tenants try vainly to correct unjust situations alone. Legislation to redress the odds against tenants, coupled with strict local enforcement measures, would serve to balance landlord-tenant relationships.

68 But “in New York State, landlords are now legally required to keep rent security deposits made by tenants in interest-bearing accounts—and to pay, starting September 1, accumulated interest to their tenants once a year.” Porter, supra note 61.

69 Interview with a staff member in the Consumer Protection Division, Office of the Attorney General, Washington State, August 19, 1971.

70 Examples on file in the Office of the Attorney General, supra note 32.

71 The number of tenants—abused or otherwise—is large and growing. According to Porter, supra note 61, one in three American families rents the apartment or home in which they live; two in five of this year's two million-plus housing starts are apartments, the majority of which will be rented; and a large number of young married couples will probably rent throughout this decade, postponing the purchase of a home until they have become more established. In addition, middle-class tenants are becoming increasingly militant: “At least one in five tenants represented by the militant National Tenants Organization in Washington, D.C., is middle class, and an even larger share of legal actions being taken on behalf of groups of tenants are for middle class people.” Id.

72 Interview with a staff member in the Consumer Protection Division, Office of the Attorney General, Washington State, August 19, 1971.
5. Franchise Investment Frauds

Few people—especially the economically depressed, the underemployed, and the dreamer—can resist the idea of earning thousands of dollars a year by owning their own businesses. Advertisements pledging “full time income with part time effort” and “no experience necessary” call out to consumers from the news media, offering “intensive training and supervision to guarantee instant success” for those willing to invest their life savings in franchises or small businesses. According to the Federal Trade Commission, the franchise boom accounts for $100 billion in annual sales. While the desire to work for oneself is clearly a product of the American Dream, this desire increases during times of rising unemployment as people desperately attempt to “buy” jobs through investments, often on borrowed money.

In exchange for only his signature and his money, anyone can purchase the right to sell jewelry door-to-door, raise chinchillas in his back yard, sell groceries, fry chicken, or buy tape recordings to give him the self-confidence to sell self-confidence courses to others. The variety of investments available and the number of people seeking extra income indicate that the promotion of franchise opportunities has become in itself a lucrative business, providing the franchisor—as opposed to the franchisee—quick profit for little outlay. While there are distinct advantages to becoming self-employed under the auspices of a legitimate franchise, some companies concentrate on the selling of distributorships and care little about the consequences of the investment once the contract is negotiated. Thus, it is not surprising that certain franchise companies today wait in ambush for the naive investor so that they may swindle him and leave him with little more than worthless equipment, a long-term contract, and a clever business name to call his own. Lacking legal counsel, many investors rely only on their dreams and ambitions to guide them, while too few states provide adequate legislation to protect them.

An initiate’s entry into the franchise market often begins with an advertisement. Claiming to supply all the training and supervision necessary, some franchise companies insist that prospective buyers need no prior business experience or skills to strike it rich. All it takes, the ads say, is “the desire to own one’s own business,” plus “common sense and a friendly attitude,” accompanied by a “minimum” investment. Seldom are these exaggerations verified by facts or figures, for such advertisements are designed more to attract attention and to imply false benefits than to provide useful information.

For example, one popular franchise company promises in its newspaper ads to provide the franchisee with enough training to compensate for his inexperience. But in fact, it requires each investor—whatever his background—to receive five days of classroom lectures for which he pays a $1,000 enrollment fee.

---

73 FTC, ADVICE FOR PERSONS WHO ARE CONSIDERING AN INVESTMENT IN A FRANCHISE BUSINESS, FTC CONSUMER BULL. No. 4, at 1 (1970).
74 Clarke, Franchise Sales, Consumer Lawyers' Newsletter No. 3, May, 1971, at 3.
75 FTC, ADVICE FOR PERSONS . . . , supra note 73, at 1, 3.
76 Id. at 1.
and another $1,000 for "incidents." Other companies advertise the price of owning a franchise by quoting only the down payment. They wait until later to disclose additional assessments such as the cost of plant facilities, advertising, royalties, or shelf stock. As part of most deceptive franchise offers, the earning potential for the average investor is grossly overstated, some even promising $50,000 to $100,000 annual salaries for everyone involved. But one couple who invested $15,000 of borrowed money in a phony restaurant franchise discovered too late that they had to work twenty-two hours a day between them in order to earn $50 per week, while the franchisor skimmed off a 2% royalty and refused to take back his business. High-pressure sales tactics—common to most fraudulent businesses—are used to sell franchises as well. By hinting that someone else is just waiting to take over a prospective franchisee's territory should he delay, a skilled salesman can convince an investor to sign a contract before he takes the time to consult an attorney. Another dishonest promoter might use a franchise name and trademark which are deceptively similar to a well-known but reputable franchise, thereby duping the unwary.

Besides false advertising, franchise investment frauds often include outrageously one-sided contracts. Failing to understand the terms of the agreement or to note certain fees, cancellation clauses, and other restrictions, many investors are shocked to realize the degree of control and oppression wielded over them by their franchisor. An attorney reports that although one nationally known franchise "appeals to those who wish to own their own businesses, under their contracts, the only element of individual ownership is the ability to lose money. Location, purchases, bookkeeping, banking, advertising, insurance, and sales promotion are almost completely outside the 'owner's' control." This same company audits and keeps the sales records for each of its franchisees, taking a 55% commission from the gross profits and leaving the investor a 45% share from which he must pay all operating expenses such as payrolls, payroll taxes, workman's compensation, inventory variations, repairs, telephone, supplies, licenses, interest, and his own salary. Another company includes in its contract a clause allowing it to terminate arbitrarily and unilaterally a franchisee's operation upon giving a 24-hour written notice—a provision which is often enforced if the location turns out to be especially profitable. In such cases, the franchisee loses what is left of his investment. Other contracts obligation the franchisee to buy his supplies from specific outlets, thus providing kickbacks to the franchisor, despite the fact that another source might sell the supplies more cheaply. Considering the hidden dimensions of investment contracts, one can well understand the high turn-over rate and financial casualties among franchise owners.

77 Example on file in the Office of the Attorney General, supra note 32.
78 FTC, ADVICE FOR PERSONS . . ., supra note 73, at 4.
79 Id. at 5.
80 Id. at 2.
81 Id. at 3.
82 Id. at 2.
83 Letter on file in the Office of the Attorney General, supra note 32.
84 Id.
85 Clarke, supra note 74, at 3.
86 Id. See also FTC, ADVICE FOR PERSONS . . ., supra note 73, at 5.
The "multi-level pyramid distribution system" represents a variation of the franchise investment. Patterned after the old chain-letter technique, pyramid selling consists of a person purchasing the right to sell franchises, rather than products, for a particular company. The investor then becomes a franchisor as well as a franchisee and earns his money by convincing other investors to buy in and do likewise. As the operation progresses, the system's structure quickly resembles the shape of a pyramid, with the first or top investors profiting, while those on the bottom unwittingly enter a saturated sales market, with prospects of earning little or nothing. A flagrant example of the way in which deceptive pyramid selling methods work is offered by Dare To Be Great, Inc., a company based in Orlando, Florida, and recently restrained from operating deceptively in the State of Washington.\footnote{Dare To Be Great Order Applies to Entire State, Seattle Post-Intelligencer, Aug. 25, 1971.} Basically, the service provided by Dare To Be Great, Inc., is the sale of tape recordings and educational seminars, programmed to teach success motivation and purporting to train a person to solicit and sell the service to other persons.

To set the system into operation, an agent of Dare To Be Great, Inc., approaches a likely-looking customer on the street and asks, "Do you want to make $50,000 a year?" Circumventing an explanation, the agent neither identifies himself nor gives additional details, but instead invites the prospective student to attend an "Investment Opportunity Meeting" to learn more. When the customer arrives at the meeting, accompanied by the agent, he soon discovers that the room is dominated by other agents whose task is to act as "shills" during portions of the revival-type presentation. The various spokesmen for the corporation exhort members of the audience to enroll in Dare To Be Great, Inc., through a heavy-handed mixture of distortion and fear ("Look how many people die broke!"), cheerleading-like enthusiasm ("YOU can DARE to be GREAT!")', misrepresented opportunities ("We need 1,500 state directors and regional vice presidents within the next 18 months!"), and overblown earning potentials ("Everyone can make $50,000!"). Considering the emotion-laden, almost hysterical tenor of the meeting, the customer's ability to make a reasonable analysis of the program is seriously impaired.\footnote{Interview with a person who attended a meeting sponsored by Dare To Be Great, Inc. See also State of Washington v. Dare To Be Great, Inc., Civil No. 203543 (Super. Ct. of Spokane County, Wash., 1971).} Dazed, he is then asked by his agent to sign an "enrollment form" which allegedly carries no obligation but merely manifests the student's "acceptance" of the sponsor, when in fact the enrollment form is a valid contract, compelling the student to pay up to $5,000 for an "Adventure IV" motivation course. The customer is told that he can finance his enrollment by borrowing from a bank under the pretense that he needs a loan for medical expenses, a home repair, a vacation, or whatever. When applying for the loan, he is encouraged to misrepresent the amount of his income by claiming other income sources as his own, such as having a relative or friend assign his income to him. "The higher the income," it is emphasized, "the higher the loan."\footnote{From brochure used by Dare To Be Great, Inc., in its promotion (on file in the Consumer Protection Division, Office of the Attorney General, Washington State).} Throughout the presentation, the salesman...
reiterates to the student that simply by purchasing a motivation course for $5,000, he will be trained as an agent to sell similar motivation courses, each sale providing him a $2,500 commission; ergo, for only twenty or more easy sales, he will earn at least $50,000. No mention is made, however, of the number of other Dare To Be Great, Inc., agents working in the area and competing for the same commissions. Such information would obviously dampen the customer's enthusiasm, for the truth is that the saturation level in the market is achieved almost immediately. Assuming that one agent earns $50,000 by selling 20 motivation courses, each of his enrollees must then sell 20 courses to earn their commissions, which suddenly brings the number of agents selling the same program in that area to 400. They in turn must sell a total of 8,000 programs to earn their $50,000 commissions... and the pyramid grows ad nauseam.

Although the Attorney General in Washington State succeeded in preventing Dare To Be Great, Inc., from continuing its deceptive practices in the state—and in fact obtained refunds for the victims—other franchise companies with similar intentions flourish in Washington and elsewhere. Effective in May, 1972, Washington's new Franchise Investment Protection Act, the strongest franchise law in the country, will hopefully set a precedent for other state legislatures to follow. Under the Act, franchise brokers must register with the state; full disclosure of all relevant information concerning the franchisor's program is required; and certain practices are prohibited, such as restricted purchasing agreements, discrimination between franchisees with respect to charges made by the franchisor, obtaining kickbacks from franchisee's suppliers, and arbitrarily refusing to renew a franchise or terminate an agreement. Furthermore, the new law allows the Attorney General to seek injunctive relief for violations and provides for criminal penalties. Violations may also give rise to a private cause of action. The obvious conclusion to draw from the previously described practice is that a wise investor should always obtain legal aid before signing any kind of franchise agreement; it is equally clear, however, that the government must do more to protect consumers from unscrupulous franchisors.

6. PRODUCT SERVICING

Contrary to the promises in their ads and warranties, manufacturers of appliances and automobiles today cannot guarantee the availability of competent repairmen to service their customers' purchases. Reflecting a general decline in the status and the wages attached to such positions, the number of people entering the product service industry is rapidly declining, although the demand for service continues to rise. With few safeguards to protect him, the consumer

---

90 State of Washington v. Dare To Be Great, Inc., Civil No. 203543 (Super. Ct. of Spokane County, Wash., 1971).
91 Clarke, supra note 74, at 4.
93 BISHOP & HUBBARD, supra note 11, at 175.
who seeks help for a broken stereo or a faulty transmission risks receiving repair service which is outrightly fraudulent or simply incompetent, yet he has neither the qualifications to judge the results nor the resources to remedy his predicament. Perhaps the overnight success of the underground publication, *How to Keep Your Volkswagen Alive: A Manual of Step by Step Procedures for the Complete Idiot*, 94 indicates a trend among some consumers to avoid possible victimization and costly bills by attempting their own repairs. While it is safe to assume that do-it-yourself solutions will not spread beyond a few people, the need for protecting all consumers from incompetent or fraudulent repair schemes is acute. A recent experiment by two *Wall Street Journal* reporters indicates the situation in the auto repair industry. 95 Intrigued by the charge that fully half of the $25 billion spent annually for auto repairs in the United States is unnecessary, Jack Kramer and Danforth W. Austin set out to discover what kind of service a customer can expect from auto repair shops today. They began with a thoroughly tuned and tested 1969 Mustang, in which they installed a defective distributor rotor worth 99 cents, then they had the car diagnosed at 12 randomly selected service shops in Dallas. Results: mechanics at three shops failed to find the trouble; two different mechanics fixed the rotor but added unneeded parts and labor; two other mechanics wanted to work more extensively on the car, each estimating a final bill of $130; and the one mechanic who repaired the rotor properly did not even charge for his labor. The costs of the repair ranged from 0 to $54.60.

When news of the experiment was released, auto repairmen around the country denied any widespread effort to cheat customers and instead blamed the trouble on the extreme shortage of trained mechanics. 96 They estimated that in 1950 there was one mechanic for every 73 cars on the road, but the ratio predicted for 1975 was one mechanic for 154 cars, resulting in higher prices, longer waits for repairs, and greater pressure for hasty jobs. The problem is further aggravated, they charged, by the luxury items found on modern cars, such as special engines, power steering, and air conditioning, all of which increase the number of parts that can break down and need repair. As many customers suspect, however, not all mechanics are entirely innocent. When a special section of the Los Angeles police department recently investigated the honesty of car repair garages, they discovered a number of abuses during their first month. Between mid-April and late May, 1971, they made 11 arrests for such frauds as installing a used engine and charging for a rebuilt one, billing for labor not performed, and selling unneeded parts. 97 Thus, while consumers would benefit

---

95 Kramer & Austin, *It Looks Bad, Pal*, *Wall Street Journal*, April 20, 1971, at 1, col. 6; CBS's "60 Minutes" devoted almost an hour to another study of unneeded auto repairs on October 21, 1971. Having taken a car in top mechanical condition to six garages, CBS Correspondent Morley Safer was sold repair jobs in each one, including two brake relines. During the program, a former mechanic revealed some of the gimmicks used to con gullible car owners and indicated that men who will not admit their mechanical ignorance are most easily suckered. Chesley, *Yes, There Are Some Good TV Programs*, Seattle Post-Intelligencer, Oct. 25, 1971.
96 Kramer & Austin, *supra* note 95, at 1, cols. 6 and 17, col. 3.
97 *Wall Street Journal*, June 3, 1971, at 1, col. 5.
from an increase in the number of available repairmen, there is still the need for control over the quality of the work performed.

Another consumer problem relates to the fact that as some products become more experimental and complex, no one, not even the manufacturers and merchants, knows what kind of performance to expect. For example, the recently expanded use of new synthetics and fabric combinations by clothing manufacturers is leaving its mark on the dry cleaning industry, as well as on customers' pocketbooks. Garments labeled "Dry Clean Only" are sometimes trimmed in materials that melt during the cleaning process; other clothing is constructed of several different fibers, some requiring dry cleaning, others requiring machine-washing. In one case, a woman who purchased a new winter coat for $60 was especially charmed by its unusually shaggy texture. After she had it dry cleaned once, however, the coat was ruined, for its texture had turned matted and hard. Angrily she demanded reimbursement from the dry cleaner, but he insisted he had done nothing wrong. To arbitrate the dispute, trade councils for both the cleaning industry and the clothing manufacturer tested the coat separately, but each again blamed the other, leaving the woman no recourse but to purchase another coat.

Whether workers in the product servicing industry are intentionally dishonest or not, the consumers' role as "captive audience" remains. With little alternative but to place his faith in an anonymous repairman, the consumer's sense of helplessness is compounded by his ignorance, causing him anxiety and mistrust. Providing more product information would improve his bargaining position in the marketplace, but it would not resolve the issue because no instruction manual or diagram can replace the training and skills required to operate and repair modern equipment. In all matters, from running a household to repairing the plumbing to installing new brakes on a car, the problems which the average person encounters daily are too varied and complex to be remedied by homemade ingenuity. Surely, in a mechanized age, the needs of society demand an availability of honest and reliable repair services, fair arbitration procedures, and enforcement of high standards.

C. The Entangling Web of Credit

Through the diversity and genius of the American economy, the nation's industries have produced a virtual smorgasbord of goods for sale, while easy credit and mass advertising have stimulated and encouraged the consumption of those goods. Bombarded with messages to "buy now" and "pay later," consumers of all income levels have grown accustomed to buying their material satisfaction on the installment plan. Indeed, approximately two-thirds of the major durables sold to low and middle income consumers today involve the use of credit or loans. Since World War II, the credit revolution has helped to

98 Interview with a staff member in the Consumer Protection Division, Office of the Attorney General, Washington State, August 1971.
99 Example on file in the Office of the Attorney General, supra note 32.
100 Note, Consumer Legislation . . . . , supra note 23, at 761.
whet the appetites and expand the purchasing power of countless Americans, people who otherwise would be unable to afford automobiles, appliances, furniture, and other expensive merchandise. In return, consumer credit has furnished the nation with a potent economic force, a mechanism to increase or contract the GNP according to the level of consumer debt. Given its formidable presence in the economy, installment buying has transformed the common medium of exchange from cash to contracts and credit cards. But the benefits of credit have not been without their costs. As a result of archaic laws, consumer ignorance, and fraudulent sales practices, the misuse and abuse of credit accounts has become one of the most serious problems facing the consumer today.

Historically, the legal doctrine governing debtor-creditor relationships originated during a time when both parties were usually businessmen of similar expertise. When businessmen spent days to consider an important contract and to carefully assess every clause, it was appropriately assumed that each side realized the consequences of his transactions and, upon signing, would fulfill his obligations. In contrast, the average consumer today signs "installment contracts of tremendous legal consequences, often without reading or understanding them, after only ten minutes' thought." Rarely does he contemplate what might happen should he lose his job or suffer some other financial setback and be forced to default on his payments; even more rarely does he realize the extraordinary power and legal advantage which his creditor has over him by dint of his signature. Instead, the typical consumer is more concerned with the pervasive opulence of advertisements and the acquisition of the latest material comforts than he is with the possibility of future ruin. Beginning innocently enough, he might first purchase a television set or a new car on time and then decide to replace the family washing machine. In a generous frame of mind, perhaps he opens charge accounts at several downtown stores, where his children buy new school clothes. He and his wife then attend an introductory exercise class at the local health spa and, after an hour of high-pressure sales talk by the manager, sign a two-year membership contract. But when his wife develops back trouble and is forced to quit the program and money is needed for medical expenses, he discovers that his contract with the health spa cannot be cancelled, nor can his payments. As his budget grows tighter under the strain of mounting bills, the consumer faces years of "easy" monthly payments, with credit and interest charges consuming a large share. Having embarked carelessly down a path of accumulating goods and complicated contracts, he now lives beneath the threat of garnishment, repossession, deficiency judgments, law suits, bankruptcy, and a ruined credit rating should he be unable to satisfy his debts. And he is not alone, for the ease with which consumers enter into financial agreements today ensures that millions of individuals and families throughout the nation are similarly in debt. To their detriment, however, the laws governing credit have not been changed to reflect the recently expanded use of credit or the needs of the unsophisticated debtor. Consequently, twentieth-century debts are being

101 MAGNUSON & CARPER, supra note 5, at 60, 91.
102 Id. at 90.
103 Id.
collected according to nineteenth-century doctrine, with all benefits and powers residing with the creditors. Like a pebble dropped into a pond, the economic and social impact of this imbalance is penalizing an ever-widening circle of consumers, the poor most of all.

Overindebtedness affects the financial stability of countless individuals and families in America. From the numbers of divorces blamed on money difficulties, to the annual rate of bankruptcies and garnishments—even to the comic strip characterization of debt-ridden Dagwood—it is clear that credit mismanagement and the irresponsible spending habits of consumers reflect a problem of national proportions. One of the primary causes of this situation, believes Senator Warren Magnuson, is that credit is too easily obtained. Backed by the weight of the law, many merchants are purposefully selling to customers who they know will be unable to pay. To realize a profit, these merchants merely repossess their goods, garnish the customer’s wages, sell the installment contracts to finance companies, or use any of the other legal weapons at their disposal. According to Clive W. Bare, a bankruptcy referee, “Clearly too much credit is being extended today, and too many loans are being made — not on the basis of a debtor’s character, integrity, or ability to pay — but solely because the lender or creditor knows if the debtor does not pay, his wages can be attached.”

One of the first steps in improving the balance between buyer and seller is to make credit less readily available to over-extended customers, thus forcing creditors to scrutinize their customers more closely. In addition, both the government and the legitimate business community share the responsibility of educating consumers to use credit wisely.

As we have seen before, the most blatant abuses of today’s credit laws are perpetrated by unscrupulous salesmen. To peddlers of home-improvement schemes, bait and switch furniture, phony franchises, junk cars, and other costly frauds, the opportunity to entrap customers in irrevocable debts represents a plum ripe with profit. Indeed, extending credit is their main goal and source of income. Using a finely honed science of high-pressure sales tactics and knowing of the debtor’s lack of defenses and his difficulty in proving such deception in court, they flatter, frighten, or flatly coerce their customers into signing complicated contracts. Once the contract is signed, the customer is indelibly bound to abide by its terms, no matter how worthless or misrepresented the merchandise. For the homemaker who is talked into purchasing a vacuum cleaner on time via the referral selling scheme, for the elderly widow who signs a “receipt” or a “credit application” for a television and later discovers it was a contract, and for the father who buys his son a used car which breaks down a mile from the dealer’s lot, there seems to be no justice. Given the unmerciful, but lawful, collection methods available, the creditor is guaranteed his claim. In fact, some of the most lucrative frauds of the market today owe their existence to the present system of credit laws. Reforming the system would thus serve to rechannel

105 MAGNUSON & CARPER, supra note 5, at 91.
106 Id.
107 Id. at 91-92.
wages back into legitimate sources, "benefiting the ethical businessman and harming only the unscrupulous fast-dealer." \(^{108}\)

The source of many credit difficulties often originates in the body of a contract agreement itself. Shrouded in small print and technical terms, many contracts contain clauses that effectively deny the debtor his rights and cancel in advance any defenses he might have had in court, even in cases of fraud and deception. Consumers who are unfamiliar with the credit vocabulary seldom read the contracts they sign, much less understand them or seek legal advice; thus, many are victimized through the inclusion of deceptive clauses. For example, a "confession of judgment" or "cognovit" provision in a contract waives the buyer's rights to due process of law and to a judicial review of the debt, \(^{109}\) even if the merchandise is falling apart, if the company fails to complete its work, or if the contract or merchandise was sold through fraud. \(^{110}\) By signing the contract, the customer agrees to pay his debt regardless of extenuating circumstances, thereby prejudging himself "guilty." Should he later default on his contract, the trial judge grants an automatic judgment of guilt without consulting the debtor or hearing any defenses; adding insult to injury, the debtor is charged "reasonable attorney's fees" for his own "representation" in court in addition to the attorney's fees of the creditor. \(^{111}\) In 1966, it was estimated that 22 million dollars' worth of debts was collected in Cook County by confessions of judgment, and that 34,000 persons were coerced into paying without being allowed to protest unjust debts. Significantly, many of the judgments were generated by one appliance store in Chicago. \(^{112}\)

The "holder-in-due-course" clause enables the merchant to sell his customer's contract to a finance company or a bank, thereby providing the merchant with immediate capital to pay his debts and reinvest in his business, while ending his responsibility for any problems the customer might have. \(^{113}\) The finance company then collects the customer's payments but, as an "innocent third party," it is not legally accountable for the debtor's grievances either. \(^{114}\) In the case of defective goods, the customer is suddenly without remedy, for neither the merchant nor the finance company \(^{115}\) is legally bound to the terms of the contract. Moreover, the holder-in-due-course doctrine deprives the customer of his only effective bargaining tool — that is, suspension of payment until the dispute is resolved. \(^{116}\) Although he might sue as an alternative, the legal process is usually

\(^{108}\) Id. at 92.
\(^{109}\) Id. at 106.
\(^{110}\) Id. at 108.
\(^{111}\) Id. at 107.
\(^{112}\) Id. at 109-10.
\(^{113}\) Note, Consumer Legislation . . . , supra note 23, at 766.
\(^{114}\) MAGNUSON & CARPER, supra note 5, at 118.
\(^{115}\) Implicit in all Holder-in-Due-Course arrangements is the role of the finance company. Some fraudulent merchants set up and work through their own finance companies, or deliberately choose known disreputable financial institutions that will buy their notes and contracts with no questions asked. "But it is disturbing . . . to learn that some of our most prestigious moneylending institutions are supplying the monetary lifelines to fly-by-night outfits . . . ." Id. at 84.
\(^{116}\) Testimony of Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, speaking before the Federal Trade Commission on Proposed Trade Regulation Rule Relating to Application of the Holder-in-Due-Course Doctrine to Retail Transactions, Sept. 20, 1971.
too cumbersome and expensive to provide him relief. Hence, the holder-in-due-course clause, in Virginia H. Knauer's words, "permits enforcement of the consumer's promise to pay, regardless of the inadequacy or malfunction of the goods or services which the consumer has purchased, or the refusal of the seller to perform according to the terms of his warranty."117

A "repossession" clause is further evidence of the creditor's inordinate powers. Granted the authority by some contracts, a creditor is legally permitted to demand the entire balance of a debt or to repossess the merchandise, "with or without legal process," if he deems that the goods are insecure or unsafe, "for any reason." By signing his name to such a provision, the debtor waives all damages caused by the creditor's entry to repossess the goods, as well as all other claims.118 In other words, even if a purchaser faithfully keeps up his payments, but develops family problems, the seller can repossess his merchandise for "just cause," and due to the ignorance of his victims, he may resort to such methods as breaking into the debtor's home or using any other strong-arm tactic he considers necessary.119 Furthermore, ghetto merchants often wait until the debtor's payments are almost complete; then if one payment is late, the item is immediately repossessed.120 When merchandise has been acquired by a consumer on an add-on contract, his entire household of furniture might be taken.121 And in conjunction with a "deficiency judgment," a repossession clause can be disastrous. "Deficiency" refers to the amount of money still owing on the debtor's bill after his merchandise has been repossessed, sold again, and the resale price deducted from his original bill. When used fairly, the deficiency judgment assures the merchant of fair compensation for goods that depreciate rapidly, such as a new car.122 At other times, however, an unscrupulous merchant might repossess a customer's merchandise on pretense and then sell it to an accomplice for an extremely low price and charge the debtor for the balance.123 In this way, the same merchandise can be sold over and over again and each time the merchant can reap unused credit charges, repossession costs, attorney's fees, and finally, huge deficiency judgments.

In addition to the clauses that actually appear in credit contracts, the debtor is subject to other penalties. Should he have a poor credit rating or fail to "shop for" credit as he does a new car — i.e., by comparing prices — he may be charged exorbitant rates on a loan or credit transaction.124 In poor neighborhoods, such inflated charges are hidden in the prices of the merchandise itself.125

117 Id.
118 Magnuson & Carper, supra note 5, at 114-15.
119 Id. at 115.
120 Cong. Rec., supra note 18, at 19211.
121 Id.
122 Magnuson & Carper, supra note 5, at 117.
123 Id. at 116; see generally Friedman, The Repossessed, in Hot War on the Consumer 257-61 (D. Sanford ed. 1969).
124 For example, in Seattle present interest rates available to those who are least able to be granted credit elsewhere are running as high as 36% on the first $300 loaned. Interview with a staff member in the Consumer Protection Division, Office of the Attorney General, Washington State, August 19, 1971.
125 D. Caplovitz, supra note 27, at 16-17. "Local stores frequently charge a higher price for goods being sold on credit in lieu of being able to openly charge a higher credit fee." Note, Consumer Legislation . . . , supra note 23, at 762. See State ex rel. Lefkowitz v. ITM, Inc., 52
Nowhere is the unequal match between creditor and debtor more pronounced, however, than in the realm of debt collection. Enjoying an almost unlimited discretion in his efforts to pressure a delinquent debtor, the creditor draws upon superior resources and his familiarity with legal and extra-legal collection techniques to ensure payment. As a result, over 99% of all consumer debts in the United States are successfully collected, a number which unfortunately includes the unwitting victims of consumer fraud.

In several major East Coast cities, public hearings have recently been held to investigate unfair and deceptive debt collection practices used by merchants and collection agencies throughout the country. With an eye toward correcting these practices, the Federal Trade Commission is finding that creditors are: using fraudulent service of court summons to obtain default judgments without notice; initiating suits against debtors in distant locations, resulting in default judgments due to their failure to defend; using collection notices containing false or misleading representations — notices that simulate legal process, for example; notifying a debtor’s employer of the debtor’s past due account or requesting the employer to help collect the debt; threatening to garnish, seize, attach, or sell any of the debtor’s property or wages without a court order permitting such action; harassing the debtor through profane or obscene language or by placing telephone calls continuously or at unusual times; and using violence or threats of violence to collect debts.

When these extra-legal tactics fail to achieve results, creditors turn to the courts. Indeed, “the courts do not administer justice in consumer disputes,” wrote David Caplovitz in a recent study, “but rather act as collection agents of the creditors.” Having greater access to the legal system than does the average debtor, many merchants, creditors, finance companies, and collection agencies rely on the courts to secure their profits. Such a merchant-initiated lawsuit, however, may not even come to trial, but end instead in a default judgment because the defendant fails to appear in court.

In most cases, the debtor either does not receive his summons and is thus unaware of the proceedings or he cannot afford legal counsel. After obtaining a default judgment, the merchant can move to repossess and/or attach the debtor’s property. If a balance on the debt still remains, “garnishment” proceedings may follow. Because a court order


126 MAGNUSON & CARPER, supra note 5, at 91.

127 FTC, News Summary, Sept., 1971, at 1.


129 Note, Consumer Legislation . . . , supra note 23, at 765. Magnuson & Carper point out, “in New York, which does not allow confession of judgment, 97 per cent of all the suits still result in default judgment because the debtor does not come to court to defend himself.” *Supra* note 5, at 110.

130 Legal aid attorneys estimate that 75% of default judgments occur because the debtor does not receive his summons — because the summons officer fails to serve it (a procedure known as "sewer service"). Other reasons for a defendant not appearing at his trial may be his failure to understand the meaning of the summons, his fear of all legal institutions, his unwillingness to take time off from work to go to court, his lack of information about where to find free legal aid, or his feeling that he will lose anyway. Note, Consumer Legislation . . . , supra note 23, at 765. In a study of 1,331 debtors in default in New York, Detroit, Philadelphia, and Chicago, Caplovitz determined that at least 20% of them had valid defenses based on their creditors' failure to live up to the bargain. Seattle Post-Intelligencer, July 19, 1971.
to withhold a portion of a worker's wages is a nuisance and an expense to the average employer, garnisheed employees are often fired. A Labor Department study of ghetto unemployment in 1966 discovered that "more people explained their unemployment on the basis of garnishment than on their police records." As the merchant's weapon of last resort, garnishment represents a big stick over the debtor's head, often forcing him to settle his debt or quit his job even when he has a defense, just to avoid garnishment's long-lasting stigma. The consequences of such tactics are frequently so disastrous that garnishment is a "threat to the debtor out of all proportion to the amount of his liability" and should therefore be abolished. In fact, experts who have studied the consumer credit systems are growing alarmed about the creditor's reserve of abusive powers. To achieve a more equitable balance, they suggest that all unfair contract provisions such as holder-in-due-course, confessions of judgment, waivers of defenses, powers of attorney and acceleration of payments in the absence of a default must be prohibited. In addition, the repossession laws must be amended to protect the debtor's rights, "cooling-off" periods of 36 hours should be allowed for the cancellation of door-to-door sales, and all collection methods must be scrutinized for their fairness. The situation is complex—one which requires the careful consideration of economists, attorneys, businessmen, and consumers. As Robert Pitofsky, Director of the Bureau of Consumer Protection of the FTC, has written:

I submit that there is reason to believe the total state and federal legal system, particularly in the area of collection practices . . . casts its weight and influence to an unfair extent on the side of the merchant and in opposition to the interests of consumers . . . . I also suggest that various legal rules of commercial law and procedural law in the debt collection area are more oppressive when viewed in the whole than in their separate parts. When you put together doctrines and practices like holder-in-due-course, waiver of defenses, deficiency judgment procedures, venue requirements, failure of effective service including sewer service — then add in what we know of court costs and the unavailability of effective legal services to the poor, you come up with a total legal system that disfavors consumers, and particularly the urban poor consumer, to an overwhelming extent.

D. The Low Income Consumer

For persons living in poverty, the problems of the marketplace are especially acute. Relying heavily on installment buying to purchase clothes, furniture, food, and other necessities, most low-income families have nevertheless been

---

131 Magnuson & Carper, supra note 5, at 96.
134 See Magnuson & Carper, supra note 5, at ch. 4; see also the study by Caplovitz conducted at Columbia University's Bureau of Applied Social Research, discussed in Seattle Post-Intelligencer, July 19, 1971; Jones, supra note 132, at 1015-31.
135 Letter from Robert Pitofsky, supra note 104.
136 "This is particularly true for purchases of expensive durables, and for purchases by welfare recipients during the last few days before the arrival of a new check, when they have run out of cash and must rely on credit from the local . . . grocery store if they are to eat." Note, Consumer Legislation . . . , supra note 23, at 750 (footnotes omitted); see also 115 Cong. Rec. 19201-17 (1969).
frozen out of the normal credit market by the very circumstances of their poverty. Such factors as the lack of a job, evidence of instability, a history of bad debts, immobility, or a criminal record automatically exclude many persons from trading in the traditional retail community. Faced with overwhelming needs but lacking cash, the poor are thus compelled to shop, not for quality merchandise, but primarily for credit, buying it wherever it is offered and always in its most expensive forms. Unable to obtain credit outside their own neighborhoods, they remain in the ghettos, providing local merchants, door-to-door salesmen, and unscrupulous hucksters with what is essentially a captive market. Every major city in the United States has its “mercantile row,” where lenders and creditors cater to low-income consumers and where “bad guys” are the rule, and price and quality competition is the exception.

As a result of these conditions, the poor pay prices for food, rent, medicine, and durables which almost always exceed those paid by more affluent shoppers.

[138] Anyone applying for credit—opening a charge account at a department store, for example—comes under the scrutiny of the store’s credit manager. Sometimes the subjective process is used to judge the applicant’s stability; at other times, the “point system” is used. The latter method, most common in the traditional market, is based on the applicant’s answers to a number of personal questions. Since points have been assigned to specific responses, the store merely adds up the applicant’s score, thereby determining his credit risk. If the consumer does not score beyond a given number of points, he is automatically refused credit. The fallacy of this system is that the results do not reflect the consumer’s stability, but rather, they indicate his degree of acquired middle-class status. Being a professional worker, for example, is worth 25 points, while earning more than $700 a month provides 15 points. But the failure to have a telephone is penalized by deleting 25 points; renting a home for less than one year is worth minus 15 points. Thus the emphasis of the questions, the points which are assigned, and the assumptions behind the test itself automatically discriminate against the poor.

[139] Note, Consumer Legislation ... supra note 23, at 750.
[140] The tradition of comparative shopping is largely unknown among the poor. Besides not being able to obtain credit easily, they are pressured to shop within their communities by the need to care for children and the inconvenience of a time-consuming trip to a more affluent area. In addition, “many of the poor are shy and unwilling to deal with strangers, preferring instead to trade with local people whom they already know and who are more likely to be personable and speak their language.” Note, Consumer Legislation ... supra note 23, at 750-52 (footnotes omitted). Accounting for a great deal of impulse, spur-of-the-moment buying, door-to-door peddlers “work” ghetto neighborhoods regularly, some operating on the basis of a personal relationship with their customers. There are some families that deal with the same peddler for a generation or more. D. Caplovitz, supra note 27, at 64, 75.
[141] Note, Consumer Legislation ... supra note 23, at 752; D. Caplovitz, supra note 27, at 19.
[142] Magnuson & Garper, supra note 5, at 36.
[143] Note, Consumer Legislation ... supra note 23, at 754.
[144] Typically, the low income consumer pays between 5 per cent and 10 per cent more for the same groceries purchased in his own neighborhood than does a middle income consumer. Other stores such as cooperatives or private stores selling in particularly high volume, have prices more than 15 per cent below those predominating in the low income areas. Low income neighborhood stores usually price durables 50 per cent to 100 per cent above the going rate in more affluent areas, employing markups of 300 or 400 per cent and giving commissions running as high as 100 per cent of the value of the goods ... The poor buy a substantial portion of their furniture and appliances from door-to-door peddlers ... [whose] prices are uniformly substantially above those of store owning merchants.

Note, Consumer Legislation ... supra note 23, at 755-57 (footnotes omitted).

Consumers in Watts ... can expect to pay from 7% to 21% more for a market basket of 30 items if they shop for groceries in ... local stores than would a family shopping in a supermarket in affluent Beverly Hills. Similar or even greater price differentials prevail in most merchandise categories.
at the same time, the merchandise available to them is generally substandard, inadequately serviced, and often broken before the customer has completed his payments.\(^{145}\) Added to this is the fact that, for the privilege of "easy credit,"

The major furniture store serving the Watts area and its unaffiliated counterpart in east Los Angeles both carried Olympic television model 9P46. This model wholesale sales for $104. The retail price in the Watts area store was $270, a markup of 160%, and $229.95 in east Los Angeles, a markup of 121%. The latter store also carried a Zenith model number X1917 priced at $269.95, or 114% above the wholesale price of $126.


In a study of the Washington, D.C., area, the Federal Trade Commission in 1968 found that product for product, the low income market retailer charged cash prices from two to three times higher than general market retailers: "Nearly half of the installment credit sales by low income market retailers were at effective annual financing rates ranging from 26% to 33%, in contrast to the finance rates imposed by general market retailers which averaged 20% or less." Jones, *supra* note 132, at 1026. See also Ridgway, *supra* note 14, at 28-29. Sengstock, *The Corporation and the Ghetto: An Analysis of the Effects of Corporate Retail Grocery Sales on Ghetto Life*, 45 J. OF U.R. L. 674 (1968); MAGNUSON & CARPER, *supra* note 5, at ch. 2.

The assumption that higher price levels in poor neighborhoods are due to higher insurance costs and shoplifting rates has not been substantiated. Note, *Consumer Legislation* \..., *supra* note 23, at 756 n.60. Sturdivant, *supra* this note, at 134. On the other hand, a Federal Trade Commission study suggests that the high prices in the ghetto market may be necessitated by the gross inefficiencies and lack of business know-how on the part of the typical low-income merchant. Jones, *supra* note 132, at 1026-28.

Furthermore, ghetto merchants use race as a criteria for price, as well as class or income. In one study, a Chicano couple and a black couple with the same "credit profiles" purchased television sets on time from the same high risk merchant in Watts. The retailer charged the black couple 49% on an 18-month contract, while he charged the Chicano couple 82% interest for 18 months. Sturdivant, *supra* this note, at 134. In another survey conducted in New York City, three women shoppers each priced the same television set in a Lower East Side store. For the young, white law student, the price was set at $125; for the Puerto Rican housewife, it was $139; and for the black woman, $200—a "racial price differential of 60 percent!" MAGNUSON & CARPER, *supra* note 5, at 34. See also D. CAFLOVITZ, *supra* note 27, at 90-93.

Because prices are not generally marked on furniture and appliances sold in poor neighborhoods, the prices can be changed according to the customer. Note, *Consumer Legislation* \..., *supra* note 23, at 759, 762.

\(^{145}\) For higher-than-average prices in poor neighborhoods, low income consumers receive inferior quality merchandise, further reducing the value of their dollars.

Grocery stores in the low income areas are less sanitary than their middle income counterparts; fruit and vegetables are more often damaged, meat commonly brown around the edges, and milk and eggs occasionally sold past the time recommended by the producer. As with prices, variations in the condition of food exist between stores of the same chain, the branch in the low income area generally having the lesser quality; both appliances and furniture have to be replaced or repaired frequently. Neighborhood stores and peddlers rarely deal in brand name goods, in part because a markup comparable to that on the low quality goods they normally sell would make brand name goods prohibitively expensive. Service on the purchased items is inadequate, warranties are rarely given, and the merchants often disclaim responsibility for goods, asserting that the salesman is no longer with them or that the line has been dropped. Often the firm is no longer even in business, at least under the same name.

*Id.* at 757-8; see also Ridgway, *supra* note 14. The fact that poor consumers cannot afford to purchase large economic quantities further reduces their spending capacity. Note, *Consumer Legislation* \..., *supra* note 23, at 760.

Chain stores do not generally locate in low income areas. A study of Watts following the 1965 riot showed that no national or regional retailing firms were represented. Of the 175 stores located in east Los Angeles, another poor area, only five were members of chain organizations. The poor are thus relegated to shop at "mom & pop" establishments, generally the least efficient segments of the business community and often the shabbiest. Fifty-three percent of the stores in east Los Angeles are more than 20 years old and have had no apparent improvements made since their construction. Sturdivant, *supra* note 144, at 132-33; see also Sengstock, *supra* note 144. With little education or technical knowledge, the poor are not prepared to make rational choices among complex products. In addition, they "are often unable to recognize even poor quality food and clothing—largely because that is the only quality they have ever known." Note, *Consumer Legislation* \..., *supra* note 23, at 751-52. Low income shoppers are
poor consumers frequently have no choice but to sign contracts with deceptive and outrageous clauses, containing terms which guarantee the merchant his right to collection on any item sold, "regardless of its condition, the circumstances under which it was secured, and the oral commitments made to the consumer."\(^1\)

The penalties for failure to pay on schedule can be unjustifiably harsh and more intimidating to the poor than to the middle-income debtor, consigning many to permanent poverty. The viciousness of this circle, sanctioned by law and repeated around the nation, is stark testimony to the mistrust and hostility of low-income persons toward American society and the business community in particular.\(^1\)

Although the Consumer Credit Protection Act of 1968\(^1\) affords most debtors a measure of protection, the Act provides low-income consumers with little or no direct benefits.\(^1\) Truth-in-Lending, as the Act is known, "safeguards the consumer by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit,"\(^5\) and consequently gives the consumer the choice of either accepting or rejecting those conditions. But poor consumers are locked into the ghetto economy without access to alternate credit sources and are therefore forced to purchase merchandise on whatever conditions are available.\(^5\)

As Joseph Smith, Director of the Neighborhood Consumer Information Center in Washington, D.C., explained:

To require that the [contract] conditions be disclosed does not protect him [the low income consumer] from cognovit clauses, open-end contracts with add-on clauses, excessive interest markups, and misrepresentation in the disclosure or non-disclosure of the agreement. The legislation only maintains the high risk merchant's position by requiring him to disclose information that he heretofore has concealed. Such legislation perpetuates the merchant's status by requiring that he disclose certain information, without giving consideration to the fact that he maintains a monopoly over a clientele that is incapable of economic participation in the retail credit market. With such a clientele, the merchant is in a position to literally dictate the terms.\(^1\)

The results of this credit dictatorship can mean financial ruin for consumers already existing on subsistence levels.

---

\(^{146}\) CONG. REC., supra note 18, at 19211.

\(^{147}\) The urban riots of the mid-60's reflected the anger and frustrations of the poor concerning their exploitation in the marketplace. “The Kerner Commission Report found that one of the 12 most deeply felt grievances of the inner-city resident concerned the sales and credit practices encountered by the poor in their communities.” Jones, supra note 132, at 1015. As a result, the arson and looting in Harlem, Watts, and Philadelphia “was directed almost exclusively at those businesses associated with sharp selling practices, excessive prices, exorbitant credit charges, or poor quality merchandise and service.” Note, Consumer Legislation ... , supra note 23, at 746. Of the more than 600 buildings damaged by looting and fire during the 1965 Watts riot, over 95% were retail stores. Sturdivant, supra note 144, at 131. Food merchants are the group of businessmen most disliked in poor neighborhoods. Sengstock, supra note 144, at 673. See generally Report of the National Advisory Commission on Civil Disorders 139-41 (1968).


\(^{149}\) CONG. REC., supra note 18, at 19202.

\(^{150}\) Id.

\(^{151}\) Id. at 19202-03.

\(^{152}\) Id. at 19202.
By exploiting the needs for status-seeking and escapism which influence the buying patterns of the poor and by preying on their ignorance and lack of business experiences, ghetto merchants are skilled in the art of selling shoddy merchandise on time. For example, the mother of eight children, living in Washington, D.C., and receiving $270 per month from welfare, contracted to buy a black-and-white television for $400 (which she later discovered was repossessed and secondhand). This purchase brought her bill with a single merchant to over $8,000. Since the majority of this merchandise had been acquired over a long period of time on an open-end contract with add-on clauses, she was obligated to pay $70 every month — in addition to her regular expenses for food, shelter, clothing, and a $100 monthly heat bill — until the debt was retired or risk losing all the merchandise if she defaulted. Typical of the deceptive, but legal, credit maneuvers used by some creditors and permitted under the Truth-in-Lending legislation, an open-end contract with add-on clauses amounts to a terminable lease, beginning with the customer's first purchase. To the original contract are added all the items a merchant can convince a customer to buy, with payments being prorated among all the purchases, leaving a small balance due on each item.

No matter how long the consumer makes payments, he has purchased nothing until the entire bill is satisfied; hence, if he falls behind on his payments, the merchant is legally permitted to repossess all the merchandise acquired on the contract. Alternately, when a payment is late for one month, an exorbitant late charge can be assessed against the purchaser, and unless he makes two payments the following month, his next payment is automatically late every month for the entire period of the contract. Repossession and garnishment might then occur at any time.

Acceleration of payments without cause and balloon payments represent two particularly vicious practices which are legal in most states if they appear in the contract. In the case of payment acceleration, a "creditor can, without giving a reason and in the absence of default payments by the purchaser, arbitrarily accelerate payments, insisting on the total balance immediately."

Failure

Note, Consumer Legislation . . ., supra note 23 at 750. David Caplovitz points out:

Since . . . [the poor] have small prospect of greatly improving their low social standing through occupational mobility, they are apt to turn to consumption as at least one sphere in which they can make some progress toward the American dream of success . . . it might be said that the lower classes today are apt to engage in compensatory consumption. Appliances, automobiles, and the dream of a home of their own can become compensations for blocked social mobility.

D. CAPLOVITZ, supra note 27, at 13. Caplovitz also found that contrary to what their economic position implies, poor families are strongly oriented toward new, rather than used, furniture and appliances, and tend to prefer the more expensive models, emphasizing a need of status rather than an increase in utilitarian value. Id. at 41, 48. Televisions are ubiquitous among the poor, with 95% of Caplovitz' study group in New York City owning at least one set. Id. at 37. Furthermore, advertising and the mass media aggravate the poor's needs for compensatory consumption by pushing the trappings of the American Dream, reminding them of what the rest of the country already has. Note, Consumer Legislation . . ., supra note 23, at 750, note 31. This pressure to buy, created by advertising and magnified by television, was noted by the President's Commission in the Report of the National Advisory Commission on Civil Disorders 139 (1968).

Example taken from CONG. REC., supra note 18, at 19202-03.

Id. at 19202, 19211.

MAGNUSON & CARPER, supra note 5, at 113.

CONG. REC., supra note 18, at 19211.

MAGNUSON & CARPER, supra note 5, at 111.
to pay the sum can result in garnishment, property foreclosure, and repossession of the merchandise. A balloon payment, on the other hand, comes at the end of a contract period. After a consumer has made small monthly payments for perhaps several years, he is suddenly confronted with one enormous payment, amounting to hundreds or even thousands of dollars. Some merchants use balloon contracts to convince low-income purchasers to sign up for merchandise they cannot afford, under the guise of "only a few dollars a month," and then move in for the kill when the customers are unable to make their final payments. Tragically, high-risk merchants make very profitable living by employing this type of financing, avoiding detection or at least staying within the broad confines of the law.

Compounding the plight of low-income consumers is their reluctance to complain to the authorities or seek professional help once they discover they are being cheated. Like the average customer, few have even a superficial knowledge of their legal rights and so tend to believe their cases have no merit. More important, most do not know where to turn for help and many others have lost the motivation to try, having already resigned themselves to the injustices and hardships of their lives. In addition, "low income consumers are unwilling to endanger what may be their only source of credit by complaining to the lender, let alone to the law." For them it is better to suffer in silence, enduring whatever burdens the market demands, as long as they can obtain credit when needed. If the consumer does become sufficiently irate to take action, he is likely to stop payment as a form of pressure or as retaliation against the merchant — thereby exposing himself to law suits, garnishments, evictions, and other problems. Thus, while low-income consumers tend to be victimized and defrauded far more often than their middle-income counterparts, the merchants who prey on the former operate unhindered — safe to come again another day.

Especially vulnerable to deceptive and complicated credit transactions are vast numbers of people who cannot read or comprehend the English language. Since virtually all creditors use only English language contracts, the disclosure of credit terms, as required by the truth-in-lending legislation, has an obviously

159 Id. at 112.
160 Cong. Rec., supra note 18, at 19203.
162 Caplovitz found that, of the low income persons in his study, almost two of every three (64%) did not know where to go for help if they were being cheated. D. Caplovitz, supra note 27, at 175.
163 Note, Consumer Legislation . . ., supra note 23, at 754; D. Caplovitz, supra note 27, at 171-72.
164 Id. at 764. For those few who do attempt to invoke legal processes, the obstacles that must be overcome are substantial: (1) the merchant may have gone out of business (only to reappear under a new name); (2) legal aid societies may be reluctant to help because they do not in general take plaintiff cases, and are, in any case, overworked and understaffed; (3) private attorneys' fees would often be so high as to eat up any possible gain; (4) alleged warranties may not have been in writing; and (5) frequently, written documents will have been lost. Cong. Rec., supra note 18, at 19206.
165 Id. at 764. For those few who do attempt to invoke legal processes, the obstacles that must be overcome are substantial: (1) the merchant may have gone out of business (only to reappear under a new name); (2) legal aid societies may be reluctant to help because they do not in general take plaintiff cases, and are, in any case, overworked and understaffed; (3) private attorneys' fees would often be so high as to eat up any possible gain; (4) alleged warranties may not have been in writing; and (5) frequently, written documents will have been lost. Cong. Rec., supra note 18, at 19206.
166 Mussehl, Chairman's Column, Consumer Advocate, Dec., 1971.
limited value to those unskilled in English.\textsuperscript{167} Surprisingly, this group accounts for perhaps 25\% of the national population.\textsuperscript{168} Consider, for example, that nine million residents of the United States are natives of foreign countries; of these, eight million speak a native language other than English and the majority are either illiterate in English or are far more proficient in a language other than English.\textsuperscript{169} Another 23 million citizens are the daughters and sons of first-generation immigrants and live in households where a language other than English is spoken.\textsuperscript{170} In addition, there are substantial numbers of native Americans who do not speak English as their native tongue: more than five million Chicanos, concentrated in five southwestern states, speak Spanish as their primary language; millions of Spanish-speaking Puerto Ricans live in New York and New Jersey; and another half million Americans are Indians, a majority of whom live on reservations where English may be a second language, if used at all.\textsuperscript{171} And finally, of those Americans whose native language is English, a large number are functionally illiterate. While over 1.8 million people over the age of 25 have never attended school, another 5 million never went beyond the fourth grade, and 34 million dropped out of school before entering high school.\textsuperscript{172} In sum, functional illiteracy and the inability to read or comprehend English occur mainly among the poor and minority consumers\textsuperscript{173} — exactly those groups which are most likely to be victimized by fraudulent creditors. Surely, if the disclosure regulations of the truth-in-lending legislation have been rendered ineffective for millions of disadvantaged consumers, effort must be made to remedy the situation.

Several consumer advocates\textsuperscript{174} suggest that the logical mechanism for this change is an amendment to Regulation Z of the Consumer Credit Protection Act, providing for a written translation of significant credit terms on contracts, especially in areas of the United States where a substantial portion of the population speaks a language other than English.\textsuperscript{175} After all, “when a creditor knows or has reason to know that a particular consumer is illiterate in English, he should have an affirmative duty to explain the important contract terms to that consumer.”\textsuperscript{176} Or alternately,

\begin{itemize}
  \item [(I)] If the consumer is unable to understand the contents of the agreement because he cannot comprehend English, he should be able to cancel that credit transaction within a reasonable period of time after he has obtained a translation of it. Even when it is not practicable to require a particular seller to use foreign language contracts, it would still be feasible to require
\end{itemize}

\begin{itemize}
  \item[\textsuperscript{167}] Petition of the NAACP Legal Defense and Educational Funds, Inc., to Board of Governors of the Federal Reserve Board, 1971.
  \item[\textsuperscript{168}] \textit{Id.} at 5, \textit{cited in} THE \textsc{Statistical Abstract of the United States} 31 (1968).
  \item[\textsuperscript{169}] \textit{Id.} at 3.
  \item[\textsuperscript{170}] \textit{Id.} at 4.
  \item[\textsuperscript{171}] \textit{Id.} at 4. \textit{See also} U.S. \textsc{Civil Rights Commission, The Mexican American} 1 (1968); W. \textsc{Brophy, The Indian: America's Unfinished Business} 11 (1966).
  \item[\textsuperscript{172}] \textit{Id.} at 5; \textsc{Statistical Abstract, supra note} 168, at 112.
  \item[\textsuperscript{173}] \textit{Id.}
  \item[\textsuperscript{175}] Petition, \textit{supra note} 167, at 7.
  \item[\textsuperscript{176}] Mussehl, \textit{supra note} 116.
\end{itemize}
that the consumer be given a reasonable opportunity to obtain a translation of the contract from someone other than an employee of the creditor before the contract became valid.\textsuperscript{177}

Since such an amendment has precedence in established principles of contract law,\textsuperscript{178} and indeed comports with the general policy of the Consumer Credit Protection Act,\textsuperscript{179} it behooves the Federal Reserve Board to enact the necessary revisions as soon as possible, thus extending to millions of low-income consumers the same kind of credit protection enjoyed by the average citizen.

Thus to understand and resolve the problems of the low-income consumer, it is as important to define him by how he spends his money as by how much money he has to spend.\textsuperscript{180} Because of different values, motivation, knowledge, and market realities, a poor person simply does not allocate his money as would a middle-class consumer whose income was suddenly reduced.\textsuperscript{181} Beyond economic factors, the major characteristics which differentiate the spending habits of the poor from those of the middle class are, as we have seen: (1) their inability to engage in comparative shopping, (2) their dependence on credit, (3) their lack of knowledge when judging quality, (4) their psychological need for "compensatory consumption," and (5) their lack of faith in being able to influence their own destinies. In other words, "the poor buy different goods and services at different stores for different prices\textsuperscript{182} for different reasons. Any attempt at resolving their problems must therefore reflect the cultural, as well as the economic, parameters of poverty.

Achieving market parity for poor consumers will require more effort than merely increasing their financial resources;\textsuperscript{183} indeed, while the reduction of poverty in the United States is essential as a matter of principle, that factor alone will not substantially improve the spending habits of the poor.\textsuperscript{184} Instead, a more realistic and immediate approach would be to increase the value of the goods which low-income consumers purchase, rather than the amount of money low-income consumers spend.\textsuperscript{185} Only by freeing them from their reliance on high-risk merchants and by allowing them to share the benefits of the competitive market will they receive better quality merchandise, lower prices, and more honest services for their purchasing dollars.

As the first step toward this goal, the traditional retail market must be opened up to low-income persons. At the same time, they must be extended

\textsuperscript{177}Id.
\textsuperscript{178}As cited in the NAACP Petition, \textit{supra} note 167: "If the consumer is either illiterate or unfamiliar with the language in which the contract is written, the contract is voidable if the consumer did not understand the contents of the contract and the creditor knew it" [citation omitted]; and "when the creditor knows or has reason to know that the consumer is illiterate, he has an affirmative duty to have the contract read or explained to the consumer." (Citation omitted.)
\textsuperscript{179}Which is, according to the NAACP Petition, \textit{supra} note 167, at 8, "that the creditor has a special obligation to give certain credit information to the consumer and to do so in writing."
\textsuperscript{180}Note, \textit{Consumer Legislation . . . , supra} note 23, at 745.
\textsuperscript{181}Id.
\textsuperscript{182}Id.
\textsuperscript{183}Id. at 769, n.157.
\textsuperscript{184}Id. at 745-46.
\textsuperscript{185}Id. at 745.
limited amounts of credit,186 supplemented by classes to teach the mechanics of wise spending and the responsible use of credit.187 To restore competitive shopping conditions, chain stores, savings banks, department stores, and discount houses must be drawn into low-income areas, driving out the high-risk merchants.188 Nonprofit programs such as community credit unions and cooperatives should be seeded to give the poor a chance to learn by helping each other.189 And finally, more information must be made available to inform consumers about fraudulent sales practices, credit ramifications, various products, and their rights in the marketplace.190

In the legal area, it is essential that the judicial system visibly begin to work on behalf of the poor. For the health of the nation, low-income consumers must be granted access to legal counsel prior to making large purchases or signing contracts; when deceived, they must be allowed to pursue their cases through the courts as vigorously as ghetto merchants have heretofore pursued them.191 In addition, changes in the credit laws, especially those described earlier, would provide welcome relief to those poor who are most frequently victimized by deceptive credit clauses and unfair collection methods.

The wherewithal and the impetus for making these sweeping changes obviously depend on the cooperation, the support, and the generosity of the reputable business and legal communities. In saying this, however, one must also recognize that it is these segments of society which bear major responsibility for the ghetto economy today. By refusing to extend their markets to low-income consumers, ethical businessmen have, by default, condoned the monopoly of the high-risk merchant;192 by remaining silent, attorneys and lawmakers have lent their tacit approval to — or at least a placid acceptance of — unfair and discriminatory laws. Thus, to improve the marketplace for low-income consumers, a whole new spirit of commitment is needed. If only out of self-interest, the legitimate market must begin to assert its responsibility.

III. Available Remedies for the Consumer

Having established that a problem exists, we can turn to an analysis of the remedies available to a consumer who has been defrauded or deceived. The consumer may turn to governmental agencies, private groups, civil suits, and in certain rare and laudable cases, a company's own consumer complaint and adjustment department.

186 Such a program has been started in Washington, D.C. See Cong. Rec., supra note 18, at 19202-13.
187 The Neighborhood Consumer Information Center conducts an on-going educational program for low income consumers. Id. at 19208.
188 Sengstock, supra note 144, at 673; D. Caplovitz, supra note 27, at 187.
190 Glicksman & Jones, supra note 189, at 709-10; Cong. Rec., supra note 18, at 19212; D. Caplovitz, supra note 27, at 184-85.
192 Cong. Rec., supra note 18, at 19212.
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. It is by that standard or criteria that we will examine the remedies available to the consumer.

A. Consumer Remedies at the Federal Level

The principal federal agency assigned a consumer protection role is the Federal Trade Commission. The Commission has enforcement powers through the use of a cease and desist order. Future violations of the order are then treated as an act in contempt of court and fines may be assessed by a federal court with a maximum penalty of $5,000 per day.\textsuperscript{193} The Commission has been under attack for being dilatory in performing its functions.\textsuperscript{194} Certain studies have accused the Commission of not answering the need of consumers for an active and energetic consumer protection agency at the federal level. Under the leadership of former Chairman, Casper W. Weinberger, and the present Chairman, Miles J. Kirkpatrick, the Commission has revitalized and strengthened its regional offices\textsuperscript{195} by delegating responsibilities and authority to its field personnel.\textsuperscript{196} Along with this decentralization, there has also been an overall improvement of the Washington, D.C., headquarters by Chairman Kirkpatrick.\textsuperscript{197}

While the recent structural and policy changes of the Commission are welcomed improvements, the Commission is still not able to effectively assist the individual consumer to obtain redress, except under rare circumstances. The Commission can and does act to prevent future acts and practices which deceive and mislead consumers as a group, but all too often the individual consumer's problem is a private matter and not in the public interest. This generally means that the case does not coincide with the Commission's priorities and limited manpower. These shortcomings are understandable, but they are no consolation to the injured consumers. Further, the Commission cannot act in a purely local matter that does not involve interstate commerce.\textsuperscript{198}

Another federal agency involved in consumer fraud and deceptive practices is the Food and Drug Administration (FDA). The FDA was first organized in 1907 as a division of the Department of Agriculture and is now a part of the...
Public Health Service of the Department of Health, Education and Welfare. The FDA is charged *inter alia* with responsibility for ensuring the safety and effectiveness of drugs, inspection of food and water facilities in interstate passenger vehicles, the safety of chemical food additives, and the enforcement of the Hazardous Substances Act of 1960\(^{199}\) and the Child Protection and Toy Safety Act of 1969.\(^{200}\) The FDA has been criticized as an agency suffering from a lack of leadership, money, morale, staff and interest in the consumer.\(^{201}\) The FDA's handling of the Child Protection and Toy Safety Act of 1969 has caused a running series of criticisms by *Consumer Reports* magazine.\(^{202}\) Aside from these criticisms and even more important to the consumer, the FDA does not have the authority to compel refunds (except under the Child Protection Act).\(^{203}\) The FDA and the FTC are concerned with consumer protection for the general public; they offer no practicable remedies for the individual consumer.

The President's Committee on Consumer Interests was established by an Executive Order in 1964 for the purpose of coordinating the consumer activities of the various federal agencies, promoting consumer education, and advising the President on consumer affairs.\(^{204}\) Mrs. Virginia H. Knauer is currently Chairman of the Committee and the President's Chief Consumer Advisor. Although the Committee and Mrs. Knauer are active on a national level, their only power is moral persuasion. The Committee, unlike the FTC and the FDA, does not have any enforcement power.

The United States Postal Service has certain responsibilities in the consumer protection area. However, its authority is limited to controlling dangerous articles, contraband, and fraudulent promotional material transmitted by the United States mails.\(^{205}\) Again we find that the individual consumer with his local problem is not helped. There are other federal agencies that have a role in the federal scheme of consumer protection, but they are not local in nature nor do they provide a vehicle for the consumer to obtain restitution.

The foregoing is a quick overview of the federal agencies. Many of their good points and past accomplishments have not been reported because they bear no relationship to the central theme of this discussion. An in-depth analysis would require volumes of material and would go far beyond the intended scope of this article. In summary it may be stated that the federal agencies are removed from the local scene; they often regard a local matter as lacking sufficient public interest to warrant involvement by a national agency; and they are primarily concerned with national or regional programs. Clearly a gap exists.

---

202 *Toying Around with Unsafe Toys*, 36 CONS. REP., Jan., 1971, at 4; *Uncle Sam Moves on Unsafe Toys (Slowly)*, 36 CONS. REP., Mar., 1971, at 143.
203 And then only a refund of the purchase price upon return to the seller. See Act of Nov. 6, 1969, Pub. L. No. 91-113 § 4(a), 83 Stat. 187.
B. Consumer Remedies—State and Local Government Programs

The state level is the logical place for vigorous consumer protection programs since the consumer is close-by, and under existing long-arm statutes, out-of-state companies can be served. The terminology of section 5 of the Federal Trade Commission Act has been adopted by only a few states. Several other states have adopted the Uniform Deceptive Trade Practices Act which lists specific deceptive practices declared illegal and contains a catch-all clause.

The choice of the so-called "laundry list" of deceptive practices by some states is unfortunate. There are two basic reasons for this conclusion. First, no specific list can cover the field because the human mind is ingenious enough to create novel and different forms of deception. (The very purpose of the broad language in section 5 of the Federal Trade Commission Act is to cover present as well as yet unconceived deceptive acts.) Specific provisions of law just do not have the necessary flexibility.

Section 2(12) of the Uniform Act is an attempt to provide flexibility. While there is as yet no case law on section 2(12), and in fact at least one state did not adopt it, it is hoped that section 2(12) will provide the section 5 type of adaptability.

In addition to not having the desired flexibility, those states that do not adopt wording similar to section 5 of the Federal Trade Commission Act are unable to take advantage of the 50 years of judicial interpretation of that Act. Also, the section 5 states can take advantage of and use the various trade regulations issued by the Federal Trade Commission. These promulgations form an accepted and known body of law which will eliminate some of the uncertainty for the business community.

However, for consumers in the remaining states (approximately 24), there is no deceptive practice statute and these states must often prosecute under their own fraud statutes. Prosecution is difficult because the consumer usually receives something for his money and there is a high degree of proof required in a fraud case.

The state agencies as well as the federal agencies suffer from small staffs and

---

208 E.g., CONN. GEN. STAT. REV. § 42-115(d) (Supp 1971); DEL. CODE ANN. tit. 6, § 2531-32 (Supp. 1970); FLA. STAT. § 817.71 (Supp. 1971).
209 Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding. UNIFORM DECEPTIVE TRADE PRACTICES ACT § 2(12) (1964).
212 See, e.g., FLA. STAT. § 817.71 (Supp. 1971).
lack of funding. In addition, they are often part of the Attorney General’s office where political sensitivity is a way of life. Political sensitivity can work both ways, however, and the consumer’s complaint might have some publicity value. The resultant sum of the factors is that the consumer’s complaint may well force the deceptive merchant out of business but his quest for restitution goes unanswered.

Consumer protection action by cities has been erratic. New York City’s Bess Myerson has been active but she is an exception.

Thus, we can conclude that for most consumers no effective restitution remedy exists within the sphere of governmental interest.

C. Nongovernmental Consumer Groups

Private groups are many and varied, with activities ranging from consumer boycotts to educational programs. Two prominent groups are the Consumer Protection Association in Cleveland, Ohio, and The Consumer Education and Protective Association in Philadelphia, Pennsylvania. Another active private group is the Neighborhood Consumer Information Center operating in Washington, D.C. However active these organizations wish to be, they are hampered by a lack of adequate funding. Some of these organizations assist the consumer in obtaining refunds and repair of defective merchandise. Although they have no legal authority to force action, these private groups can help a plaintiff pursue his cause of action by providing legal assistance. However, more private participation is needed if any significant impact is to be made.

Legal Aid Societies or neighborhood legal services are available, but they have undermanned staffs and the operating guidelines require that the consumer be essentially poverty stricken. They are not able to help the middle-income and most of the lower income consumers.

The Better Business Bureaus and the Better Business Committees of Chambers of Commerce are involved in consumer affairs. They are a good source for

214 In 34 of the states, the consumer agency is in the Office of the Attorney General. See Consumer Offices in State, County and City Governments, published by the Executive Office of the President, President’s Committee on Consumer Interests, Washington, D.C. (December 1, 1970).

215 It should be pointed out that even in the states with some type of consumer deception laws the law often does not provide standing for the plaintiff-consumer to sue or for the state authorities to obtain refunds. But see Wash. Rev. Code § 19.86.090 (1970), which allows a civil action for damages. The maximum amount recoverable is $1,000 plus attorney’s fees.

216 Commissioner of the City of New York, Department of Consumer Affairs, 80 Lafayette Street, New York, New York 10013.


218 Consumer Protection Association, 118 St. Clair Ave., Cleveland, Ohio 44114. The Executive Director is Mr. Solomon Harge.

219 Clarissa Cain, President, 6048 Ogentz Avenue, Philadelphia, Pennsylvania 19141.

220 Joseph F. Smith, Executive Director, 3005 Georgia Avenue N.W., Washington, D.C. 20019.

221 Various conversations between the author and Joseph F. Smith. See note 220 supra.
a consumer who wants information about a particular business firm, but they offer little assistance in obtaining redress for a deceived buyer.222

The Better Business Bureaus have two built-in limitations: they were founded by businesses and are dependent on business for funding, and the culpable firm is often not a member of the Bureau and thus no effective action can be taken.223 In summary, the Better Business Bureaus perform a preventive function but do not provide the consumer with an after-the-fact remedy.

D. Private Suits by a Consumer

Because government is concerned with broad types of consumer frauds and deceptions and because private groups are underfunded, the consumer's answer may lie in a private civil suit. The major stumbling block to a consumer's civil suit is the high cost of the legal fees.224 One solution to this problem is to allow injured consumers to combine their grievances in a class suit, thus enabling consumers with small claims to pool their efforts and share the cost of legal expenses. However, class claims are time consuming and all too often the defendants are judgment-proof.

Of some help to consumers are the small claims courts, where a lawyer is usually not needed and the court fees are small. However, the damage limitations are set at $500 or less, and if the damages are higher, the consumer must go into a more formal court with a lawyer or else reduce the amount of his claim.225 These jurisdictional limits should be raised.226

E. Corporate Consumer Programs

Part of the consumer problem is caused by the lack of communication between seller and buyer. Certain large corporations have initiated consumer complaint departments or "hot lines" where it is claimed that consumer gripes can be aired.227 However, it should be pointed out that only a few companies have implemented this type of program. Further, they may be only an advertising device and consequently offer little relief.228

This analysis should not be taken as being entirely negative. Each of the agencies and concepts named above is useful and plays an important role in consumer protection. It must be recognized, however, that each has a defect or defects which weakens their role as an effective and comprehensive consumer agency. What is needed is an agency or service that is local in nature and free

224 The typical average hourly fee for attorneys is $30-$35 per hour. With a minimum of 100 hours involved in a court trial, the cost of legal fees often exceeds the original purchase price of the merchandise.
226 Id. at 628.
227 E.g., Whirlpool Corporation and Travelers Insurance Company.
228 Weiss, If Corporations Won't Listen to Consumers, Government Will, ADVERTISING AGE, July 12, 1971, at 52, 54.
from political pressure, and which combines educational facilities with investigation and settlement powers.

IV. The Neighborhood Consumer Center

Consumer protection must be made available to those consumers who are cheated by unscrupulous merchants. The traditional forms of legal action and institutional organization do not provide an adequate remedy on the local level for individuals victimized by consumer fraud. In most instances, the sums of money involved are far too small to warrant the expenditures necessary to hire a private attorney. For many persons, however, transactions with local merchants are of primary significance. These transactions are susceptible to misunderstanding, confusion, and in many instances, fraud. The lack of effective legal response to these problems will likely have a significant impact on the defrauded consumer's confidence in the total legal system.

Having diagnosed the problem, members of the Consumer Affairs Committee have consulted in depth with numerous individuals actively engaged in the consumer protection field. Among those consulted were the founders of the Neighborhood Consumer Information Center in Washington, D.C., established by students from Howard University Law School. The Center, located a few blocks from Howard University, has been counseling consumers in the District of Columbia for over three years. It provides service primarily to black, poor persons who have difficulties arising from purchases from high-risk ghetto merchants. The Center offers effective redress to consumers and, with certain modifications, it could serve as a model for cities that do not possess the unique social and demographic characteristics found in the northwest section of Washington, D.C.

Funds are now being sought through private foundation sources for a Neighborhood Consumer Center in Seattle, Washington. If the Seattle experience proves successful, the program is expected to be expanded to a number of other urban centers throughout the United States. During the pilot program year, means of financial support will also be studied and it is anticipated that a national program will be supported by governmental and private foundation funding. In developing this project, the Consumer Affairs Committee has worked closely with governmental agencies. As Chairman of the Committee, the author of this article has had opportunities to confer at length with Virginia H. Knauer, the President's Special Assistant for Consumer Affairs. Mrs. Knauer has assured the Young Lawyers Section of the American Bar Association that the Administration gives full and enthusiastic support to the Neighborhood Consumer Center Project. She has expressed a need for the program with incisive insight:

In our society today, a great number of people feel alienated from our institutions, including our judicial system. In many instances a consumer experiences a feeling of helplessness because of his or her inability to obtain

---

229 A petition has been filed with the Ford Foundation by the Young Lawyers Section of the American Bar Association (November, 1971).
effective redress of minor commercial disputes. This helplessness can easily lead to despair. The well-being of a society committed to the rule of law dictates that prompt and effective remedies be available to those people who have bona fide grievances.\footnote{Letter from Virginia H. Knauer to American Bar Endowment, Committee on Grants, April 19, 1971.}

Mrs. Knauer was confident that the operation of the Neighborhood Consumer Center Pilot Project would be of substantial interest to the newly formed National Institute for Consumer Justice which is undertaking a thorough study of the adequacy of existing procedures for resolving disputes arising out of consumer transactions.\footnote{\textit{Id.}}

The goals of the Neighborhood Consumer Center fall into two broad categories. First, the Center will undertake a consumer education program which will be designed to communicate information in basic terms. Consumer education classes will be conducted within the local communities through existing community organizations. Special classes will be offered in conjunction with facilities found in neighborhood schools, churches, welfare organizations, block clubs, and other similar local organizations. Consumer information will be provided that will relate to everyday experiences of household management. Warnings concerning prevailing deceptive practices and frauds will help the potential victim recognize the common danger signals before the fraud is committed. The scope and content of much of the Center's education programs will be determined by the specific needs of the neighborhood residents. Flexibility in teaching techniques and approaches will enable the Center to respond to varying local situations. Teachers from local schools and community leaders will conduct consumer education classes on a voluntary basis. Community participation will be emphasized.

In addition to class instruction, the members of the Education Division of the Center will be able to detect existing consumer problems through discussions with members of their classes. Broadly stated, the Education Division will undertake the challenge of helping consumers obtain the "know-how" to survive and compete in the marketplace.

The importance of educating the public cannot be overstated. Mrs. Knauer recognizes the magnitude of consumer education, and in her letter of support of the Neighborhood Consumer Center Project, she stated in part:

\begin{quote}
Of utmost importance is educating the consumers of their rights in cases involving fraud, deceptive practices and inferior merchandise as well as attempting to educate the consumers in order to help them become truly informed shoppers. The surface has not been scratched in the educational area.\footnote{\textit{Id.}}
\end{quote}

The second broad goal of the Neighborhood Consumer Center will be to provide support for legal actions and direct legal assistance in appropriate cases. Many local consumer problems result from misunderstanding and lack of com-
munication between the merchant and the buyer. These types of disputes can be worked out through negotiation and mediation by members of the staff. A priority will be given to swift redress.

Legitimate consumer grievances in the marketplace, if unresolved, create a deep-seated frustration and a sense of powerlessness among individual citizens. Mary Gardiner Jones, Commissioner, Federal Trade Commission, and recognized consumer spokeswoman, expressed her great concern for the need to establish consumer grievance mechanisms of all types to deal with consumer complaints. In a letter of support for the Neighborhood Consumer Center Program, she wrote:

Assuming, as I do, the essentiality of an effective legal system to the survival of society, it is crucial that some solution be found to remedy the inability of citizens to be able to submit their disputes and grievances to some type of grievance solving machinery. . . . Limited experience suggests that a substantial majority of felt grievances require no more than a one-time intervention of a third party in order to achieve a satisfactory resolution.233

Commissioner Jones indicated that what is very much needed today is a “carefully constructed broad-scale program directed both at helping consumers to understand their rights, their remedies and the marketplace structure and, most important, at providing them with a mechanism through which they can obtain a fair resolution of their disputes.”234

The honest businessman will welcome a dispute-resolving forum. The perceptive merchant is aware that unresolved marketplace disputes create on the part of consumers a sense of mistrust and anger at the business community in general. This attitude holds true even though their particular grievances may be directed to only a relatively small minority of the businesses in that particular community.

A key to successful dispute settlements is thorough investigation of the consumer complaint. Law students will be employed by the Center to assist the Director in this type of investigatory work. The process of complaint investigation will have an educational benefit for the individual bringing the complaint as well as the law student assigned the responsibility of the investigation. In cases where the result of the Center’s investigation indicates that formal legal action is appropriate, the matter may be assigned to a local attorney on a voluntary or minimal fee basis. The attorney will be assisted by the law students employed by the Center within the limitations imposed by the local legal intern rules. The statutes of the State of Washington provide that in certain types of consumer fraud cases, reasonable attorney fees may be awarded by the court. This provision gives the private attorney added incentive to participate in the Center’s lawyer referral program. In general, today’s law school graduate wants to involve himself in “pro bono” work and consumer protection cases are appealing to the lawyer who feels a commitment to protect the public interest.

In some instances, the nature of the case will warrant referral to an ap-

\[234\] Id.
appropriate governmental agency such as the Federal Trade Commission or the state attorney general's office. Liaison has been established with the Consumer Protection Division of the Attorney General's office in the State of Washington and with the Seattle office of the Federal Trade Commission. The heads of those two offices have agreed to serve as members of the Center's Board of Directors. In addition, liaison has been established and encouragement received from the Seattle-King County Bar Association and its lawyer referral service. The president of the Association expressed his opinion that the pilot project would prove to be successful because its structure avoids duplication.

A nonprofit corporation has been formed and the Directors include responsible representatives of all the appropriate public bodies and other groups interested in consumer protection. This includes representatives of the Washington Citizens Committee on Consumer Interest, Legal Services (OEO), the Prosecuting Attorney's office, University of Washington Law School, the Young Lawyers' Section of the Seattle-King County Bar Association, the local Chamber of Commerce, and lay persons living within the local community. President Jones' investigation revealed the following:

We discover that the program is in fact supported by all of those groups and that they regard it as a significant development in the field of consumer protection both from the standpoint of education and information and for appropriate handling of actual problems in the field.

The Center will conduct research studies into areas of consumer concern. The studies might include position papers on the economic impact on certain segments of the community resulting from consumer legislation or business practices.

The law of consumer remedies is rapidly changing and expanding. Part of the effort of the Center will be to accumulate existing legal materials applicable to consumer protection situations. These legal materials will be analyzed by attorneys and law student personnel in consultation with economists and other social scientists. The results of the Center's research will be available to its staff and to others active in consumer protection.

The Center will employ a Director who will serve on a full-time basis as the operating head of the Center. The Director will be an attorney, a member of the local Bar, and will have substantive experience in consumer protection law. Under the supervision of the Director and cooperating local attorneys, the Center's program will be carried out primarily by paid third-year law students. A few of these law students may work full time during the summer and all will work part time during the academic year. The Center's program will be assisted by full-time secretary-paraprofessionals. In addition to the extensive services provided by the paid law students, more limited participation will be forthcoming from other law students and from students in home economics and the social sciences.
sciences on a voluntary program. The concept of the Neighborhood Consumer Center encourages participation from the various local leaders and individual residents. It is not identified as a governmental agency or extension thereof. The identity is similar to that of a community co-op. It is designed to be a focal point for local problems.

A natural feature of the Neighborhood Consumer Center concept is the built-in physical facilities for arbitration. The Consumer Affairs Committee of the Young Lawyers' Section of the American Bar Association has been consulting with Mr. Willoughby Abner, Director, National Center for Dispute Settlement, and Justice Robert Braucher, head of the National Institute for Consumer Justice.238 The Committee concluded that dispute avoidance and settlement can be implemented successfully provided that the following conditions are met:

(1) **Availability:**
It is imperative that the system reduce to a minimum the lost work time to the consumer. The location should not require travel beyond the consumer's usual area of familiarity.

(2) **Input:**
The consumer must have faith in the decision. This can be established and maintained by allowing the consumer to relate positively to the decision maker either by power of appointment or by using indigenous personnel. There must be no fear of reprisal for filing a complaint.

(3) **Procedure:**
The procedure must be informal. However, the complainant may be represented by an agent who is not necessarily a lawyer.

(4) **Financing:**
The full cost must be borne by a party or source other than the consumer.

(5) **Enforceability:**
The decision must be enforceable without resorting to legal formalities. Sanctions must be available to enforce the ruling.239

In conclusion, if consumers are going to become equal participants in the marketplace and in our court system, they must have a convenient forum. The consumers need a familiar focal point to take their commercial consumer problems. Democracy can only work effectively in an atmosphere of nonalienation. By involving citizens in a local effort to deal with consumer abuses, the Neighborhood Consumer Center not only deals with consumer concerns but also provides a structure designed to inspire people to work together in an atmosphere of hope.

---

238 Consumer Advocate, April, 1971, at 4.
239 Id.