DECISION-MAKING EFFICIENCY OF ADULT CONSUMERS: A RESEARCH UPDATE

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Using differing informational constraints, the efficiency of consumer purchase decisions was studied. The current phase of the project studied a female adult population; a previous phase studied students. Subjects selected product information they desired from a display board in a laboratory setting. Consumer efficiency ratings were calculated for each subject. These ratings compared the consumer's selected product alternative with objectively established quality ratings. Both the housewive and student populations clearly demonstrated that consumer information has a positive effect on consumer efficiency.

Last year we reported on an exploratory phase of this research which used a student population [3]. In continuing our study of differing informational constraints, we obtained data from a female adult population. In this project we were interested in the types of information, amounts of information, and the sequence of information sought by adult consumers in a decision-making situation.

Another earlier paper presented a methodology for measuring efficiency of consumer decision-making [2]. Briefly, the concept of consumer efficiency refers to a consumer's success in obtaining maximum consumption from a fixed level of resources. A perfectly efficient consumer was defined as one who could determine the level of quality, satisfaction or needs fulfillment available in each product alternative. Efficiency was measured by comparing the consumer's ratings with objectively established quality ratings. Consumers were categorized as having moderate efficiency and low efficiency when their performance deviated from perfect efficiency.

This presentation examines four research questions:
(1) what effect does increasing levels of information have on the level of consumer efficiency,
(2) how many "bits" of information do consumers use at differing levels of efficiency,
(3) what specific information categories do efficient consumers choose, and
(4) in what sequence do efficient consumers choose information?

Methodology

This phase of the research was conducted in a laboratory. A total of 150 adult female consumers participated. Initial contact with the subjects was a brief telephone interview, utilizing telephone numbers chosen at random from the local telephone directory.

The consumers ranged in age from 21 to over 55; the median category was 36 to 40 years old. Almost half of the sample (48 percent) had a college degree or higher and most were married (87 percent). Income levels were evenly distributed above the $10,000 level.

Subjects were divided into three treatment groups. Each group participated in a consumer information-seeking and decision-making experiment. This involved rating the quality and purchase preferences for four blankets and four slow cookers. These products were chosen because they had been rated previously by Consumers Union.

Consumers in treatment group one were shown the four blankets and four slow cookers and asked to rate them without any information other than their personal evaluation. Group two was given five categories of marketing information on each brand of blanket and slow cooker (i.e., for blankets the brand name, care instructions, available colors, fiber content and price were given; for slow cookers the brand, care instructions, available colors, material, and price were given). Subjects selected information from display boards set immediately behind the four blankets and four slow cookers. Consumers in group three were presented with five categories of extended market information in addition to the five basic categories from group two. For blankets the extended information included information on the binding, durability, strength, warmth, and weight. Extended information for slow cookers was capacity, cord, energy use, recipe book, and storage space.

The use of a display board for presenting consumer information and measuring the consumer's use of information during the decision-making process is a relatively new technique in consumer research. Basically, cards on the display board contain pieces of information on each product and for each characteristic (i.e., price of brand X) [1]. Subjects select the information they desire from a display board and this is recorded. A complete record of the types, amounts, and sequences of information which the consumer used in making the decision is obtained.

As indicated earlier, consumer efficiency was measured by comparing the consumer's rating of product quality for the four alternative choices as compared to Consumer Reports ratings. A consumer efficiency index (CEI) was calculated for each consumer as follows:

$$CEI_j = \sum_{i=1}^{k} R_i - C_{ij}$$

CEI_j = Consumer Efficiency Index of the jth consumer in rating the quality of k alternatives in the set,

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where

k=Number of choices (alternatives, brands made available to consumers in a set),

R_i=Objective rating of the ith alternative in the set,

C_{ij}=Rating of the ith alternative by consumer j,

and

$\sum_{i=1}^{k}$=the sum of the (absolute) values over all k alternatives.

For the experiment, rank orderings were used to calculate subjects' CEI scores. Based on the distribution of scores obtained, three levels of efficiency were identified for use in the analysis. These were perfect efficiency (a percent score, no errors in ranking), good efficiency (small but potentially consequential deviations from perfect efficiency), and moderate to low efficiency (scores indicating substantial error and a likelihood of inefficient choice).

Findings

The consumer efficiency ratings for the blankets and slow cookers by treatment groups are presented in Tables 1 and 2.

Chi square analyses showed a significant difference ($p \geq 0.01$) among consumer efficiency ratings and information treatment for blankets, but not for slow cookers. For blankets, the proportion of perfectly efficient adult consumers increased across informational treatments. The percentage who were perfectly efficient increased from 23 percent of those with no information, to 29 percent with basic marketing information, and a large increase to 48 percent with extended market information. For slow cookers, the reverse was true for perfectly efficient consumers. The group with no information had 37 percent who were perfectly efficient consumers. The percentage dropped to 34 percent with basic market information and to 29 percent with extended market information.

Table 2 presents the number of information cards selected by consumers with different levels of efficiency. For the blankets, more efficient consumers selected more information for both basic marketing information and extended market information. Perfectly efficient consumers selected an average of 20.7 bits of information, compared to 17 for good efficiency and 14.8 for moderate to low efficiency. For slow cookers, perfectly efficient consumers selected the fewest information cards, 15.5, while those with less efficiency selected more information (20.7 for good efficiency and 18.3 for moderate to low efficiency).

Table 1. Efficiency in Rating Quality By Levels of Information

Consumer Efficiency	Level of Information: Products Only	Products and Marketing Information	Products and Extended Information
Blankets			
Perfect	23%	29%	48%
Good	28	40	32
Moderate to Low	49	31	20
TOTAL	100%	100%	100%
(N)	(50)	(50)	(50)
Slow Cookers			
Perfect	37%	34%	29%
Good	24	32	44
Moderate to Low	35	33	31
TOTAL	100%	100%	100%
(N)	(50)	(50)	(50)

Blankets: Chi-square = 12.09 D.F. = 4 p .016
Slow Cookers: Chi-square = 2.89 D.F. = 4 p .578

Table 2. Mean Number of Informational Sources Used, By Products, Informational Treatments and Levels of Efficiency in Rating Quality

Products, Informational Treatment, and Level of Consumer Efficiency	Mean Number of Sources
Blankets:	
Extended Information	
Perfect Efficiency	20.70
Good Efficiency	17.06
Moderate to Low Efficiency	14.80
Marketing Information	
Perfect Efficiency	14.21
Good Efficiency	12.90
Moderate to Low Efficiency	13.87
Slow Cookers:	
Extended Information	
Perfect Efficiency	15.53
Good Efficiency	20.73
Moderate to Low Efficiency	18.31
Marketing Information	
Perfect Efficiency	11.91
Good Efficiency	13.91
Moderate to Low Efficiency	12.59

Table 3. Informational Contents Selected By Perfectly Efficient Consumers (Blanket Quality Ratings Under Extended Information)

Informational Content	Percentage of Selections, By Rounds			
	1-5	6-10	11-15	16-20
Brand Name	19%	15%	16%	16%
Care Instructions	23	17	13	11
Colors Available	6	6	11	15
Fiber Content	26	18	11	8
Price	18	18	24	16
Binding of Edges	2	3	5	8
Durability	3	12	8	7
Strength	0	4	4	4
Warmth	1	5	8	11
Weight	1	3	1	6
Total Percent	99%	101%	101%	100%
Total Number Selections	493	457	340	189
Mean Number Selections	98.6	91.4	68	37.8

Table 4. Informational Contents Selected By Perfectly Efficient Consumers (Slow Cookers Quality Ratings Under Extended Information)

Informational Content	Percentage of Selections, By Rounds			
	1-5	6-10	11-15	16-20
Brand Name	32%	14%	14%	11%
Care Instructions	24	18	16	15
Colors Available	3	4	6	16
Material Content	9	14	16	15
Price	20	25	22	14
Capacity	5	9	9	6
Cord	1	3	7	9
Energy Use	4	9	8	4
Recipe Book	2	3	3	8
Storage Space	0	1	0	2
Total Percent	101	100	101	100
Total (Number Selections)	493	434	316	193
Mean Number Selections	98.6	86.8	63.2	38.6

Table 5. Comparison of Significant Anov Findings: Adult vs. Student Subjects

Significant Effects, By Products*	Adults	Students
Blankets:		
(A) Quality Ratings (Between Subjects Anov)		
IT	P = .003	P = .01
IT x CS	NS	P = .04
Quality Ratings (Within Subjects Anov)		
Products	P < .001	P < .0001
Products x IT	P = .0002	P < .000
(B) Purchase Preferences (Between Subjects Anov)		
IT	P = .02	NS
IT x CS	NS	P = .05
Purchase Preferences (Within Subjects Anov)		
Products	P < .0001	P < .0001
Products x IT	P = .002	P - .0001
Slow Cookers:		
(A) Quality Ratings (Between Subjects Anov)		
IT	P = .07	P = .02
IT x CS	NS	P = .06
Quality Ratings (Within Subjects Anov)		
Products	P < .0001	P < .0001
Products x IT	P = .03	P < .0001

Table 5 continued

Significant Effects, By Products*	Adults	Students
(B) Purchase Preferences (Between Subjects Anov)		
IT x CS	P = .10	P = .05
Purchase Preferences (Within Subjects Anov)		
Products	P .0001	P .0001
Products x IT	NS	P = .0001

*IT = Informational Treatments Factor
CS = Consumer Sophistication Factor
NS = Not Significant (P .10)

Further examination of the categories of information selected and the sequences of their selection is given in Tables 3 and 4. For blankets, fiber content (26 percent) and care instructions (23 percent) were the leading selections followed by brand and price. Even when extended market information was available, it was selected later in the sequence. For slow cookers, consumers also selected basic marketing information first but in a somewhat different order. Brand name was selected the most (32 percent), followed by care instructions and price.

Analysis of variance was used to determine the relationship of the product quality ratings and purchase preferences to informational treatment levels and consumer sophistication level. Consumer sophistication scores were computed for each subject using their education level, knowledge of consumer products, self-confidence in purchasing consumer products, the value associated with product brands, and consumer reading materials. The resulting consumer sophistication index ranged from 3 to 55 with a median score of 32.6. For the analysis of variance, subjects were grouped into two index levels--high and low. Consumer sophistication was not significantly related to the informational treatments for either blankets or slow cookers in any analysis.

However, product quality ratings and purchase preference were significantly related to informational treatments. The analyses show that informational treatment effects produced results with the adult population which are identical to those of the student population studied earlier.

The two independent samples of different consumers clearly demonstrate that consumer information has a positive effect on consumer efficiency. Although the effect is more clearly evident with blankets, there is also a trend to increased efficiency with slow cookers. The nature of the consumer product appears to have some effect on the use of information and consumer efficiency. This needs to be tested with more consumer products.

Consumer sophistication continues to be elusive. We feel it is present, but it is difficult to measure its effects. More work is needed on this concept.

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TRADE-IN PRACTICES FOR MAJOR HOME APPLIANCES

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Improved energy efficiency of home appliances, plus a sizable number of other factors, encourage consumers to replace major home appliances. An essential input to the replacement decision is the trade-in potential of the existing unit. This study examines the current trade-in practices for refrigerators, a major home appliance. Specific topics addressed include: position of dealers on accepting trade-ins, age and condition of trade-ins, dollar allowance on trade-ins, criteria and procedures used to establish the trade-in allowance, relative importance of resale of trade-ins, channels used to dispose of trade-ins, and estimates from dealers as to potential market for used appliances.

There has been limited empirical investigation of current trade-in practices for major home appliances. While several surveys [5, 6] have shown the percentage of sales with trade-ins, they provided no explanation of possible causes for the sizable shifts between years. The surveys also provided limited information on the disposition of trade-ins, but failed to explain shifts in disposition patterns between years. Last, the surveys provided no estimate of the market's potential or a compilation of dealer's position on accepting trades.

The basic question of what is the potential for used appliance sales has not been answered. Smallcombe [7] reported that dealers indicated the used appliance market had considerable potential. He suggested that some dealers believe the higher mark-up on used units makes the market worth pursuing. He did, however, point out that dealer's positions on accepting trades were mixed: some refused all trades, others accepted them with varying degrees of reluctance, and some actively encouraged them. Dealer's reluctance often centered on concern about the impact of selling used appliances on their store's image, possible reliability problems on the used units, or a shortage of floor space. Dealers who encourage trades said obtaining an adequate supply of saleable units was a serious problem. Luckett [3] took quite a different position when he commented, "It's a rare appliance dealer who is glad to get a trade-in these days." He suggested that many dealers refuse trades altogether and even among accepting dealers, many do not give anything on the trade. Reasons for refusing trades included lack of demand for used units, poor condition of typical trade-ins, and the possibility of clouding the store's image as a retailer of new appliances. He suggested that $10 to $20 would be a typical allowance.

A major shortcoming of these two studies is that neither reveals the size, distribution, or method of selecting dealers for their sample. Nor does either one provide details on the content of the questionnaire dealers completed. Clearly an up-to-date, broad-based empirical study of appliance trade-in practices is necessary.

Need For This Study

The continued emphasis on improving the energy efficiency of home appliances [4, 8] presents consumers with a series of new, more efficient models as potential replacements for existing appliances. Further, a recent survey [2] suggests that many consumers consider improved energy efficiency a major incentive to trade-up to a new unit. An essential input to that replacement decision, however, is the trade-in potential of their current unit. Because there are few recent empirical studies on appliance trade-in procedures and practices, individuals have limited, if any, information on this essential input. They need to know whether appliance dealers currently encourage trade-ins, actively discourage them, or are somewhere between those extremes. They also need basic information of what dollar allowance consumers can reasonably expect. Answers on both questions are an essential part of appliance replacement decisions. Since some of these decisions may involve appliances which are only a few years old, the above information should cover appliances of various ages.

Beyond the potential replacements motivated by improved operating efficiency, there are a number of other factors which encourage individuals to replace their current unit each year. These decisions likewise require data on the existing unit's trade-in potential.

Last, the continued sharp increases in home ownership costs may encourage more people to purchase a used rather than new appliance as a cost saving measure. Before conclusions can be drawn as to the desirability, or even feasibility of this shift, we need further information on the volume of used units being traded-in, a profile of the units ages and general operating condition, and information on how dealers typically dispose of used units. These deficiencies and shortfalls suggest a need for empirical study of the used appliance market.

This Study

This study concentrated on the trade-in practices for a single major home appliance: refrigerators. Narrowing the study to one appliance was done for several reasons. First, manufacturers have expended considerable effort to improve the efficiency of refrigerators. And since the annual operating cost of a refrigerator is substantial, an individual who trades up to a more efficient unit would be likely to reduce operating costs significantly. Second, the unit's high purchase price, coupled with its near universal ownership, should make it representative of the entire group of essential major home appliances. At the same time, the unit's sizable total ownership cost together with its long service life could make a used unit a viable substitute for a new one. Third, it was essential to keep the questionnaire at a manageable size if an acceptable response rate was to be achieved. It appears that the

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findings for this unit should be sufficiently representative of the broader major home appliances population to permit generalizations about that population.

The questionnaire was sent to 125 appliance dealers located in 35 cities throughout the 48 contiguous states. Cities in the sample ranged from less than 25,000 in population to more than 10,000,000. Within the 35 selected cities, dealers were selected on a random basis from those listed in the telephone directory. Dealers surveyed covered the spectrum from very small outlets with sales of less than 50 units annually to high volume outlets selling more than 400 units each year. Likewise, the types of outlet ranged from single store independents to large national retail chains.

The actual mailing included an introduction letter, a questionnaire with cover letter, a follow-up letter, and a second letter with another questionnaire. Replies were received from 58 dealers for a 46.8 percent response rate. From those 58 replies, 52 were usable for this study.

To examine the question of whether trade-in practices varied depending on the size of city where the dealer was located, the sample was divided into four strata by city size. The first stratum included dealers in cities of 40,000 or less, the second included cities of 40,000 to 90,000, the third included cities of 90,000 to 250,000 and the final stratum, cities of 250,000 or more. Sample sizes were 12 dealers, 6, 7 and 32 for the four strata, respectively. Dealer responses were analyzed for differences among strata.

Results of Study

While average annual sales for the responding dealers were 200 to 250 units annually, there was a considerable number of small dealers with annual sales of less than 100 units, as well as very large dealers selling more than 400 units. Dealers typically handled 2 or 3 brands of refrigerators.

Among all responding dealers, 21 percent indicated they refused all trade-ins on refrigerator sales. The high incidence of dealers with a "no trade-ins" policy may have been due to the inclusion of stores from several national retail chains in the sample. An analysis of responses together with subsequent follow-up work suggests these retail chains have a nearly universal policy of not accepting trade-ins. Among the 79 percent who accept trade-ins, dealers indicated that approximately 20 percent of their new sales include a trade-in. Accepting dealers suggested the most frequent reason for there not being a trade-in was the buyer's decision to keep the old unit. Next most frequently cited reasons were that the buyer had no old unit, followed by the fact that the buyer sold the unit privately. To a much lesser extent, some accepting dealers indicated they actively discourage trade-ins.

As shown in Part A of Figure 1, the typical refrigerator trade-in is 9 or more years old; relatively few units less than 6 years old are taken as trades. At the opposite extreme, a sizable number are more than 15 years old. This suggests that many trade-in units are nearing the end of their service life, which the U.S. Department of Agriculture estimates to be fifteen years [1]. This conclusion is supported by the fact that dealers indicated 30 to 40 percent of the trade-ins are ultimately scrapped because they are inoperable when received (Figure 1, Part B). Likewise the operating condition of a sizable percentage of trades is only poor or fair: 20 to 30 percent in each category. Consequently the units require considerable or extensive service work, respectively, to prepare them for resale. External and internal appearance of 64 percent of trade-ins were rated as fair while 15 percent were poor, and 13 percent very poor. Only 8 percent were rated as good or very good. Despite the advanced age of many trade-ins, dealers estimated that 20 to 30 percent had remaining service lives of 3 to 6 years, with a similar 20 to 30 percent having 6 to 9 year lives. The remainder were spread among 2 groups: lives less than 3 years and more than 9 years.

The average dealer trade-in allowance was $25 to $50, although 20 percent typically give a $75 to $100 allowance. Among accepting dealers, 70 percent had a flexible dollar allowance that was determined by the trade-in's age, condition and features. The remaining 30 percent set their dollar allowance either with "considerable weight" on the trade-in's attributes, or "some consideration" of those attributes, or a "single flat amount". When establishing their allowance, dealers placed the greatest emphasis on the unit's operating condition and age, some emphasis on cosmetic appearance, little emphasis on brand-name, and no emphasis on features and extras. These levels of emphasis on individual attributes are the computed means response from all returned questionnaires.

Figure 2 summarizes dealers response to the question of what dollar allowance they would give if the trade-in's age was as shown, if it was a national name-brand, had moderate capacity, was in the middle of a manufacturer's model range, and its operating condition and appearance was average for its age. The dollar amount varied indirectly with age and declined a consistent $25 for each 3 year increase in age. Each dollar allowance shown in Figure 2 is the median response that replying dealers stated they would allow on a trade-in of the indicated age.

As might be expected from the limited number of trade-ins, the majority of accepting dealers described their resale of trade-ins as insignificant (21 percent), very minor (14 percent) or of limited importance (29 percent) to their overall appliance business. Only 36 percent said the resale of trade-ins was an important or very important part of their business. Interestingly few dealers attribute this lack of importance to limited customer demand or sizable service problems when the trade-ins are resold. By far the most frequently cited reason was the store's policy of actively discouraging trade-ins. One frequently cited reason was the limited number of trade-ins seriously restricted potential sales.

Figure 1. Age and Operating Condition of Refrigerator Trade-Ins

Characteristic	Percentage of Trade-Ins: Less than 10%	10%-20%	20%-30%	30%-40%
A. Age of Trade-In				
More than 15 yrs			X	
12 to 15 yrs				X
9 to 12 yrs			X	
6 to 9 yrs		X		
3 to 6 yrs	X			
Less than 3 yrs	X			
B. Operating Condition When Received				
Very Good	X			
Good	X			
Fair		X		
Poor		X		
Inoperable Scrapped			X	
C. Disposition of Trade-In				
Reconditioned and Resold to Individual				X
Resold to Individual in "As Received" Condition		X		
Wholesaled "As Is" to Another Dealer		X		
Reconditioned and Resold Under Standing Purchase Order		X		
Scrapped			X	

Figure 2. Dealers' Estimate of Dollar Allowance for "Average Trade-In"

Age of Trade-In	Dollar Allowance: Less Than $50	$50-$75	$75-$100	$100-$125	$125-$150
More than 12 yrs	X				
9 to 12 yrs		X			
6 to 9 yrs			X		
3 to 6 yrs				X	
Less than 3 yrs					X

Part C of Figure 1 summarizes how accepting dealers dispose of their refrigerator trade-ins. Clearly, individuals are the single most important customer group to purchase used units. Most dealers recondition the unit rather than sell it to an individual "as received". Dealers' estimate of the relative importance of various customer groups as potential purchasers of used units is shown in Figure 3. Ranked by importance, individuals purchasing units as their principal appliance and purchase of units for use in a rental living unit are about equally important. Each response shown in Figure 3 is the mean response from replying dealers. To better understand which factors customers consider in purchasing a used refrigerator, dealers were asked how important certain attributes, shown in Figure 4, are to customers. Operating condition is clearly the most important attribute in that decision process. Appearance, however, is also highly important. The unit's age, its capacity and the brand-name, while important, receive less weight. The response in the figure is the mean response from all returned questionnaires.

The consensus among dealers is that the market for used refrigerators improved slightly during the past ten years. Over the next ten years the market is expected to improve somewhat. Dealers were also asked to estimate the potential market for used refrigerators of varying ages. Figure 5 describes those estimates for different aged used units assuming the hypothetical unit was a national brand, had moderate capacity, was in the middle of the manufacturer's model line, and its operating condition and appearance were typical of a unit of that age. While they felt the potential market for units less than 9 years old was better than for those older than 9 years, they suggested there still was a considerable market for older units. Dealer expectation of only limited improvement in the market over the next ten years is more likely caused by the limited availability of salable, used units rather than a lack of customer demand.

Figure 3. Relative Importance of Customer Groups in Reselling Refrigerator Trade-Ins

	Relative Importance			
Customer Group	Not Important			Highly Important
Unit Purchased as Individual's Principal Refrigerator			X	
Unit Will Be Individual's 2nd or 3rd Refrigerator		X		
Unit Will Be Used In A Rental House or Apartment			X	
Unit Is Wholesaled To Another Dealer	X			

Figure 4. Importance of Trade-Ins Attributes to Potential Used Refrigerator Buyers

	Relative Importance			
Attribute of Trade-In	Not Important			Highly Important
Operating Condition				X
Cosmetic Appearance			X	
Brand-Name		X		
Age of Unit		X		
Features and Extras	X			
Capacity of Unit		X		

Figure 5. Dealers Estimate of Potential Market for Used Refrigerators

Age of Unit	Potential Consumer Demand				
	Non-existant	Limited	Moderate	Good	Very Good
More than 13 years		X			
11 to 13 years				X	
9 to 11 years				X	
7 to 9 years				X	
5 to 7 years				X	
3 to 5 years				X	
Less than 3 years				X	

Dealer Response By Size of City

There were differences in dealer response according to size of city. The first significant difference was that dealers in larger cities had a lower incidence of trades on new refrigerator sales. A much higher percentage of dealers in the upper two strata reported that "less than 10 percent" of their new sales involved a trade than did dealers in the lower two strata. On the other hand, a much higher proportion of dealers in the bottom two strata indicated that "more than 30 percent" of their new sales involved a trade-in. The trade-in allowance dealers gave was also significantly different among the four strata. Dealers from larger cities tended to give lesser amounts than did their smaller city counterparts. No attempt was made, however, to determine if those larger allowances necessarily meant the net price (price of new unit less trade-in credit) for the new units was lower. Higher trade-in allowances from smaller city dealers was also evident in dealer's estimates of the dollar allowance they would give on an "average used refrigerator" of varying age. The dollar spread between smaller city dealers and their larger city counterparts was especially large when the hypothetical unit was more than six years old.

Conclusion

Conclusions from the preceding results are divided into two sections. The first discusses the impact on individuals who are contemplating trading an existing refrigerator for a new unit. The second discusses the effect on individuals who may be candidates for a used refrigerator.

Individuals Trading An Existing Refrigerator

Anyone desiring to trade-in their existing unit should be able to find a dealer willing to accept the unit. Large national retail chains will be the major exception since most refuse all trade-ins. The impact of this exception is sizable given the large volume of appliance sales these chains handle. Since dealers typically receive considerable numbers of older units, a unit's advanced age should not deter a consumer from offering it as a trade-in. Likewise, one need not assume that if an existing unit whose operating condition and appearance is only fair will necessarily reduce the dollar allowance significantly, since age, operating condition and appearance are the principal determinants of the unit's dollar allowance.

Consumers can typically expect to receive a \$25 to \$50 trade-in allowance. While a number of dealers indicated their typical allowance was nearly twice that amount, that may not guarantee a lower net price on the new purchase. This questionnaire did not address the issue of whether high trade-in allowances meant a lower, higher or no significant difference in net price on a particular new purchase. For those individuals trading in a newer unit, the flexible trade-in allowance policy of most dealers should be to their benefit. Likewise, the person should receive a larger allowance when the unit's operating condition and/or appearance is good or very good.

The existence of strong potential demand for units of all age groups in the resale market should insure that most accepting dealers will be reasonably receptive to trade-ins. This should permit consumers to trade-in older units where the principal motivation is the unit's advanced age, and should also permit trading a newer unit which is energy inefficient or for some other reason no longer meets their requirements.

Individuals Who Are a Potential Candidate for a Used Refrigerator

Since the percentage of new sales with a trade-in is reasonably low, the number of available units will generally be limited. And the lack of participation by the major retail chains may further restrict some consumers' choices. Given the advanced age of the "typical trade-in", the remaining service life of many units may be limited. Purchasing the unit from a dealer with a reputable and competent service department would seem essential since the operating condition of most units is only fair when traded-in. Last, potential customers cannot expect, nor will they often find, a unit that matches the shiny, spotless appearance of a new unit.

While dealers do not receive large numbers of newer units, the larger trade-in allowance which is given on such units will be reflected in a higher asking price. The study did not address the question of which age group of used units - newer units, intermediate-aged units, or older units - would provide the lowest total annual ownership cost per year. Certainly the dealer's reconditioning expense on older units (which most elect to do) would also raise the asking price on these units.

Some trade-ins will not be available to individual purchasers because dealers elect to either wholesale them or sell them under a standing purchase offer from a business or individual. Among the remaining units, customers who buy the unit as their principal refrigerator face considerable competition from buyers who want the unit for a rental house or apartment. Furthermore, dealers estimate that since customer demand is sufficiently strong, it is unlikely there will be an excess supply of used units.

Limitations and Recommendations

To the extent that the 125 dealers included in this study were not sufficiently large or adequately diversified by type of dealer to be representative of all appliance dealers, the findings and conclusions in this study could be suspect. A larger dealer sample in a future study is desirable. Considering this, the author is currently conducting an expanded study.

While the response rate was acceptably high, it is possible that replies of non-respondents would be significantly different from those summarized here. This study did not attempt to determine if such bias exists.

Although the author believes refrigerators should be representative of major household appliances, they may be sufficiently unique to make generalizing these results to the broader population of appliances questionable. A future study should examine whether there are significant differences in trade-in practices among various appliances and the likely causes of those differences.

A future study should also explore the question of whether the net price on a new unit varies indirectly with size of the allowance on the trade-in. Since there can be sizable price differences for the same appliance at different dealers, it would be interesting to know what, if any, impact trade-in allowance has.

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STATE CONSUMER EDUCATION POLICIES: AN OVERVIEW

Robert J. Alexander*

An overview of state level policies in consumer education is presented. The data were collected from the fifty states and the District of Columbia in the spring of 1978. Thirty-seven states plus the District of Columbia have specific policies that incorporate topics of consumer education (as consumer education is defined here). Some states have more than one policy statement, resulting in a total of 53 separate policy statements. Trends were identified in the adoption of consumer education policies and in the geographical distribution of such policies.

This presentation is an overview of state level policies in consumer education. A detailed analysis is available in a document titled State Consumer Education Policy Manual, published by the Education Commission of the States (ECS) in Denver. The information reported is based on a national survey of the 50 states and the District of Columbia, conducted by the ECS in the spring of 1978. Every effort has been made to assure the accuracy of the data. The ECS interviewed all 51 of the governing bodies by both telephone and mailed written survey. I reviewed and analyzed the survey responses, verified the accuracy of the information regarding each state, and compiled this policy analysis.

The verification procedure followed in January, 1979, was to telephone the chief state school officer in each state and explain the purpose of the call. Either s/he or someone else on the immediate staff referred me to whomever they considered the most appropriate individual. In some states the person verifying the accuracy of the analysis had completed the original survey. Most frequently, however, the verifying person had not completed the survey. I read to them the sections of the total analysis that made reference to their state policies and programs. They agreed the analyses are accurate.

There are two possible sources of error in this report: first, I recognize telephone verification rather than written is subject to misinterpretation; and second, policies are not static; that is, they are in a constant state of change. For example, I would hope this report will encourage individuals to:

1. review their state policies in light of the other states, and

2. take action to update their own state's policies if appropriate.

Doing so will result in the analysis becoming outdated.

The policies reported can be divided into several categories and subcategories, and they can be analyzed in a variety of ways. Since this report is intended for a number of audiences: policy-makers, administrators, curriculum specialists, consumer educators, etc., the analyses of the policies come in several forms. Different audiences will find some analyses more interesting and useful than others. I hope everyone finds one or more analyses appropriate for their purposes. I would encourage those of you who would like a more detailed analysis for their state to see me afterward and/or request a copy of the written report from the ECS. In the manual, every policy was reproduced in its entirety so you can review the policies using your own techniques and see my detailed analysis.

Definition of Concepts

There are two areas related to the policy analyses that are important to clarify at the outset: the policy requirements and the instructional content. For the purposes of this presentation "requirements" are those actions that must be taken, i.e., they are mandated. In those states with policy requirements, I have been careful to distinguish between three levels: State Education Agency (SEA), Local Education Agency (LEA), and student mandates. Requirements at the SEA level indicate there is a policy mandate for action on the part of the state education agency but at no lower level. Requirements at the LEA level indicate each school district must follow a course of action. Requirements at the student level indicate students must receive instruction in consumer education. Careful attention must be paid to these differences. For example, an LEA may be required to "offer" instruction but students may not be required to receive instruction. Therefore, whether this example is a "mandate" is subject to interpretation; some consumer educators would consider it such, others would not. Briefly, then, I will report as mandates only those requirements that must be taken. I have further attempted to distinguish between requirements of "being available to students" and those of "attendance by students."

I have adopted a broad content perspective of "consumer education" policies. From this perspective consumer education includes four general areas: consumer behavior, economics, personal finance, and rights and responsibilities. Consumer behavior includes instruction topics such as attitudes, values, decision-making and needs vs. wants. Economics includes basic, free enterprise, and/or consumer economics. Personal finance includes the principles of buymanship and money management. Rights and responsibilities include consumer protection, laws and regulations, consumer redress mechanisms, and the responsibilities of consumers in the American economic system. When one of the four areas is listed as part of the policy "content" it means that at least some but not necessarily the entire area is included in the policy. As a consequence of the perspective, you will find analyses of policies entitled not only consumer education but also free enterprise education, consumer economics, etc. Furthermore, while I consider certain policies (for example, free enterprise policies) as consumer education, that is not to be construed as an indication that the policy-making body would agree.

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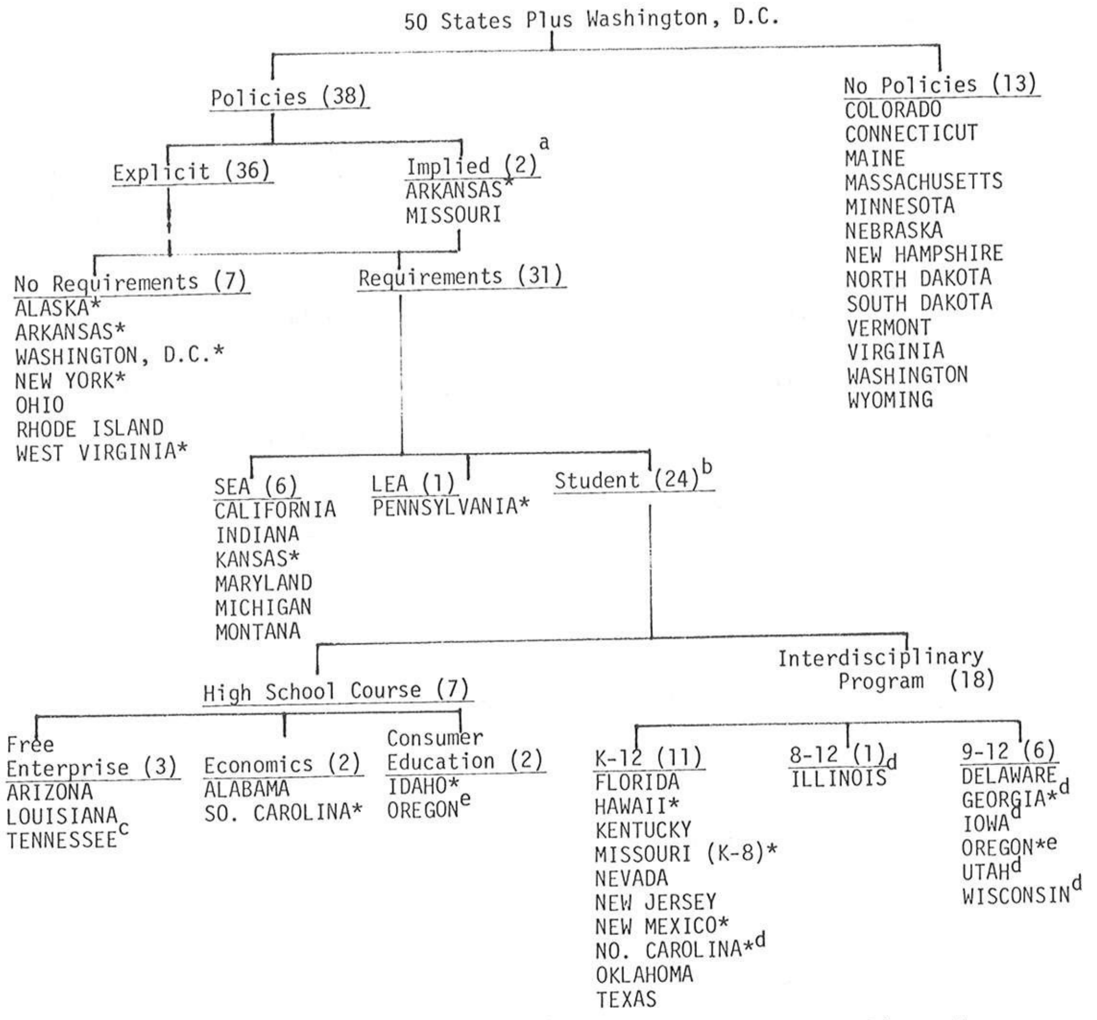
I hasten to add that discrepancies between state policies and actual programs in the LEA occur. In this presentation I report the actual policy rather than actual practice at the LEA level.

One final caveat is necessary. Every state has submitted a plan under the Vocational Education Act (P.L. 94-482) which includes "Consumer and Homemaking Education." Therefore, I have assumed every SEA has a policy and program to the extent that the vocational education plan includes consumer education. However, I only cite the plans if the SEA personnel responding to or verifying the accuracy of the survey included them. As a result, the preponderance of information included in the analysis is related to policies that have been adopted that are specifically related to consumer education rather than existing as part of a broader policy or program. None of the states with consumer education requirements fall in this category. They all have explicit policy statements.

Findings

A summary of state policies is provided by the chart, State Policy Key. Thirty-seven states plus the District of Columbia have specific policies that incorporate topics of consumer education as defined earlier. In states that have more than one policy, the most definitive policy was included in the chart. Thirteen states do not have policies

STATE POLICY KEY



a An implied policy means there is no definitive consumer education policy. However, consumer skills and knowledge are included in a state adopted competency program.
b By implication, if the requirement is that students receive instruction, then there is a requirement for LEA's to provide instruction.
c The SEA believes this to be a "free Enterprise" mandate and does not believe a consumer education course would satisfy legislative intent.
d At the option of the LEA the "program" may be a separate course or parts of courses.
e Oregon has both a course and a program requirement.
* State Board of Education policies; others are legislative.

beyond those that appear in state vocational education plans. Of the thirty-eight policies, thirty-six are definitive statements endorsing consumer education while two policies are part of a state competency policy that has consumer education as a specific component. Seven of the policies have no requirements; they "urge" or "encourage" consumer education but do not mandate it.

Thirty-one states have specific requirements or mandates. Six mandates only apply to the state education agency (SEA) and not to local education agencies (LEA). Generally speaking, these six policies require the development of consumer education guidelines. One state (Pennsylvania) requires the LEA to offer a course but does not require students to take it. Twenty-four states mandate that students receive instruction. While the chart classifies these latter states as having "student requirements," they would obviously imbed the LEA requirement of providing instruction. Indeed, most of these twenty-four states require the SEA to provide assistance to LEAs.

In the states with instructional mandates, seven require a high school course for graduation. Eighteen states require a "program." The program must extend from K-12 in eleven states, from 8-12 in one state, and from 9-12 in seven states. In six of these nineteen states, the program <u>may</u> be a course at the option of the LEA.

There are 36 states that have explicit policy statements. Some states have more than one policy (for example, Alabama has four) resulting in a total of 53 separate policy statements.

Reviewing the policies by the year they were adopted showed that the major interest in consumer education began in the early 1970's, peaked by the mid-1970's, and in 1978 showed a significant decline. Only six states had policies prior to 1970. Fifteen new policies were adopted in the next four years--so that 17 states had policies by the end of 1973. Between 1974 and 1977 the total number of states practically doubled; sixteen additional states adopted policies and ten other states added new policies to those they had prior to 1974. In short, 29 new policies were adopted in those four years bringing the totals to 33 states with 50 policies. A marked slowdown occurred last year with only New Mexico and New York adopting their first consumer education policies and Alabama adopting its fourth. For the future, Oregon has adopted a policy that goes into effect in January, 1980.

An analysis of the adoption of these fifty-three policies reveals two identifiable trends. First, through 1975, legislatures were much more active than state boards of education (SBE), adopting 32 of the 37 policies in effect by the beginning of 1976. Since then, however, of the sixteen policies adopted, twelve came from SBEs and only four from legislatures. Second, the most recent policies, beginning in 1973, show a much broader scope of instructional content as they have been implemented as programs. I was not able to identify any specific trends in the areas of mandates vs. supportive policies.

Reviewing the geographical distribution of states reveals some interesting patterns. Of the thirteen states with no policies, five are contiguous states in New England and six are contiguous Midwestern and Rocky Mountain states. Among the seven states with mandated courses three are Western and four are Southeastern. Eighteen required programs are concentrated in the South and Central states. It is not possible to attribute these patterns to interest in or concern with consumer education. The patterns may be a reflection of state educational policy-making traditions. For example, the National Association of State Boards of Education has been aware of strong philosophies of local control in New England and the Midwest. (The same pattern appears in policies regarding programs for the gifted and the talented, for example.) Therefore, this dynamic may well have caused these states not to adopt state policies directing local action.

In closing, I would like to repeat an earlier caution. What I have been discussing is state level consumer education policies, <u>not</u> instructional programs in schools. Certainly many of you are aware of discrepancies between state policies and local programs.

<u>Challenge for Consumer Educators</u>

In my opinion these policies provide you, as consumer educators, with ammunition and challenges. They provide you with the ammunition to approach LEAs in support of bolstering local programs. However, they also provide the challenge of assisting in the development of those programs. They provide a second challenge of lobbying state boards and legislatures to improve your own state policies. For example, I suggest you try to follow the lead of the two most recent policies adopted. Alabama and Oregon have taken the lead in assuring that teachers will be adequately prepared to teach consumer education by requiring that all teachers take a course in consumer education as part of the state teacher certification requirements.

PANEL DISCUSSION: THE CONSUMER AND ELECTRONIC FUNDS TRANSFER

Moderator: Dr. John Wish*
Presenter: Dr. James L. Brown
Presenter: Robert C. Zimmer, J.D.

ELECTRONIC FUNDS TRANSFER AND PRIVACY

Dr. James L. Brown**

Consumers are generally suspicious of innovations or alterations in financial services. Individual concern for private financial security undoubtedly is the root cause of this inherent fiscal conservatism. Absent a substantial demonstrable benefit, consumers are less likely to experiment with new financial services than with other new products or services due to the fear of endangering their financial resources. Given this attitude on the part of consumers, then, it is of little surprise that virtually all consumer commentary on electronic funds transfer (EFT) has been presented in the form of concerns or fears. Numerous surveys of consumers using EFT systems have indicated consumers are generally pleased with the undeniable convenience aspects of EFT, but, usually only after the almost instinctive suspicion about using such services was overcome. Non-users are unlikely to conceptualize benefits from EFT; rather, they typically express concern, fears, mistrust, and a general reluctance to embrace the unknown.

Complicating this situation is the general expectation which typical consumers hold vis-a-vis the privacy of the information contained in their personal financial records. As the Supreme Court of California recognized in 1974, "a bank customer's reasonable expectation is that, absent compulsion by legal process, the matter he reveals to the bank will be utilized by the bank only for internal banking purposes." The constitutional underpinnings of consumers' substantial expectations regarding their privacy generically has been recognized by the United States Supreme Court in such cases as Griswold, Roe, and Doe. Congressional activity has also reflected the public's concern about the appropriate dissemination of credit, employment, and insurance related information, i.e., the Fair Credit Reporting Act. However, while consumers may have such expectations, their legal rights are not always concomitant with their expectations. The Supreme Court, in the Miller case, made it clear that the customer of a bank does not have a federally recognized legitimate expectation of privacy in his bank records of sufficient degree to give him standing to contest the production and disclosure of those records. Recent federal legislation has restricted the ability of federal agencies to obtain personal financial information. However, this legislation relates only to federal agencies and does not speak to potential abuses by state agencies, credit grantors, insurance companies, general snoopers, and others.

Generally, consumers have always had expectations about the privacy of their personal financial records. The difficulties in attempting to achieve these expectations are largely a function of where and how such information is stored. In the 18th and 19th centuries, personal financial information was most often stored in one's home and thus was protected for privacy purposes rather effectively by the Fourth Amendment to the Constitution. In the 20th Century, however, more and more information was retained in banks as individuals increasingly used banks to effectuate their personal transactions. The bank achieved, in no small degree due to self-promotion, the perceived role of quasi-trustee of the customer's account and account information. The Supreme Court recently ruled, however, that placing a check in commerce effectively deprives the customer of that expected degree of privacy. This notion gives rise to an essential problem in this area, namely, the intent of the individual writing a particular item. If the check is intended for a particular use, then the customer generally expects that other uses, or parties not having needed access to the intended use, should be restricted.

Consequently, we are currently experiencing a situation in which individual consumers retain expectations about financial privacy generically, yet may not in actuality realize those expected levels of privacy. This is further complicated by the amorphous perception of privacy which most consumers hold. Privacy is a notion most individuals find difficult to define with much percision; and, as a corollary, invasions or abuses of privacy are difficult to identify with specificity. Nonetheless, privacy is generally perceived as having an intrinsic value; it is a *per se* benefit in the mind of the public and thus ought to be protected.

Privacy regarding financial records involves peculiar implications. As U.S. Supreme Court Justice Louis Powell indicated, "Financial transactions can reveal much about a person's activities, associations, and beliefs." A few prominent examples of illegal use of financial records leading to abuses will serve to underscore this point. The White House "plumbers" discovered Daniel Ellsberg was undergoing psychoanalysis by prying into his bank records; information contained in FBI files about such diverse individuals as Jane Fonda, Dr. Benjamin Spock, and Floyd McKissick was all derived from their personal bank records. Thus, it is important to recognize that privacy problems relative to financial records are generic and not peculiar to EFTS.

However, EFT systems create peculiar problems regarding privacy due to many of its technological characteristics. EFT systems possess many peculiarities which serve to inflame consumer concerns regarding the privacy of their financial records. First, the numerous monopolistic characteristics of EFT systems arouse concern. Sharing of terminals by numerous financial institutions and the processing of information through those instititions creates obvious potential exposure of this information to more numerous sources. Second, the use of long-lines communication facilities also portends potential

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problems for the integrity and sanctity of personal financial information. Placing information on these wires increases the potential for untoward interceptions. Third, EFT systems, of necessity, require the accumulation and retention of personal financial data for such purposes as error investigation and resolution, assessment of liability for fraud and mistake, and under certain circumstances, reversing transactions. The amassing and storage of such information, albeit for legitimate purposes, creates potential problems.

These concerns are heightened in the EFT systems by the intensified centralization of data. The centralization of information forms the basis, in my opinion, for the primary financial privacy problems inherent in EFT systems. This is an important notion since relatively little new or presently unretained information will be generated by EFT systems. Except for information concerning EFT transactions which heretofore were cash transactions, little information will be generated by such systems which is not currently generated in other payment mechanisms. Consequently, the problem (or potential for problems) is largely a function of the technology. Computer technology expands the capacity to retain and retrieve information. The retrieval capacities of modern computers also greatly enhance potential accessibility to stored information. This retrieval capacity exists in EFTS primarily because of the centralization of the information.

The centralization enhances the dissemination not only of derogatory (albeit accurate) information but also of inaccurate information, both of which types can lead to adverse actions involving an individual. These enhanced retrieval capacities permit potentially easier access, categorization, and interpretation of financial data. It permits the information to be more easily used for purposes other than those which were intended by the provider of the information at the time the information was provided. Also, it may perversely serve to insulate the information by restricting the ease of access to such information when the customer wishes to inspect, and where appropriate, to amend or purge existing information. Finally, the centralization of such information increases the likelihood of unauthorized persons obtaining access to data generally for any purpose, proper or improper, since one need only look in one location for such data rather than many locations as previously required. Interestingly, the centralization of information, which creates an increased danger of access by unauthorized persons, also holds the potential for restricting access to such persons if appropriate controls are ascribed to a given system.

The fundamental concerns about privacy seem to be with the uses of the information rather than with the fact of the information storage and retention itself. As such, concerns about privacy seem to be segregable into at least two broad categories: first, real, demonstrable, specifiable threats; and second, dimly perceived or feared threats, the outlines of which are vague at best. It must be borne in mind that most consumers will react to specific identifiable threats to their financial privacy in much the same way as they will to vaguely felt, unspecified fears about such threats. Regardless of whether the threat is real and demonstrable or whether it is vague and amorphous, EFT technologies present privacy-related problems essentially because they deal in information. This is a crucial concept for it demonstrates that the use of EFT as a means for transferring value reflects a basic shift in the nature of "money".

The transfer of value between accounts, institutions, and parties to a transaction is increasingly becoming recognizable as nothing more than the transfer of information about the relative worth and reliability of the parties to that transaction. Money has possessed an informational characteristic ever since value transfer evolved beyond the stage of barter. Coin and currency, for example, merely represented the capacity to effectuate future transactions when passed from a payor to a payee. Put another way, they were essentially symbolic. Similarly, checks and credit card sales slips also are valuable only because of the information they contain, which can subsequently be translated into transactional ability or monetary liability. With the advent of computer-based technology to transfer value, this essentially informational nature of money becomes readily apparent. And with this recognition of the informational nature of money comes the concern for the appropriate uses of such information.

As indicated earlier, privacy problems can be regarded as both demonstrable and potential. All of these problems, however, are essentially broad and conceptual. What, for example, is an "improper use?" By way of corollary, what is a perceived harm? Is the use of my financial records to identify me for specific marketing purposes as a promising potential buyer of certain products an invasion of my privacy? The extent of "harm" suffered may well be receipt of an undesired mailed solicitation. Or by contrast, I may be so notified of opportunities which are of interest to me. The problem is one of perception. The point is that while my privacy may well have been technically compromised, it is imperative to examine what the nature of the abuses are and what the harm is that ought to be eliminated or mitigated. This suggestion is not intended to be construed as belittling concerns relative to privacy in EFTS. It is intended, however, to place into perspective the dichotomy between demonstrable, specific fears and more generic, more undelineated concerns. Both are important on a perceptual basis but the distinction must be borne in mind when considering legislation, so as not to improperly balance the consumer's right to privacy with the unquestioned need in our society for appropriate dissemination of accurate, adequate information.

By extension, the threat to privacy is a threat regarding the misuse of the information rather than an undefined threat regarding undesired access to that information. As a practical matter, however, it may well be that effective legal strictures designed to insure privacy would address the access to the information rather than the uses or misuses of the information. That is to say, it may be more efficacious to control or attempt to control access to information rather than to provide after-the-fact remedies for untoward uses of that information. I believe this comports with the general desires of individual consumers for effective control over both generated and stored data. Consumers ought to be entitled to control over the purposes and uses to which financial information about them is put. This maintains the common perception of the private nature of such data. This implies a right to restrict most disclosures. Similarly, they should be entitled to control over the accuracy of information concerning them under theories analagous to common law notions, such as libel. Implicit in this concept is a right to inspect, review, and amend information about themselves. Further, they expect to be able to control the identity of those persons having access to such information. They also would expect effective notice of attempts to obtain information by persons other than those previously authorized by the consumer, and an effective opportunity to enjoin such acts where necessary. Finally, they expect timely disposal of information no longer possessing reasonable expected, legitimate usages. The very economics of EFTS and its information storage capacity should mitigate to this last end.

The computer-based technology of EFT systems has undoubtedly helped to focus attention on privacy problems involving individual financial records. Yet, computer technology has created huge information storage capacities which its proponents may seek to fill to capacity, presumably like Mt. Everest, simply because it is there. Careful legal structures seem necessary to meet the legitimate expectations of individual consumers and the requirements of financial institutions serving these customers.

CONSUMERS AND THE LAW GOVERNING EFT

Robert C. Zimmer***

There are three major areas of law governing electronic funds transfer (EFT) which have a direct and substantial impact on consumer EFT services: those governing geographic location of terminals, those mandating sharing of terminals among financial institutions, and those establishing consumer rights and liabilities in EFT transactions. With regard to the first area, geographic location, several states have passed legislation limiting the number and/or location of terminals which consumers can use, thus depriving them of potential conveniences of terminal-based services. With regard to the second area, sharing, some states have passed laws requiring financial institutions to share EFT terminals and systems under specified terms and conditions. These sharing laws, however, create complicated schemes of state regulation and are unnecessary because experience has shown that sharing occurs whether or not required by state law. Moreover, sharing laws may conflict with federal antitrust law, discouraging financial institutions from establishing and operating terminals under the terms required by state law. The end result is that consumers are not able to take advantage of the benefits of new and improved financial services.

I would like to focus my remarks today on the third area of law, consumer rights and liabilities in EFT transactions, and explain the provisions of the newly enacted federal EFT Act and its relation to state EFT laws.

***Zimmer, Egge, & Sisk, Washington, D.C.

The Federal EFT Act

The federal Electronic Fund Transfer Act, signed into law on November 10, 1978, establishes a comprehensive set of consumer rights and liabilities in EFT transactions (Pub. L. No. 95-630, S 2001 (1978)). The provisions of the Act which limit a consumer's liability for unauthorized transfers from his account and which restrict distribution of debit cards, codes and other means of access to a consumer's account, took effect in February. The remaining major provisions of the Act govern disclosure of account terms, transaction receipts and periodic statements, error resolution procedures, a financial institution's liability for its errors and system malfunction, and a consumer's right to stop payment of preauthorized transfers. These remaining provisions are scheduled to take effect May 10, 1980; however, a bill has been introduced to accelerate this effective date.

The Federal Reserve, in issuing the first portions of Regulation E implementing the Act, found it necessary to clarify many of the Act's provisions by regulation. Because the Act itself is unclear or silent on several important issues, Regulation E goes well beyond merely clarifying the Act, and contains several substantive additions to the Act's requirements.

Relation to State Law

The federal EFT Act preempts state law only to the extent that a state law is inconsistent with federal law, but a state law is not deemed to be inconsistent if it affords a consumer "greater protection" than does federal law. The Federal Reserve Board is given authority to exempt from the requirements of the federal Act "any class of electronic fund transfers" within a state, if the laws of that state contain consumer protections which are "substantially similar" to those set forth in the EFT Act. This exemption provision, however, will not affect financial institutions in the vast majority of states. Although thirty-three states have EFT legislation and/or regulations, only sixteen contain consumer protection provisions.[1] Most of these states provisions are very limited, however, and no state EFT law covers all of the areas which are covered in the federal EFT Act. Thus, financial institutions in some states with EFT laws will be subject to a combination of federal and state law, depending upon which law gives a consumer "greater protection" with respect to a particular matter.

Scope of the Act

The federal EFT Act governs the relationship between a consumer and a "financial institution". The Act defines a "financial institution" as any person, including a federally or state chartered depository institution, who directly or indirectly holds a consumer's "account". In addition, Regulation E expands the definition of "financial institution" to include any person who issues an "access device" and agrees with a consumer to provide electronic funds

[1] Alabama, Colorado, Florida, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Mexico, Oregon (privacy protection only), Virginia, and Wisconsin. In addition, Arkansas, Maryland and Kentucky require that financial institutions adopt procedures to protect confidentiality of EFT account information.

transfer services. Where two or more "financial institutions" jointly provide EFT services, they may contract among themselves to fulfill the requirements imposed by the Act and Regulation E.

The EFT transactions governed by the Act include "any transfer of funds" (other than a transaction originated by paper instrument such as a check) initiated through an electronic terminal, telephone, or computer tape, and instructing the entity holding the consumer's account to debit or credit the account. Specifically included in the Act's definition of electronic fund transfers are point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and telephone transfers. Certain transactions are specifically excluded, including check guarantee or authorization services, and interbank and interbusiness wire transfers through the Federal Reserve's Communications System or similar network.

Consumer Liability for Unauthorized Transfers

A consumer bears no liability for an "unauthorized" electronic fund transfer, except as provided in Section 909 of the EFT Act as implemented by Regulation E. If a consumer alleges that an unauthorized transfer has occurred, the financial institution is liable for the transfer unless it can prove that the transfer was authorized or that Section 909 conditions for consumer liability have been satisfied.

A consumer is liable for unauthorized transfers only if the card or other access device used to initiate the transfer was an "accepted" device, the institution has provided a means of identifying the authorized user, and all disclosures required under the Act have been made. Except in certain cases involving fraud or failure to report loss (see below), the consumer's liability for an unauthorized transfer (or a series of transfers arising from a single loss or theft) may not exceed the lesser of $50.00 or the amount of money/value of goods or services obtained prior to the time the institution is notified of, or "otherwise becomes aware of, circumstances which lead to the reasonable belief" that an unauthorized transfer may be effected. Notice is sufficient when "such steps have been taken as may reasonably be required in the ordinary course of business," whether or not the institution does in fact receive notice.

The Act's limitations on consumer liability apply only if the transfer falls within the Act's definition of "unauthorized," *i.e.*, initiated by a person without actual authority, and the consumer received no benefit from the transfer. The $50.00 liability limit rule does not apply, and the consumer will be liable for the full amount of a transfer, where (1) the consumer acts with fradulent intent, or (2) the transfer was initiated by a person who was furnished with the card, code or other means of access by the consumer, unless the consumer notifies the institution that such person is no longer authorized.

The Act imposes a duty on the consumer to report loss of his/her debit card, code or other access device, and irregularities in periodic statements. Thus, a consumer may be liable for up to $500.00 if the financial institution can prove that s/he failed to report loss or theft of the debit card within two business days of learning of the loss, and loss of funds could have been prevented if s/he had reported within the two day period. S/He may be liable for the full amount of the unauthorized transfer if the financial institution can prove that s/he failed to report irregularities in his/her periodic statement within sixty days after the statement was mailed to him/her.

Distribution of Unsolicited Debit Cards

Section 911 of the EFT Act restricts the issuance of a debit card, code or other access device, and permits devices to be distributed on an unsolicited basis only if certain conditions are met. The general rule set forth by the Act is that a device may be issued to a consumer only in response to an application, or in renewal of or substitution for an "accepted" access device. In addition, Regulation E contains a "grandfather" provision permitting financial institutions to renew debit cards which were issued on an unsolicited basis before February 8, 1979 (the effective date of Section 911) without regard to whether the card was "accepted": debit cards may be distributed in renewal of or substitution for cards issued before February 8, 1979 provided that certain disclosures accompany the renewal card.

Access devices may be distributed on an unsolicited basis only if the following conditions are satisfied:

- the access device is not capable of being used to access the account until it is validated in response to a request from the consumer, after verification of his identity by any reasonable means (such as by signature comparison or person visit);
- the distribution is accompanied by a "clear explanation" that the device is not validated and how the consumer may dispose of it if validation is not desired; and
- the distribution is accompanied by a disclosure "in readily understandable language" of certain specific items.

Disclosure of Account Terms

Under Section 905 of the EFT Act (effective May 10, 1980), EFT account terms and conditions must be disclosed at the time the consumer contracts for EFT services. Disclosure must be made in "readily understandable language" and must include certain specified items, such as types and nature of transfers which may be initiated, charges for transfers, a summary of error resolution procedures, extent of consumer's liability for unauthorized transfers, and the financial institution's policies with regard to disclosure of account information. When a change in account terms is made, if it would result in greater cost or liability for a consumer or decreased account access, the institution must give the consumer 21 days prior notice.

To facilitate compliance with the Act's disclosure requirements, the Federal Reserve Board is directed to issue model disclosure clauses for optional use by institutions. Use of these clauses insulates an institution from liability for failure to comply with the Act's disclosure provisions.

Although Section 905 of the Act does not take effect until May, 1980, certain disclosures are now required under Regulation E provisions governing distribution of unsolicited debit cards. The Federal Reserve has proposed additional disclosure requirements to take effect prior to May, 1980.

Documentation of Transfers and Periodic Statements

The Act's provisions governing transaction receipts and periodic statements take effect May 10, 1980. Under this section of the Act, written receipts for transfers initiated by use of a terminal must be made available to a consumer at the time the transfer is initiated, and must clearly set forth information such as the amount, date and type of transfer, and identity of third parties to whom or from whom funds are transferred.

The consumer is also entitled to receive notice of certain pre-authorized payments from his account: if a consumer's account is scheduled to be credited by a pre-authorized transfer from the same payor at least once every 60 days; *i.e.*, direct deposit of salary. The financial institution must provide either positive notice when the credit is received or negative notice when the credit is not made when scheduled. This notice is not required, however, if the consumer receives positive notice directly from the payor.

Periodic account statements are required for each monthly cycle in which an electronic transfer occurs. Statements are not required, however, for passbook accounts whose only EFT transactions are pre-authorized credits, as long as the consumer has the right to receive written documentation of amount and date of all credits upon presentation of his passbook.

The Act gives special evidentiary status to transaction receipts and periodic statements: in any action involving a consumer, receipts and statements constitute *prima facie* proof that a transfer was made to a third party.

Preauthorized Transfers

The Act contains three requirements regarding preauthorized payments from a consumer's account. First, a consumer has the right to stop payment of a pre-authorized transfer by giving oral or written notice up to three business days preceding the transfer. Secondly, where pre-authorized transfers to the same person may vary in amount, either the financial institution or the payee must give "reasonable advance notice" to the consumer of the amount and schedule date of transfer. Finally, written consumer authorization is required for pre-authorized transfers from his account.

Error Resolution

The error resolution requirements of the Electronic Fund Transfer Act apply whenever a financial institution receives a consumer's notice of error within sixty days after having transmitted to the consumer a periodic statment, receipt, or notice of preauthorized transfer. The consumer's notice may be written or oral, but the financial institution may require written confirmation be made within ten days of an oral notice of error.

Within ten days of receiving the consumer's notification of alleged error, the institution must either complete its investigation, or provisionally recredit the consumer's account for the disputed amount plus interest pending completion of its investigation within 45 days. If the institution determines that an error has been made, it must correct the error and credit any interest due within one business day after making its determination. If it determines that no error has been made, within three business days after concluding its investigation, the institution must explain its findings to the consumer, and upon request, furnish the consumer with copies of documents upon which it relies.

In an action brought against an institution for violation of the Act, treble damages may be awarded in some cases to a consumer if the financial institution did not exercise good faith in complying with the Act's error resolution procedure.

System Malfunction

An institution is liable to a consumer for damages caused by its failure to:

1. make an electronic funds transfer in the correct amount or at the correct time in accordance with account terms and conditions.

2. make a transfer due to insufficient funds when the institution failed to properly credit a deposit which would have provided sufficient funds for the transfer.

3. stop payment of a preauthorized transfer when properly instructed to do so.

Two defenses are available to an institution: it is not liable if its act or omission resulted from (1) an act of God or other circumstance beyond its control, provided it exercised reasonable care to prevent the occurence and exercised "such diligence as the circumstances require," and (2) a technical malfunction which was known to the consumer at the time he attempted to initiate a transfer.

If system malfunction prevents completion of an electronic fund transfer initiated by a consumer to a third party who has agreed to accept payment by such means, the consumer's obligation to that person is suspended until the transfer is completed or until the third party requests in writing payment by other means.

Freedom of Choice

The Electronic Fund Transfer Act contains two provisions designed to preserve the consumer's right to choose between alternative payments systems and competing financial institutions: no person may condition an extension of credit to a consumer upon repayment by EFT, nor may anyone require a consumer to establish an account with a particular financial institution as a condition of employment or receipt of government benefits.

Civil Liability for Violation of the EFT Act

The EFT Act provisions governing civil liability for failure to comply with the Act create a one-year statute of limitations, provide a minimum recovery of $100.00 in individual actions and set forth criteria to be used by the court in determining the amount recovered in class actions. Any person failing to comply with the Act is liable to the plaintiff consumer(s) for an amount equal to (1) actual damages, (2) in individual actions, an amount between $100 and $1,000; in class actions, such amount as the court may allow, not to exceed the lesser of $500,000 or 1 percent of the defendant's net worth in any one action or series of actions arising out of the same failure to comply; and (3) in successful actions, costs of the action plus reasonable attorney's fees. In determining the amount to be awarded, the court is directed to consider factors such as the frequency of the defendant's noncompliance, the extent to which it was intentional, and in class actions, the defendant's resources.

The following defenses are available to a defendant in an action brought under the Act:

- the violation was not intentional and resulted from a bona fide error, and the defendant's procedures were "reasonably adapted to avoid any such error".

- the act or omission was done in good faith and in conformity with a Federal Reserve Board regulation, interpretation or model disclosure form.

- prior to filing of the action, the defendant notified the consumer, complied with the law's requirements, adjusted the consumer's account and paid any actual damages.

To discourage frivolous lawsuits, the EFT Act gives a defendant the right to recover reasonable attorney's fees if the suit was brought in bad faith or for purposes of harassment.

Privacy

The federal EFT Act does not contain provisions protecting the confidentiality of a consumer's EFT account information. The federal "Right to Financial Privacy Act" of 1978 restricts only *federal* government access to financial records pertaining to an individual customer and held by a financial institution, consumer financial institution, or credit card issuer. Although *private sector* access to information held by a financial institution is not similarly restricted by federal law, some state laws restrict disclosure by depsitory institutions of information regarding an individual's account. In addition, there are privacy protections provisions in the Federal Home Loan Bank Board's RSU regulations, the Comptroller of the Currency's EFTS Guidelines, and the Federal Credit Union Bylaws issued by the National Credit Union Administration.

President Carter has announced plans to introduce legislation restricting disclosure of data from EFT systems. The Administration's "Fair Fund Transfer Act," to be introduced in the 96th Congress, will embody some of the recommendations made by the Privacy Protection Commission. The President's announcement follows several months of study by an interagency federal task force, the Presidential Privacy Initiative, formed in late 1977 to study informational privacy issues and develop an administration policy. Among the privacy issues studied by the task force were those raised by the information collection, retention, and distribution practices of private entities such as financial institutions, retailers, and other providers of consumer financial services, and issues raised by federal government access to information held by such private entities.

The Privacy Protection Study Commission, a body created by the U.S. Congress in 1974 to examine individual privacy rights and record-keeping practices, concluded that protection was needed for individually identifiable information flowing through an EFT data communications network. The Privacy Protection Study Commission made two major recommendations in the EFT area, both of which were endorsed by the National Commission on Electronic Fund Transfers:

- That individually identifiable account information generated in the provision of EFT services be retained only in the account records of the financial institutions and other parties to a transaction, except that it may be retained by the EFT service provider to the extent, and for the *limited period of time*, that such information is essential to fulfill the operational requirements of the service provider.

- That procedures be established so that an individual can promptly correct inaccuracies in transactions or account records generated by an EFT service.

The Privacy Protection Study Commission also expressed particular concern about the threat to individual privacy resulting from Federal Reserve operational involvement in ACH services. The Privacy Commission explained that as EFT services become more sophisticated and documentation and surveillance capability increases, government operation of EFT systems "will become...an unparalleled threat to personal privacy." Therefore, the Privacy Commission recommended that no governmental entity be allowed to own, operate, or otherwise manage any part of an electronic payments mechanism that involves transactions among private parties.

Conclusion

All three major areas of law directly affecting consumer EFT services (geographic restrictions on remote terminal placement, sharing of EFT terminals among financial institutions, and consumer rights and liabilities in EFT transactions) are in the formative stages. Federal and state legislators and regulators are weighing competing interests and formulating the body of law and regulations governing new electronic financial services.

At the state level, several state legislators are considering EFT laws, some of which would restrict geographic location of remote electronic terminals, and/or impose sharing requirements on financial institutions operating such terminals. In addition, some of these proposed state laws would establish consumer rights and remedies in EFT transactions and may preempt the federal EFT Act in that particular state.

The issues raised by terminal placement and sharing are also being debated at the federal level. In the consumer protection area, the Federal Reserve Board is currently formulating regulations to clarify (and in some cases, add to) provisions of the EFT Act.

The laws and regulations being drafted today will determine the extent to which consumers are able to take advantage of technological advances in the financial services area. Thus, consumers, as well as financial institutions and other EFT system participants, are well advised to ensure that their desires and needs are communicated to the legislators and regulators who will fashion the rules under which EFT systems will operate in the future.

PANEL; ETHICS AND THE CONSUMER INTEREST: IMPLICATIONS FOR THE PROFESSIONAL

Introduction: Isaiah T. Creswell
Presenter: Dr. Gordon E. Bivens
Presenter: Mary Gardner Jones
Presenter: Alice E. Fusillo

ETHICS AND THE CONSUMER INTEREST

by

Isaiah T. Creswell*

I am honored to be invited to speak with you on the important topic of ethics and the consumer interest, and doubly honored to share the platform with other distinguished members of the panel: Alice E. Fusillo of the Food and Drug Administration, Mary Gardiner Jones of Western Union, and Gordon E. Bivens of Iowa State University. I am a bureaucrat and a lawyer, but neither a philosopher nor an ethicist. So I ask your acceptance that I come to you with a few observations, some tentative questions, and little in the way of answers about ethics.

Webster's Dictionary defines ethics as "a set of moral principles or values; principles of conduct governing an individual or group." Moral is defined as "of or relating to principles of right and wrong in behavior."

Evidence of Decay

Thus ethics, it seems, is a set of guides or principles to help us make behavioral choices between what is right or wrong. If so, there is much evidence of a decay in the effectiveness of ethics; often in our society the wrong choices are being made. You are all familiar with the "Crisis of Confidence" in business and in government, especially big business and big government. The Roper, Harris, and Yankelovich polls all show growing distrust on the part of citizens and consumers toward major business and industrial enterprises and government at all levels, but particularly at the federal government. Watergate, the corruption of public officials, illegal political contributions, and the disclosure of bribery as a way of doing business all lead to an overwhelming sense of malaise.

The recently released Carnegie Council report catalogs increased cheating among college students, their diminishing respect for communal property, inflated grades reflecting lowered standards of achievement, and deceptive or misleading college and university catalogues--outright misrepresentation by institutions whose stock in trade is truth.

We find apathy in our political processes, emotional isolation of individuals, and expanding hedonism marked by the acquisition of material goods and the pursuit of temporary pleasures.

Factors Related to the Decline

There are, it seems to me, some factors which correlate with the present decline in moral and ethical effectiveness, factors which tend to make ethical choices more difficult. The tremendous advancement of technology and scientific knowhow has tended to reduce the importance of individual human beings. We are seeing more and more abstractions in some giant calculus. The development of birth control pills, the possibility of cloning human life, the ability to prolong life by artificial means, and improvements in health sciences that increase life expectancy all have presented ethical choices which no human being ever had to face before this century.

Related to this is the tremendous explosion of information and the increased exposure of more individuals to more bits and pieces of this expanding pool of knowledge. We simply have more things to consider in making choices and decisions these days.

Bigness, the sheer size of institutions also has its effect, producing feelings of alienation in individuals. Institutions are bigger, cities are bigger, countries are bigger, and populations are bigger. Each individual's world encompasses more than ever before.

Our nation has tried to accommodate and form a cohesive social and political unit from a very wide variety of diverse cultures, races and religions. This magnificent attempt at pluralism, however, has sometimes stressed differences rather than similarities and at the same time blurred distinctions that offer individuals a sense of self and self-worth.

And, finally, I will mention the introduction of the electronic media, particularly television, into our society. The impact of television has been great; it has not always been good. Television has vast potential for both good and ill, but how it will be utilized in the years ahead is a very open question.

Coping Mechanisms

In response to the factors that I have mentioned, I suggest that we as a society, as individuals and institutions, have developed two effective coping mechanisms. The effect of one is to ease difficult decision making in some circumstances. The other allows us in different ways to avoid the difficulty of making ethical decisions.

First, I would suggest that ethics or morality as a guide to decision making has been replaced by a kind of functional utilitarianism. What were once ethically determined decisions must now be hard-headed, tough-minded, unsentimental choices, worked out in terms of the actual or supposed preferences of discreet individuals. The standards must be clear--utiles of pleasure, dollars, or lives--qualities that can be turned into quantities so that the ultimate decision is as indisputable as addition or subtraction with no room for moralizing. At worst, this is body count morality; at best, it involves the systematic application of economic

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models to every aspect of moral and political life. Economic models are useful but do not enhance our ethical sensibilities or our moral understanding. For example, public debate around the use of marijuana is couched in descriptive rather than judgmental terms. We discuss how many people turn on and how many do not. We calculate the cost of enforcing drug laws and compare the physiological effects of pot to those of alcohol or heroin. But the public debate does not ask seriously whether the use of marijuana is ethically right or wrong, whether its use is morally sound or unsound.

The second coping mechanism which I suggest, the one that allows us to avoid decisions, involves the substitution of relativism for absolutism in much of our thinking and public debate. With this, morality and ethical guides have become highly subjective and individualistic, inarticulate and unchallengeable under some exaggerated notion of tolerance. The tolerance that I refer to is not tolerance in a healthy sense where you and I recognize and respect our differences and likenesses and through compromise mutually establish agreeable standards to which we both will adhere. Mutually agreed upon and accepted standards provide a basis of self-restraint, self-determination, and self-reliance. Rather, in the substitution of relativism for absolutism, we find an exaggerated tolerance or license that is responsible to no one but self, that neither tolerates nor imposes any standards, that glorifies each person "doing his or her own thing."

If you accept for the moment this thesis that there is some ethical dysfunction in our society, some rather obvious questions follow:

1. How, if at all, have these major and important segments of our society--higher education, government and business--contributed to this ethical dysfunction?

2. What, if anything, can these institutions do to correct this situation and reinstate ethical considerations to the rightful role in decision making?

3. And what, if anything, can the professionals within these institutions, particularly those concerned with consumer interest, do to contribute to this restoration of ethics as a guide?

If I could answer these three questions there would be no need to share this platform with my fellow panel members, and we could conclude rather quickly. But out of respect for the integrity of the agenda, and because of my own very real limitations, I will limit myself to reporting current answers to the first of these questions regarding the three institutions.

<u>Accusations Against Business</u>

The accusations against business are the most commonly expressed and often the most strident. Business has corrupted public officials through bribery and illegal campaign contributions. Business has undermined ethics by example: through false and deceptive advertising and the marketing of unsafe, unhealthy or simply shoddy products. Business has caused large scale pollution of the environment and fostered a disproportionate and wasteful consumption by the United States of the world's resources.

These complaints come not only from anti-establishmentarians, but from a surprising minority of business leaders. "Business has spectacularly abused its freedom," states J. Erwin Miller, Chairman of the Cummins Engine Company. Or Stanley Marcus: "Americans still believe in the free enterprise system. They have no quarrel with profitmaking. But they do quarrel with unethical and questionable business practices...with companies which pollute our water and air...with the majority of businessmen who have fought and obstructed and delayed every piece of progressive legislation enacted during this century."

Esther Peterson echoes this: "[F]ew if any fundamental corporate policy improvements have come about on a purely voluntary basis. Legislators had to pass laws abolishing child labor, demanding sanitation in food processing plants, requiring safety precautions for workers, and mandating auto and consumer product safety."

In addition, "business and its trade associations have generally opposed [other social legislation protecting rights of workers, minorities, and women.] And they have done so in a deliberate and carefully planned manner using the same tactics time after time. For when a group wants to defeat a new legislative initiative, they first deny that a problem exists, then discredit those who support it. If that fails, they will fight it through every step of the legislative process. If it passes, they will try to block its appropriations. If it becomes law and is funded, they will try to have someone appointed to run it who doesn't believe in it. In the end, if all else fails, they will try to do something about the problem itself." That is a strong indictment of the ethical contribution of the business community.

<u>Complaints About Government</u>

Government fairs no better in the public judgment. This country's involvement in Viet Nam was "the immoral war"; Watergate was the product of an amoral president. The news media dissect and expose the indiscretion and corruption of public officials.

A more serious indictment is that government has become too big, too distant and too unresponsive to the needs of citizens. Crime rates soar and the police harrass but do not protect. Civil servants are hardly civil and do not serve. The social contract is broken. We are taxed but not protected and what little we have left is eroded by inflation, uncontrolled if not actually caused by poor economic planning and policy. Profits are up, taxes are up, inflation soars, and my pocketbook goes down.

Finally there is complaint that there is simply too much government activity. Government cannot legislate ethics or morality. The best it can do is put constraints on people so they do not behave badly. But there is wide consensus that we regulate and legislate too much, that legal authority in lieu of moral authority is too centralized, that government has restricted too much our choices and actions, has fostered dependence on authority, and has diminished citizen participation and responsibility in making important political and ethical choices.

John Gardner, of Common Cause, has remarked that "mortality is not reached through government but has to be gotten through family, schools and churches as well as through the intellectual and social apparatus." Are we in government guilty of undercutting these intermediate social institutions which provide ethical anchors? Have our divorce, tax and welfare laws undermined the basic family unit? In prohibiting voluntary, nonsectarian prayer in school, have we carried the separation of church and state so far as to undermine ethical and moral training? Have we centralized economic and political power to the weakening of neighborhood and community?

Many of you are aware that the Federal Trade Commission is considering a trade regulation rule concerning television advertisements directed at young children. One alternative that may come from the Commission's deliberation would be a ban on certain kinds of advertisements. In considering this alternative the commissioners and staff have had to face certain ethical questions. Is it ethical for non-elected officials to legislate--in effect to take away from businesses the right to disseminate certain information and to deny parents and children the right to make choices both of what to see and what to buy? That is one question. On the other hand, given the apparent lack of self-restraint on the part of business and advertisers, and the apparent widespread abdication of parental authority, is it ethical for the Commission to do anything else but step in and correct the abuses that are apparent from this kind of advertising?

The Role of Education

And what of the contributions of higher education to the ethical dysfunction that I have posed? By and large, institutions of higher education have had some role, usually a significant role, in educating our leaders to be leaders, our businessmen to conduct business, and our public administrators to administer. To some extent, we look to the educational establishment to train our citizens in the proper exercise of citizenship and to show our consumers how to be judicious in their consumption.

Of course, no one expects the educational system to do this alone. Particularly in instilling moral and ethical values, the educational system, led by the institutions of higher education, should support and be supported by the institutions of family and church, if not others. But the educators are professionals, the experts whom we pay, directly or indirectly, with our tax dollars to train individuals to function in our society, to help implant the discipline needed if a free society is to function well, to teach the importance of moral order and obedience to law and set an example of moral leadership. A deep concern of many social critics these days is the abdication by schools of moral leadership. In the wake of the turbulent upheavels of the 1960s, there is need for schools to assume once again a share of responsibility in the moral upbringing of the younger generation. Noted historian and philosopher Jacques Barzun puts it like this: "We need to create the moral self and end this idiotic 'identity crisis.' Young people who have not been taught moral choice cannot have any kind of solid inner core they can call self. You don't find self--you make it."

John Howard, president of Rockford College, suggests that if freedom is to survive the colleges will have to go back to teaching four attitudes necessary to sustain society: respect for the law, respect for private property, self-restraint and self-reliance. In a free society, restraint is self-restraint but nothing in human history suggests that such attitudes will spring forth spontaneously.

Neil Postman, professor of communications in New York University, joins the chorus of those who believe the schools must restore a more traditional style of learning instead of trying to compete with television by trying to be entertaining. He sees the breakdown of morals linked closely with the influence of the electronic media, which competes for attention and does not give youngsters the opportunity to engage in dialogue.

Toward Ethical Standards

As I said earlier, I do not have very much in the way of answers for you. When I first accepted the invitation to address these issues, I debated whether to approach ethics from the point of view of the individual professional operating within his or her institution, or to look at the ethical implications of the institution's own actions. What became obvious to me may be readily apparent to you: namely, that the two are so intertwined that they cannot be considered as separate issues.

It is too obvious to be helpful to state that each of us needs to attend to strengthening the ethical rudders with which we steer our individual course through thorny issues. But I suggest that this simply is not enough. My ethical standards may be vastly different from yours and the collection of our individual standards may only produce chaos. How do we go from individual ethics to ethics for groups and institutions in larger societal choices?

One great benefit to me from the invitation to be with you today was that it forced me to step back from the individual activities and businesses of my government responsibilities and to think about the ethical underpinnings which should but unfortunately do not always guide my choices. On reflection, it became apparent to me that one could not consider ethics in higher education, or ethics in business, or ethics in government without considering the relationship between business, government, and higher education.

Consumer advocate Ralph Nader would give citizens greater participation in decision making through a form of decentralization of government power. He would make government agencies more accountable to the public they serve through formal public participation programs and through laws that would give citizens the right to sue. Mr. Nader would also institute federal chartering of giant corporations as a way of making them more democratic, efficient, and law abiding. Some think it will take an even greater blending of the public and private sectors--and there is already a considerable meshing--to meet the challenge to our society. This manifests itself in various proposals for some form of national economic planning. I have no brief for any of these proposals, but cite them to suggest that further exploration of the ethical thicket requires some reexamination not only of the relationship between the elements of our society but the fundamental underlying philosophical principles which have heretofore defined those relationships. If ethics has anything to do with truth, let us not waste time debating the merits of a free market economy and open competition, both of which disappeared about the time of John Locke.

Let us recognize that we already have a planned and managed economy, though it may not be planned or managed well. And let us recognize too that businesses, no matter how formed, exist under some form of popular consent and therefore have responsibilities to the general society that transcend the accountability of profits to shareholders and wages to workers.

In closing, let me confess to some significant distortion in what I have presented. My remarks have been painted with a broad and negative brush. I have shown the down side of our society and have not given examples, as I could, of very able, progressive and ethical leadership on the part of business executives. I have not given space to sensitive, responsive government officials, of whom there are many, nor have I recognized the professionals in higher education who continue to contribute to a healthy ethical climate.

My only excuse for this is that when I sit down, you will have living examples before you of just those kinds of people.

ETHICS AND THE CONSUMER INTEREST: SOME CONCERNS OF A PROFESSIONAL EDUCATOR

Gordon E. Bivens*

An objective of educating people for their roles as consumers is to develop capacities to make and implement decisions about using resources in ways that contribute to optimum development of their (and their families') human resources. If one accepts this statement of objective, it suggests that anything in the environment which hinders obtaining that objective, i.e., optimum development of human resources, raises ethical questions. For purposes of discussion, elements in the environment will be considered in two categories: those that are primarily under control of producers and sellers in the market and those which are more nearly under the control of consumers.

Producer-Seller Controlled Elements in the Environment

One can't help but be concerned that at least 60 percent of firms included in one study break the law in some way. This refers to the years 1975-76 as reported in a study by University of Wisconsin sociologist Marshall B. Clinard. The 60 percent excluded a fairly significant portion of the commercial environment; not included were banking, insurance, transportation, communications and utility companies. Thus, if anything, there might be the possibility for understatement.

Also, John Conyers, Chairman of the House Judiciary Sub-Committee on Crime, has estimated that the public loses no less than $200 billion per year because of white-collar crime compared to $4 billion through property-related street crime such as robbery, burglary, and larceny. Thus, it seems that although one doesn't want to be a alarmist, there are elements in the environment under the control of sellers-producers that really do raise questions about the ethics of the marketplace.

Advertising policies and practices are clearly under the control of sellers in a large part. Here, several points could be raised regarding privacy and other matters. For instance, there has been some recent evidence that sponsorship of television programs containing elements of violence which appear on Saturday morning segments when young children are the primary viewing audience, has increased. Researchers at the University of Pennsylvania Annenberg School of Communications estimated that the rate of Saturday morning violence in children's programs went from 15.6 occurrences per hour in the fall of 1977 to about 25.0 per hour in the fall of 1978. ABC and CBS, using the definitions of the Pennsylvania Study, were above average while NBC was somewhat below. This, coupled with the increasing speculation that television viewing which includes a lot of violence contributes to fearfulness in people's attitudes, raises serious questions about the ethics of advertising in terms of its general influence upon the climate of society.

Also, the whole role of fashion in American life seems to be an area in need of reexamination. C. S. Lewis in "The Screwtape Letters" indicated that "nonsense in the intellect may reinforce corruption in the will." The trick, Lewis says, is first to convince people that fashion should rule them because fashion is the trend of history and hence, "progressive." Then "we direct the fashionable outcry of each generation against those vices of which it is least in danger...cruel ages are put on their guard against sentimentality, feckless and idle ones against respectability, lecherous ones against puritanism..." Because it creates the potential for economic waste, the role of fashion as a basis for advertising claims is something that needs more attention as an element of the environment in which consumers make choices.

The extent to which producer/seller groups capitalize on social problems would seem to be an element in the environment also deserving attention. For example, do oil companies tend to capitalize upon the current petroleum dilemma? Clearly, one shouldn't over-generalize from the early 1979 profit figures of oil companies but one doesn't gain consolation from examining those figures either. Also, to what extent do appliance manufacturers use the energy efficiency labeling trend to attempt to obsolete earlier appliances? What about the medical profession's controlling entry (supply) into the profession, thus affecting price conditions for medical services? These, and other instances of whether producer/seller/professional groups tend to capitalize on social problems, raise questions for examination about the environment and whether or not they really do hinder the optimum development of human resources.

Somewhat related is the question of whether there is suppression of real innovation. Paraphrasing

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Abba Lerner...consumer sovereignty is "raped" anytime better and/or cheaper ways of production and consumption are suppressed, or when there is insufficient investment in the production of such knowledge. This, along with evidence that real innovations come from small companies and often are absorbed only after a lag period by the giants in industry, would seem to suggest that either there is a suppression or lack of real concern about innovation of a fundamental nature on the part of large business in the environment. The relative size of research and development budgets in relation to advertising budgets might yield light on this matter.

Consumer Controlled Elements in the Environment

Although we may have a concern about the elements in the environment over which producer/sellers/professional groups exercise control, it must be recognized that consumers also have fairly direct control over several elements in the environment.

One of the elements in the environment over which consumers exercise control is the externalities of their consumption. This is an area we have tended to overlook or ignore to a large extent. For example, what about the noise fallout from the use of certain kinds of equipment of either a household nature or an automotive nature? Doesn't noise and fume fallout affect one's neighbors? What about other kinds of pollution? What about waste generally? The obvious kind of waste is the increase in garbage, but there is also the waste of petro-based fuels, and so on. What about the externalities of one's children's behavior? What about the potential for waste in the continuing trend for increase in the size of houses?

Perhaps hardest to face is the necessity to be honest to one's self. Are consumer choices ground in one's basic beliefs, hopes, and one's aspirations for life? Or do consumers tend to let others take charge? There may be a need for a form of assertiveness--consumer assertiveness. This is not a plea for aggressiveness, but rather a taking charge of life to control one's choices in relation to priorities of goals and objectives the individual holds.

Consumers' willingness to be politically astute and active and to overcome political passivity would seem to be an important element. Although we cannot expect government to give all answers for consumer problems, we recognize that, in a complex society, an element of arbitration must take place through third party intervention, and government is the third party we would turn to, in many cases. Consumers often seem to be guilty of engaging in a bit of "ho-hum" passivity by not participating in the political and regulatory processes to the extent that would seem justified by the increasing complexity of our economic environment.

Consumers may also need to consider their use of time. For example, time as an input to the process of purchasing through the need for information gathering and time as input to consumption in terms of maintenance, upkeep and repair. Regarding the inter-temporal dimensions of time, do consumers pay adequate attention to the way in which decisions, at one point in time, tend to commit their resources in future time periods? Often they have predetermined their use of resources in future years by decisions they make in the present. Do consumers do an adequate job of anticipating this and apply appropriate discount procedures?

Some Implications for Educators

If some of the elements of the environment that have been suggested seem appropriate for attention by educators, it seems to me we must recognize the openness which it requires, openness to the contribution of people from a broad range of perspectives and disciplines. In consumer education we have often been guilty of thinking that the range of disciplines contributing to appropriate solutions of problems and appropriate content for courses was more limited than would seem desirable. A very broad range of disciplines and approaches could be useful in the design of educational programs for people in their role as consumers, especially when the objective is cast in terms of fostering development of human resources.

Another thing that we as educators must face is that it takes patience to deal with the basics of improving people's ability to make decisions in the marketplace. Providing information about products, and so on, can be very straightforward, but the results of helping people develop their capabilities in the process of decision-making are often difficult to see.

There also is a certain amount of risk involved for educators if they are to deal with the basics of teaching sound decision-making principles. Most of us in education are not experienced in the art of helping others to view consumption in relation to the broad view of one's life style and its effects upon human resource development. To move in this direction involves taking on some risk since it suggests moving from the usual perspective we have had. It may raise a question of whether we are willing to do that. Perhaps Joan Robinson speaks to the issue when she points out that "the task of the generation now in rebellion is to reassert the authority of morality over technology; the business of social scientists is to help them see how necessary and how difficult that task is going to be."

My view would be that we must see our efforts--whether in the academic sphere, including research, or in the activist arena, or others--as being an integrated part of the broader view of human betterment. In other words, we must not have a "battle-line" mentality, but a concern for overall strategy. As academicians we need to be careful not to lose sight of the broad view of how what we do fosters or hinders development of human potential. That is, we must not be too enamored of the elegance of the research design or the flashiness of the teaching method. Again, C. S. Lewis makes the point "you can spoil your enjoyment of the finest mountain view by thinking of it in terms of the mechanics of the retina or the optic nerve."

ETHICS AND THE CONSUMER AFFAIRS PROFESSIONAL

by Mary Gardiner Jones*

If problems of ethics are in part problems in differences in perceptions of values, needs and expectations of different groups in our society, then the role of consumer affairs professional takes on very important significance in influencing the ethical content of organizational policies and practices. Consumer affairs professionals can act as a bridge between the business ethic and the social ethic. Their particular discipline provides direct and relevant expertise in identifying and interpreting consumer needs and expectations as they relate to the development and implementation of corporate goals and policies.

Ethical concepts play a fundamental role in binding a society together on the basis of shared values toward which the whole society aspires. No society can exist unless people agree in broad and fundamental terms on what is decent and indecent, what is reasonable and unreasonable, and what is offensive and inoffensive conduct.

Ethical conduct has two principle characteristics: it responds to the aspirations and values of society as to what is decent and fair; and it encompasses a concern for the well-being of others and of human society as a whole. Ethics is most frequently defined in terms of honesty and service to society. It is seen typically as behavior which subordinates self-interest to the needs of others, and as the force society uses to temper power and legal right by fairness, decency, and justice.

Ethics is also a dynamic concept. It evokes different types of behavior in different periods of history as society's expectations and concerns change. To the Greeks, for example, justice was the highest value to be sought after. Thus, the set of concerns and actions evoked were very different from those deemed significant to the 18th century philosophers, for whom individual liberty was the predominant value. The ethical base of our laissez-faire economic organization viewed the highest value for individuals as freedom to use their resources in their own way to satisfy their own wants. Today, a major shift in ethical concepts is occurring, moving from a focus on equality of opportunity to the more important goal of equality as <u>sharing</u> of both opportunity and results. Few of us today define equality in terms of the freedom of the rich man and the tramp to sleep under the bridge in the middle of winter. But there is little consensus as to how far society should go toward ensuring a greater quality of results than has prevailed in the past.

One problem confronting the United States today is an increasing polarity between many of the important values held by significant and articulate segments of our society. I believe this polarity partially accounts for the apparent increasing use of law courts by all segments of society to resolve differences, achieve aspirations or defend themselves from the encroachments of various societal power centers.

Professional groups, both public and private, can serve an important role by focusing attention on the ethical responsibilities of their organizations and ensuring that those organizations are responsive to the ethical concepts of their various constituents. In this way we can start to rebuild the credibility of the institutional infrastructure which seems to be badly damaged today.

There is an important relationship between the skills and expertise of consumer affairs professionals and the perceptions of corporations as to the scope and content of their ethical obligations. If we see problems of ethics in part as problems in differences in perceptions of values, needs and expectations of different groups in our society, then the role of the consumer affairs professional is very important in influencing the ethical content of organizational policies and practices. Consumer affairs professionals act as a bridge between the business ethic and the social ethic, between what business perceives to be the "right" action and what society perceives to be "right." It is their job, along with lawyers, accountants and public affairs officers, to ensure the responsiveness of corporate conduct to societal expectations.

I do not take the position that consumer affairs professionals have special capacities for "moral" or "ethical" action, or special insights into knowing what is right and wrong conduct. I do want to advance the proposition that, because of the dimensions of their particular discipline, they have a very direct and relevant expertise in identifying and understanding the consumer interest in business practices and policies. The consumer affairs discipline encompasses a specialized body of knowledge respecting consumer lifestyles, expectations and concerns, and sense of fair dealing; consumer information and redress of needs; consumer satisfaction levels with products and services; and other specifics of marketplace standards of conduct required by consumers to make intelligent marketplace decisions. The consumer affairs discipline also extends to a knowledge and sensibility of broader consumer concerns about their community, the quality of their environment and their lives, as well as the broad range of consumer interests in public policy issues which affect their lives specifically as consumers (as distinct from their concerns about these same issues in their role as workers, producers or individual citizens).

Thus, while individuals practicing the consumer affairs discipline have no special expertise in determining ethical behavior, they do have a special skill in identifying and interpreting consumer needs and expectations related to the development and implementation of corporate goals and policies.

Corporations, perhaps more than other large institutions, are under great pressure to produce "results" within exceedingly short time frames.

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First quarter earnings can affect the judgment of investors regardless of what the resultant corporate year-end financial condition may be. This may be an extreme example, but it is nevertheless true that annual earnings, revenues, sales volumes and market share are the primary quantifiable indicators of corporate performance used by investors, security analysts, bankers, and even the business press, to determine the success of corporate management. Managers inside corporations are under short term pressures to produce results which underlie these indicators of corporate "success." Corporate managers face daily dilemmas which are generated by seeming conflicts between these traditional demands placed upon their performance by the economic community and system and demands placed upon their performance by the political and social community. These political and social demands are seldom attainable within the quarterly and year-end time frames within which much of corporate performance is traditionally judged. Traditionally, corporate performance is measured in terms of productivity, efficiency and growth. This emphasis internally, for managers to achieve the relatively easily quantifiable goals of sales and earnings, makes it difficult for corporate managers to achieve the level and breadth of corporate behavior which is increasingly expected by larger and larger segments of the body politic.

I do not believe that corporations cannot meet the newer social demands and at the same time remain viable, innovative and financially healthy institutions. I do believe, however, that traditional indicators of corporate performance must take into account the new demands resulting from society's broader expectations of corporate responsibility and accountability.

To act ethically is to make certain that one's actions respond to public expectations and sensitivities of what is right and wrong. There can be only one ethic: that sense of right, fairness or decency which is held by society as a whole. Since it is society which gives legitimacy to institutions, institutions must be perceived by society to be acting in accordance with the public's sense of decency and fairness. Business ethics, therefore, cannot diverge too greatly from society's ethics without jeopardizing (in the eyes of the public) the right or privilege of the corporation to exist. The ethical challenge confronting business is to ensure that its conduct accords with the needs of the community at large and is perceived by the public as conforming to its sense of decency, right and fairness.

The consumer affairs professionals inside a corporation have a special opportunity to reduce the polarity between corporate values and standards of success and societal values and expectations of corporate behavior. In many instances, consumer affairs professionals can be significant change agents for corporations concerned that their practices and policies accord with the sensibilities and needs of their customers. Consumer affairs officers in business are not and should not be viewed as adversaries. They are an integral part of the corporate organization; they are as concerned as any other corporate manager with the successful performance of the corporation. Their challenge is to help corporate managements develop new measures of the effectiveness of the corporation in implementing society's expectations respecting affirmative action obligations, safety of the corporate work environment and information about their products and services; as well as the impact of corporate production processes and resultant products and services on the environment, the community and, in some cases, the planet as a whole.

Consumer affairs professionals understand both traditional and new forces which play upon corporations today. Their ethical responsibilities are to assure that the needs and concerns of the consuming public, as these relate to corporate actions, are clearly identified and understood by relevant corporate managers. By the same token, consumer affairs professionals have an obligation to be straightforward with the outside world, be it a government agency or a consumer organization or whatever group, as to exactly what the corporate policy or practice impacting them is and why it exists. They must be clear about consumer needs and expectations and equally clear about the capacity of corporations to respond to those needs.

Broad areas of corporate conduct will not necessarily accord with all the needs and expectations of consumers. Examples include corporate policies to differentiate products from those of competitors when the differences may have minimal significance to consumers, corporate dislike of disseminating "negative" information about their products and services, or finally, corporate decisions to produce product or service A rather than B because A can command a larger market and return a higher profit. Marketing strategies may be more responsive to corporate objectives than to consumer needs and sensitivities. Each of these areas of corporate policy and strategy can evoke ethical considerations for consumer affairs professionals if you define ethics as conduct which is perceived to be decent, reasonable or inoffensive. In this sense, the consumer affairs professional has a responsibility to evaluate (for corporate management) the tradeoffs involved in pursuing a corporate policy or strategy which may advance only corporate, rather than consumer needs. A policy or practice which responds more to corporate needs than to consumer needs is not the crux of the ethical issue. Rather, it is the consumer affairs professional's duty to sound an early warning and to sensitize management to their customers' concerns. This, to me, forms the ethical content of the consumer affairs professional's responsibilities.

Finally, there are the ultimate personal ethical values of any corporate employee, staff or line, professional or non-professional, in consumer affairs or any other discipline. These involve individual personal reactions to institutional conduct which is perceived as unethical. Here each individual must react to the particular situation in his or her own personal way. Whether to overlook it, rationalize it, resign or report it to other groups is a matter of personal values which cannot be generalized upon, nor preached, nor frequently identified in advance. As individuals we remain ethical creatures. How we discharge our personal values is the measure of who we are. But this has little to do with our role, our title, or the substantive expertise or discipline we exercise. How we discharge our ethical responsibilities as consumer affairs professionals is a product of our expertise, competency, sensitivity and compassion.

In sum, to do a good job is to do an ethical job. To take risks, to tell people what they may not want to hear, to try to stimulate change and different ways of thinking about familiar things are the tools of the trade and the contribution which the profession can make to our organization, to the community and to society as a whole.

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ETHICS AND THE CONSUMER INTEREST: IMPLICATIONS FOR PROFESSIONALS IN GOVERNMENT

by

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Professionals who work in the consumer interest must gear their work to current consumer needs. A number of factors in the structuring and functioning of government which impede professionals in their concern for the consumer interest are identified. Some mechanisms, however, are currently available to facilitate consumer access to agency information and consumer input into agency work. Examples of such mechanisms, in the case of the FDA, are discussed. Finally, recommendations are made for actions to carry out consumer rights.

Ethics concern standards of conduct. Professional ethics require the highest quality work possible, done in an honest and objective manner. Professionals are expected to use all the capabilities and skills they can muster. Professional ethics are expected to contribute to, or at least not hinder, the rights of consumers. These rights, briefly stated, are the right to safety, the right to be informed, the right to choose and the right to be heard.

I shall confine my talk to professionals in government. I am going to talk from my observations during fifteen years in four government agencies. The views expressed are strictly my own and not those of a government agency. The first part of the paper will be an overview of some of the problems in this area; the second part gives examples of mechanisms for consumer input and of what one agency has done to overcome these problems; and finally, I shall make some recommendations for what might be done to carry out the rights of consumers.

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Overview

Factors in the organizational structure and organizational functioning can work against professionals in their concern for the consumer interest. Let us consider some of these factors.

Bureaucratic Problems for Consumer Programs

Many of the problems of professionals in reaching consumers, and keeping consumers in mind as they work, are of a bureaucratic nature. In the bureaucratic process, professionals have little control over what they judge should be done in the interest of the consumer. Decisions are seldom made by one person with regard to what work should be done and how that work shall be utilized.

Work programs are submitted and reviewed by many layers of management. Reports and other work records go through the same complicated process of review. Sometimes these documents go through drastic revisions in which new areas of work may be deleted. Approaches to work and program plans by those in top management positions often become standardized and inflexible. Factors that encourage standardized approaches are the mission statements for the offices and their divisions, and even the branches. All work plans must be justified on the basis of the mission and accounted for by progress reports. To change the mission is a major undertaking requiring a long period of time for clearance through all the hierarchical levels of the agency. The mission may limit the professional in making work responsive to consumer needs. Thus, programs often reflect the effects of bureaucratic calcification.

Another bureaucratic factor which can divorce professionals and their work from the consumer interest is the handling of consumer requests for information and consumer complaints. Consumer inquiries are often handled by persons designated to perform that function. Thus, the treatment of consumers becomes institutionalized. Those who deal with consumers daily develop routine ways of handling complaints and requests for information. Summary reports may be written on consumer inquiries, but they do not always reach the professional, nor do they have the necessary detail. This centralized handling of consumer inquiries has its assets in relieving professionals from this burden and allowing them more time for the work at hand. Nevertheless, it keeps the professional from being in touch with consumer interests. A system to feed relevant information from consumer inquiries to professionals should be devised.

Another factor in the bureaucratic process which may not assist consumer programs and concerns is reorganization, the very process designed for change. Reorganization may not work in the consumer interest. Reorganization can curtail consumer-oriented programs and, sometimes, reorganization is so frequent that consumer programs that have been started are never completed.

In some cases, reorganization and other change agents are totally ineffective. Some professionals continue year after year doing exactly what they always did, only under a new name. This type of rigidity hampers adjustment by the professional to changing consumer needs.

Another type of inflexibility is agency commitment to a particular position. It presents the most difficult situation of all for the professional. When an agency is committed to a particular position on an issue, it looks to professionals for support of this position. What happens when they consider the agency position to be erroneous? Ethics dictate that the professional must do the work in an honest and objective fashion, letting the chips fall where they may. Most importantly, the professional must make sure that the work is sound and the results valid. Even when sure, what does the professional do? How far should one go in seeing that the report of findings be made known? Is handing the work over to the supervisor enough? All professionals must answer these ethical questions for themselves. What can or should be done often depends on the setting, the importance of the issue, and the flexibility of the agency.

Agencies which allow for ethics in the role of the professional are more likely to be effective and to make the necessary changes to redirect program and policy toward consumer needs. While controversy over issues produces conflict, conflict produces change. It is a mechanism of correction to keep programs going in the right directions, thus avoiding pitfalls.

The professional not only has an ethical obligation to do objective work but also an ethical obligation to see that the work is used. Where the work impinges upon consumer interests, professionals have an obligation to see that their work is updated to meet current consumer needs. The professional may have to take the initiative to seek out current consumer needs and must take every opportunity to make the agency aware of the need for consumer input into work plans and programs. The professional must be aware of management's problems. Management may be more willing to listen to a new approach, especially when faced with a continuing problem.

External Pressures Affecting Consumer Programs

Internal pressures from the bureaucratic process are not all that inhibits the pursuit of consumer interests. There are also pressures external to the agency.

Pressures of all types affect government programs and program orientations of an agency and its professional staff. Starting at the top, executive policies and all the forces that play a part in executive directives are major factors in priorities that are assigned to programs. Pressures from Congress, which controls the purse strings, have a major effect. There are pressures from lobbies and other special interests, along with the private views of Congressmen and the power of agencies vying for funds; all affect the programs of an agency. Moreover, consumer lobbies are sometimes in conflict with one another.

While professionals generally cannot deal with the pressures that surround the programs of their agencies, they can help consumer needs and assist in formulating rebuttals to erroneous criticism. Agencies should afford professionals the opportunity of having consumer input to their work and having a part in responding to existing pressures. Today, because of pressures from both inside and outside the agency, the professional has a very small voice in what should be done in the interest of the consumer.

Specialized Problems for Consumer Interests

In addition to the external and internal pressures, technical difficulties impede professionals in their service to consumer interests.

Professionals' roles in consumer interests vary greatly by type of work and role of the professional. Certain types of work do not bring the professional in contact with consumer interests. Among those that are in contact with consumer interests are the specialized professionals. These professionals usually have a language problem. Chemistry, mathematics, sociology and most other disciplines have their own terminology. When these professionals try to disseminate their findings to the consumer, they have difficulty in being understood. Attempts to simplify the material may lead to distortions and misinterpretations. Agencies can and often do provide writers to help specialists put information into laymen's terms. Management should encourage such dissemination of information to consumers; informed consumers are better able to choose among alternatives.

The language barrier may separate the professional specialists from the consumer in another way as well. The connection between the work at hand and its application to the consumer world sometimes is lost. Specialists can get so caught up in the technical aspects of what they are doing that their approach becomes distorted. The further they are removed from consumer interests, the greater the chance that the purpose or problem is stated in technical terms rather than in terms of consumer needs. This can result in the use of inappropriate techniques and analyses for the basic problem.

Fragmentation of work is another aspect of specialization that inhibits the pursuit of consumer interests. Often when a problem is approached piecemeal, it is difficult to put the results together in a way that will make an impact on the problem. Professionals have the obligation to coordinate their work and to put it in terms that can be utilized by those working on other aspects of the problem. Agencies should provide opportunities for professionals from different disciplines to work together in the context of the common consumer problem.

Professionals should not only be aware of each other's work, but reports of work in the consumer interest should be made public. What work an agency does, how it does the work, and what the major issues are should be made known to the consumer. Over the short term, life may be difficult for an agency and its professionals when they take this route, but over the long term programs will be far more effective and worthwhile.

In discussing professional ethics and barriers in bureaucracy, I have been talking in generalities. Little has been said abot how these situations can be remedied. For examples on how consumer interests might be served, I now turn to the case of one agency.

Mechanisms to Increase Consumer Inputs

After many years of discouragement as a consumer sympathizer, I am beginning to take heart in a number of fairly recent developments which seem to be bringing the Food and Drug Administration (FDA) closer to promoting consumer rights. Certain mechanisms have been instituted which implement these rights.

One mechanism which can greatly aid consumers in getting information is the Freedom of Information Act of 1967. Using the Food and Drug Administration (FDA) as an example, FDA procedural regulations to implement this act became effective in 1977. The regulations are extensive. They strongly tie professional employees to consumers in that every record or document to be released shall bear the names of all employees concerned therein.

Briefly, the Freedom of Information Act requires that every document that is available to any member of the public be made available to all members of the public; it ensures uniformity of access. There are a few exceptions. Records may be withheld which concern national security; internal personnel rules and practices; personnel and medical files; information on financial institutions; geological and geophysical information such as maps and wills; investigatory records, trade secrets, commercial or financial information; documents with information prohibited from release by statute; and some inter- and intra-agency memoranda or letters.

Another mechanism is the Privacy Act of 1974, which is a companion piece to the Freedom of Information Act. The Privacy Act provides for the publishing of a list of record systems which agencies maintain. The FDA list was published in the Federal Register on August 27, 1975. It included about twelve systems. Two of these systems which might be of interest are Communications (oral and written) with the Public, and Individual Household Statistical Surveys and Special Studies on FDA Regulated Products.

A third mechanism which can aid consumers in getting information is the provision for economic impact statements, as required by Executive Order 12044, issued in 1978. This order requires executive agencies to prepare a Regulatory Analysis of significant regulations that may have major economic consequences. This current Presidential directive continues the process set in motion by previous Executive Orders, but Executive Order 12044 emphasizes the need for economic considerations early in the regulations' developmental process.

The impact statement requires a detailed rationale or Regulatory Analysis Assessment covering a description of the problem, alternative approaches to it and their economic effects, and the reasons for selecting the preferred alternative. For example, consider a regulation requiring adding information on the food label. It is felt that any additional costs to the food manufacturer will be automatically passed on to the consumer. How great is the need for information? Does it have health implications? How great is the cost?

Two cost criteria must be met to comply with an impact statement on Regulatory Analysis Assessment. First, the proposed change would have to cause an increase in the total cost or price of goods or services in the national economy of $100 million a year. The second criterion is that the proposed change would have to cause an increase in the cost or price of goods or services of 10 percent in any one year in any industry or market, level of government or geographical region, providing that the increase in cost or price of goods or services so affected exceeds $10 million annually. These two criteria are to be employed for impacts that occur within five years of the date of regulatory action. They both include the estimated cost to the FDA of implementing the proposed regulation. The draft of the Regulatory Analysis Assessment is to be placed on file in the Hearing Clerk's Office along with the proposed regulation.

No longer are alternative outcomes of issues to be weighed in terms of goodness or badness, i.e., benefits and risks, but they must be weighed in terms of cost to the consumer. If the cost is prohibitive, the most beneficial outcome may not be feasible and other alternatives must be considered.

Disadvantages for the Consumer

Unfortunately, consumers are still at a disadvantage even with the above-mentioned laws and executive order to aid them in obtaining information. Consumers often have trouble identifying a problem. Unlike those who seek specific information for business reasons, consumers are often not aware of the prevailing issues which are embodied in specific requests. They often do not have the breadth of knowledge to see the implications from specific cases. These specific cases arise from a specific need in industry or in the research field. For example, a manufacturer might want to add an emulsifier to a pasteurized cheese product. The consumer, however, may be against the use of food additives in general, rather than a particular type of food additive like an emulsifier. The manufacturer can request specific records for the specific problem. The consumer would have difficulty knowing what to ask for. Moreover, with more specific issues, the consumer does not have a staff of specialists, such as food technologists, chemists and medical doctors, who can help specify and analyze the information needed. Even when being alerted to an arising issue, the consumer is disadvantaged.

Few consumers are willing or able to read the technical language of the Federal Register day in and day out and are able to figure out all the implications in petitions for changes in regulations. The petitions in the food area are often for new foods or changes in foods. How can consumers get the big picture, prioritize their needs, and know what questions to ask?

Yet, the agency and the professionals need the consumer input. From consumer understanding and input, comes meaningful work and balanced decisions. Balanced decisions should take into account not only scientific concerns and industry concerns but consumer viewpoints as well. Broadly based decisions are more likely to withstand the onslaught of pressures brought to bear on an agency and are likely to have greater support. How can consumers be well enough informed to make their input count, and how can professionals help them?

The Food and Drug Administration has been developing programs to help consumers in most of the areas I have mentioned. This is done through the Office of the Special Assistant for Consumer Affairs which reports directly to the Commissioner of the FDA. This group is highly committed to public participation. It helps consumers stay on top of action items. The Office of Public Affairs helps to inform consumers and keep them abreast of issues through the mass media and the FDA Consumer magazine. The Office of Regulatory Affairs helps consumers obtain materials under the Freedom of Information Act.

FDA Action on Food Labeling

To demonstrate how consumer input can be tied into programs and policy-making, I am going to describe a major effort the FDA has been making in the direction of food labeling. The need for changes in food labeling has become very apparent. In part, this need has been demonstrated through the Agency's interaction with consumers and the active participation of professionals. To work with consumers and to air issues, a small public forum was arranged for periodic meetings with consumers, consumer representatives, the FDA Commissioner, and professionals in FDA. Known as the Consumer Exchange Meeting, it started around 1971. The programs of the FDA were presented and issues discussed, with background information supplied directly by FDA's professional staff. While the meetings were sometimes tumultuous, the communication began gradually to pay off. Again and again food labeling issues were raised.

For additional consumer input on food labeling, hearings were held around the country. The FDA, along with the FTC and USDA, sponsored five hearings around the country last fall. The hearings themselves generated approximately 450 pieces of oral testimony. In addition, the hearings were well publicized in the various media: newspaper, radio, FDA Consumer, and by our own FDA Consumer Affairs Officers. This publicity generated nearly another ten thousand written comments.

The opportunity to state their views, ask questions, discuss issues, and to get information from professionals helped to increase consumer understanding and promote consumer participation in setting priorities on issues facing the Food and Drug Administration.

Concurrently, a nationwide survey on food labeling information was conducted by the Bureau of Foods' Division of Consumer Studies. It was a representative sampling of what concerns consumers across the country and what they want on food labels. The data were analyzed by age, sex, education and socio-economic status of the respondents.

The Division of Consumer Studies is a research group which helps to keep professionals in touch with consumer needs. It works with the divisions in the Bureau of Foods to determine what consumer input is needed and then gears consumer research to those needs. It obtains consumer input from all walks of life and from across the country, and it gives professionals the opportunity to be concerned about consumer interests in their work.

From the consumer research and the hearings, the most important issue identified was ingredient labeling. Consumers want a complete listing of ingredients and some quantification, such as percentage ingredient labeling, on all foods. They want simplification so that long chemical names can be understood. Their second major area of concern was nutritional labeling. They want the number of calories listed on all foods and more complete information about fat, cholesterol and sugars. Consumers have a fear, we think an unfounded fear, of the food supply. They want information on labels to avoid ingredients or attributes of food which they believe to be harmful such as artificial colors, preservatives, salt and cholesterol.

During the coming year the Division of Consumer Studies will be busy with the following:

1. Determining what information on the current label is understood and useful, which information is confusing or not useful and what other information not presently on the label is needed. We will also execute a series of studies to determine how to communicate food labeling information to maximize understanding and usefulness.

2. Conducting a multi-purpose survey to help determine the needs, concerns, worries and difficulties or problems which consumers have with foods and cosmetics. This information will be useful to the Bureau in proposing new regulations, modifying present regulations, designing consumer education programs, or taking other appropriate action.

3. Continuing the research-oriented surveillance of the food supply through a contract with A. C. Nielson.

4. Conducting a surveillance of the dietary foods market by going directly to consumers to ask them what dietary foods they are consuming, why they are consuming them, whether it is under a doctor's care, and similar questions to allow the Bureau to have a better understanding of this market.

5. Developing a consumer education program on food additives for the Consumer Affairs Officers who are stationed in the ten regions of the country and who work with community groups.

6. Conducting an economic cost/benefit study on proposed revisions of the food label.

7. Forecasting future trends in such areas as the sale of processed food or eating away from home. Such information will be useful to the Agency in formulating better regulations in a more timely manner.

8. Developing one or more new methodologies for measuring food consumption behavior, with special emphasis on long-term eating patterns, rather than the 24-hour recall used today.

In doing this research, the rights of consumers as participants are carefully guarded under the Privacy Act, and personal identity is completely protected. Data are released in statistical form only. Rules have been formulated to implement this act. Participation of respondents in a survey or other research is completely voluntary. Consumers as respondents are fully informed about who is doing the survey and the purpose of the survey. There can be no adverse effects on individuals from participation in the research. Human Rights Committees are established by contractors. The rules are so stringent in preventing the invasion of privacy that in some cases questions vital to the research cannot be asked.

So far I have discussed factors which impinge on professional ethics and consumer rights. Some mechanisms for informing the consumer and giving the consumer a chance to be heard and to have input have been described. The next step is to reconsider what might help support professionals in their ethics and support of consumer rights.

Recommendations

Recommendations for the consumer's right to be informed, to choose, and to be heard:

1. The establishment of a consumer research group within an agency is one of the best means of getting consumer input and one of the best opportunities for professionals to tailor-make their work to more closely fit consumer needs. Getting a representative sample of consumers is one sure way of getting an accurate picture of what consumer interests and concerns are if the measuring instrument is valid and techniques are sound.

2. Consumer group meetings can be an effective vehicle for consumers and professionals to become informed. Discussions between these groups enable them to understand different facets of issues. All professionals should attend these meetings when issues are in their area. Consumer representation on task forces should be considered where technical aspects of issues are discussed.

3. Hearings held in various places around the country are desirable when new national programs are being contemplated. They alert consumers to pending issues and give them a chance to react and to be heard. Consumers have an opportunity to choose among alternatives and express choices.

4. Publication of regulations, technical papers, status reports and the like in understandable language is highly desirable. Writers skilled in translating highly technical language should be used.

5. Analysis and proper channeling of consumer inquiries and complaints can be accomplished by a proper accounting of consumer requests and should be transmitted to professionals working in related areas and not just to management personnel. Many times there is no free flow of this information even when it exists.

How are professional ethics maintained? Professionals who work in the consumer interest must constantly gear their work to current consumer needs. If they attend meetings where they can interact with consumers, both professionals and consumers can assess problems more effectively. The agency often has mechanisms for consumer input which professionals should seek out. Professionals must stand their ground in being objective, make sure that those above them understand the material presented, make sure the alternatives are presented in terms of the welfare of consumers, and supply ample documentation on controversial issues. Good ethics practiced by employees are the strength and reputability of an agency.