

CONSUMER FRAUD: An Analysis of Impact and Opportunities for Intervention

Technical Report: Phase I

Prepared for the Community Crime Prevention Division, National Institute of Law Enforcement
and Criminal Justice, Law Enforcement Assistance Administration, Washington, D.C. 20531

Grant No. 76-NI-99-0122

December 1977



AMERICAN INSTITUTES FOR RESEARCH/1055 Thomas Jefferson Street, NW, Washington, DC 20007

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by

Jane G. Schubert, Andrew M. Rose, George J. Zweibel, and David J. Klaus

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Consumer Fraud: An Analysis of Impact and Opportunities for Intervention (Grant No. 76-NI-99-0122) is sponsored by the Law Enforcement Assistance Administration (LEAA), Community Crime Prevention Division. This project is a combined effort of the American Institutes for Research (AIR), Washington, D.C. and the National Consumer Law Center (NCLC), Boston, Massachusetts. The participation of both social scientists and legal experts in investigating consumer fraud offers a promising and systematic approach to curtailing the incidence of these offenses. Empirical findings may be related to policy decisions concerning such issues as: 1) which types of consumer fraud are most effectively attacked by the Federal government and which by state and local governments; 2) which types of consumer fraud are adequately covered by existing controls and which are not; 3) which types of consumer fraud are more amenable to interventions based on increased consumer awareness and which based on stricter enforcement. The successful blending of viewpoints from these two disciplines will ensure that the results of this project are both technically sound and practically useful to the law enforcement/criminal justice community.

This report presents the findings of AIR's Phase I activities. It represents the combined efforts of several individuals. Dr. Jane G. Schubert, who supervised the preparation of this document, drafted several chapters and edited the report. She also developed the Transactional Sequence. The Network approach was produced by Dr. Andrew M. Rose, who also critiqued the chapter on the refined definition. Mr. George J. Zweibel contributed the first cut of the descriptive dimensions. He reviewed the literature on definitions of consumer fraud; the findings appear as Chapter V. The third suggested classification scheme, the Thematic approach, was designed by Dr. David J. Klaus who also prepared the statements which summarize the findings of our Phase I activities. The entire report has been reviewed and edited by Dr. Robert E. Krug.

I. INTRODUCTION

This research is designed to accomplish three broad aims; each addressed in one of three consecutive phases:

- Phase I. To describe the nature, scope and characteristics of consumer fraud;
- Phase II. To examine the incidence and impact of consumer fraud in order to determine the requirements for prevention and control efforts; and
- Phase III. To identify intervention strategies for systematically controlling consumer fraud.

The long range goal of this project is to reduce the incidence of consumer fraud through the design of practical countermeasures. These countermeasures may be modifications of existing practices or new ones developed to meet specific needs. Opportunities for these interventions will be identified through an analysis of a sizable data base of consumer fraud incidents. To do this requires the development of a suitable analytic framework and the creation of a working definition of consumer fraud which distinguishes these events from ordinary consumer transactions.

Phase I was designed to assemble and examine actual events which various law enforcement and consumer assistance specialists view as examples of consumer fraud. The purpose of this analysis was to prepare a qualitative description of events where consumer fraud has been alleged in order to determine the nature, scope and characteristics of consumer fraud, and thus provide an overall picture of what is happening. During Phase I, representatives of law enforcement agencies, consumer groups and regulatory agencies were asked to supply examples of actual events where they believed consumer fraud had occurred. Approximately 400 examples were obtained. This set of examples was then used to establish alternative typological frameworks for use during the remainder of the project, to aggregate information about consumer fraud, to communicate the characteristics of conceptually similar classes of events, and to develop countermeasure strategies. It also has served in refining the definition of consumer fraud.

The Principal Investigator during Phase I was Dr. David J. Klaus, who left AIR and the project in October. Dr. Robert E. Krug replaced Dr. Klaus as Principal Investigator at that time. Dr. Jane G. Schubert has served as Project Director for the entire period; she manages the day-to-day project activities and contacted the Phase I data sources, arranged for the data collection and supervised the data analysis. She also serves as the continuing liaison with NCLC personnel assigned to this research. Dr. Andrew Rose (AIR) participated in the data analysis and developed one of the models for the data collection framework. Ms. Adele Gunn (AIR) participated in the data analysis and the preparation of the bibliography.

Mr. Mark E. Budnitz (NCLC) has overall supervisory responsibility for NCLC's work on this project. Mr. Jonathan A. Sheldon (NCLC) took charge of the survey of state and local laws pertaining to consumer fraud and supervised the daily activities of NCLC staff assigned to this project. He is the NCLC project coordinator and responsible for contact with AIR. Mr. George J. Zweibel (NCLC) had primary responsibility for the survey of Federal consumer fraud law. He works in the AIR Washington Office with the project staff and participated in the data collection and data analysis.

This project, a segment of programmatic research about white collar crime, is sponsored by the Community Crime Prevention Division of the National Institute for Law Enforcement and Criminal Justice. The Director of the Division, Dr. Fred Heinzelmann, was instrumental in the development of this study. The Project Monitor is Mr. Bernard Auchter.

At intervals in the course of this research, a panel of experts representing numerous areas of consumer fraud prevention, detection and regulation have met and will continue to meet, to review project activities. The panel's responsibilities include: a) examining project plans and accomplishments; b) advising us on priorities for project efforts; 3) expressing user viewpoints regarding the conceptualization and reporting of project findings; and 4) participating in the formulation of intervention strategies.

Additional details about the panel's relationship and expected contributions to the project will be found, along with a list of each panel member's name and his/her professional affiliation, in Appendix A.

This volume reports on the Phase I activities of the American Institutes for Research. The National Consumer Law Center's report on Phase I appears in a separate volume.



II. PHASE I OBJECTIVES

AIR's activities during Phase I had three general aims: 1) to assemble between 300 and 500 documented examples of consumer fraud complaints; 2) to develop a descriptive taxonomy useful for categorizing these offenses; and 3) to refine a working definition of consumer fraud.

More specifically, the objective in gathering examples of consumer fraud was to create a pool of case material from sources which reflected different geographic areas, victim groups, and types of jurisdiction. It was not expected that this material would be quantitatively representative of the consumer fraud domain. However, the data gathering was intended to capture as diverse a range of events as possible so that all major types of offenses would be included.

The objective in creating a descriptive typology was to allow instances of consumer fraud to be aggregated into conceptually consistent families which would simplify communication, permit comparisons of characteristics, and suggest opportunities for workable interventions. Several alternative approaches for developing the taxonomy had been identified, and it was expected that the more promising ones would be explored to see which seemed to best meet these criteria.

The objective in refining the tentative definition of consumer fraud with which this project began is to more explicitly distinguish these offenses both from other, similar offenses and from other negative but not fraudulent, consumer transactions. An effective definition is essential, of course, for explaining the kinds of offenses we are trying to deal with and for selecting additional cases for the quantitative analysis scheduled for Phase II.

III. DATA COLLECTION PROCEDURES

A. Consumer Fraud Events

Understanding the meaning of consumer fraud is a problem shared by many consumers, merchants, researchers, and law enforcement officials. The aspects of a transaction that would define it as a fraudulent activity are not clearly established. Thus a consensus as to whether a transaction is an example of consumer fraud does not exist. Many consumers appear to experience situations where they feel "ripped-off." Consider these examples:

- Senior citizens respond to mail order advertisements offering investment opportunities; not only do these consumers seldom realize any return, but in most cases, their initial investment is forever lost;
- Low income residents pay inflated prices for goods sold in their neighborhoods. For a variety of reasons, access to stores offering lower prices are closed to such residents.

Consumers are taken advantage of in many ways but the boundaries which separate fraudulent activity from non fraudulent "rip-off" are obscure, and for many situations undefined.

Defining consumer fraud in terms of existing regulations and statutes at the Federal, state and local levels is not very helpful. This legislation often has gaps and ambiguities, and typically relies on examples to define prohibited consumer fraud practices but hinder the application of overall general standards, thus permitting some unspecified fraudulent activities to continue.

In light of this problem, our approach to determining which kinds of events might be considered fraudulent was to depend initially on the judgment of practitioners who work in this field. We asked them to select actual events either reported to them by consumers or uncovered by regulatory and law enforcement investigations. These cases then could be examined to establish what is meant by consumer fraud on an empirical basis.

The first step was to identify the sources we would survey for our data base of 300 to 500 examples of consumer fraud offenses.

B. Selecting Sources of Data

There were several considerations. The most important was choosing agencies which together would provide a full range of fraudulent events. Consideration also focused on the comprehensiveness of the reports we could expect to collect. Our feeling was that the consumer's complaint alone was not sufficient and that some follow-up information or investigation of the event was essential at this stage to understand what transpired.

The Advisory Panel suggested several potential data sources, such as local consumer groups, the United States Postal Service, grass roots organizations, and law enforcement agencies. The Economic Crime Project, conducted by the National District Attorneys Association (LEAA Grant No. 76 DF-99-0015), was recommended because this project has compiled an extensive data bank on white collar crime offenses and it was expected that a substantial portion of these offenses would be appropriate for our investigation. Specifically suggested sources included grass roots volunteer consumer groups such as Consumer Education and Protective Association (CEPA) in Philadelphia, county agencies such as the Montgomery County Office of Consumer Affairs (QCA) in Rockville, Maryland, trade and business associations such as the local Better Business Bureaus, and various regulatory agencies, police departments, and prosecutor offices.

It also was decided, in an effort to achieve representation of all types of events, to tap sources whose records did not include individual consumer complaints. Thus the Federal Trade Commission was included among our sources even though its actions are not based on single grievances but on an aggregate of information against a merchant.

Nineteen agencies were contacted; those listed in Table 1 agreed to participate in the Phase I data collection.

At nine sources, agency representatives who regularly handled complaints chose these cases which included investigation data secured after the complaint has been filed. Although a case need not have proceeded to litigation or resolution, enough data were required to verify the complaint. To the degree possible, the following information was obtained for each case: a) an overall description of what happened; b) the goods or services involved; c) the sequence of events occurring between the consumer and the merchant; d) offender characteristics; e) location and setting; f) cost to victims; and g) case duration in the agency.

Table 1
Participating Agencies: Phase I

-
- U.S. Postal Service: Fraud Division
 - Federal Trade Commission: Headquarters Office
 - Attorney General's Office, Consumer Protection Division: Phoenix, Arizona
 - Call For Action: WTOP - Washington, D.C.; WJR - Detroit, Michigan;
KMOX - St. Louis, Missouri; WERE - Cleveland, Ohio
KFWB - Hollywood, California; WCIX - Miami, Florida;
Intercity Network - New York
 - Montgomery County Office of Consumer Affairs: Maryland
 - American Association of Retired Persons: National Consumer Assistance Center
 - Governor's Office of Consumer Affairs: Atlanta, Georgia
 - Miami Police Department: Fraud Detail
 - District Attorney: Sacramento, California
 - Neighborhood Legal Services/Legal Aid: Washington, D.C., Kansas City,
Missouri, Lewiston, Maine
 - National District Attorneys Association: Economic Crime Project
-

Some agencies contacted were unable to respond to our request, for quite different reasons:

a. Some agencies did not maintain records that contained the extent of information being sought. This was especially true of the volunteer groups whose members focused their efforts on resolution of consumer problems rather than documentation of their activities.

b. Our request for 50 events was too great for some agencies for several reasons. Staff time could not be made available to search files and select cases. Handling consumer affairs also was often one small component of a larger organization which was staffed by a few individuals. The case load, therefore, was lower than we anticipated; cases of alleged fraud numbered even less. Newer agencies had not accumulated enough cases to identify 50 fraudulent situations.

c. One organization with a data base of a few thousand consumer complaints expressed interest in contributing to this pool of events, but the data were in the process of being transferred to a computer; and

d. Trade associations, we learned, rarely pursue complaints considered to be examples of consumer fraud. Immediate determinations are made when inquiries are received and those suspected of fraud are referred directly to law enforcement officials.

A summary of the characteristics of each participating agency is shown on Table 2.*

C. Obtaining Case Materials

There was considerable variation among the data supplied by each of the 11 agencies. Four of the 11 agencies photocopied case materials selected by staff representatives and forwarded these materials to AIR.** The remaining seven sources were visited by a project staff member who worked on-site with the agency staff.

All participating agencies generously cooperated in our data collection effort. The four agencies which forwarded materials to us devoted an impressive amount of time and energy to this task. Two of these four sources are national headquarters offices, from which requests were made to field sites: Call for Action contacted 10 syndicated stations; the Fraud Division, Chief Inspector's Office, USPS, asked for data from 18 divisional sites. In addition, three Neighborhood Legal Services/Legal Aid supplied data. The fourth resource, the Federal Trade Commission, reviewed case files on hand. Together, these four sources contributed 163 usable cases or 42.5 percent of the total.

Collecting data from the other seven sources required site visits by a project staff member. The procedures differed slightly at each site; in five of the seven agencies, the agency staff selected the cases for our data base. In two agencies, other commitments for staff time precluded selection by agency personnel. Typically, after a review of data requirements, a meeting was held with relevant agency staff to discuss the project and respond to questions. The next step was for agency personnel to sift through the files for examples of situations where they felt consumer fraud had occurred. At this point, an abstract of each one was prepared

*Detailed descriptions of each participating agency appear as Appendix E. The descriptions include complaint handling procedures, enforcement powers, agency mandates, staff qualifications and training, and case loads for each agency.

**Confidentiality of any information which would identify the consumer and the merchant was honored.

Table 2. Summary of Characteristics of Participating Agencies

Characteristic	Source of Data										
	Amerian Association of Retired Persons	Attorney General, Phoenix	Call for Action	District Attorney, Sacramento	Federal Trade Commission	Miami Police Fraud/ Forgery Detail	Economic Crime Project	Neighborhood Legal Services Program	Governor's Office of Consumer Affairs, Atlanta	Montgomery County, Md Office of Consumer Affairs	United States Postal Service
Type of Agency	Privately funded	State	Privately funded	County	Federal	City	Publicly funded	Publicly funded	State	County	Federal
Special Consumer Fraud Component	National Consumer Assistance Center	Economic Protection Div., Consumer Fraud Section	—	Fraud Division	Bureau of Consumer Protection	Fraud and Forgery Detail	—	—	—	—	Postal Inspection Service
Age of Agency or Special Consumer Fraud Component (in years)	4	2	14	8	63	3	3	12 (approx)	2	6	6
Mandate	Seek consumer redress for retired persons	Process consumer complaints and enforce state consumer fraud law	Provide consumer assistance through restitution and referral	Respond to consumer complaints; enforce state and county consumer protection laws; monitor and support or oppose new consumer legislation; educate consumers	Enforce federal consumer laws prohibiting unfair or deceptive practices affecting commerce; educate consumers	Investigate suspected consumer fraud cases as well as such other offenses as forged checks and unauthorized use of credit cards	Reduce, prevent, and control economic crime; coordinate efforts of and help establish new economic crime units; educate consumers	Provide free legal advice and representation to those unable to pay lawyers in all types of civil matters; educate the poor as to their legal rights	Protect consumers against deceptive practices; educate consumers	Enforce county law prohibiting unfair or deceptive practices; assist consumers with complaints of cosmetic, factory, mail order, travel, etc.	Enforce federal mail fraud laws; assist consumers with complaints of cosmetic, factory, mail order, travel, etc.
Staff: Regular*** Volunteer	1 4	2	5 (national office) 2500 (national-wide)	13 —	2	6 —	5 (national office) —	Varies by program	Full-time 12 1 & E 5	24 6.6 person years	2
Geographical Scope of Activities	National	State	National	County	National	City	National	National	State	County	National
Population Served	Elderly	General public	General public	General public	General public	General public	General public	Poor	General public	General public	General public
Origin of Cases	Consumers	Consumers	Consumers	Consumers; referrals from other agencies; agency initiated investigations	Consumers; own investigations; businesses; trade organizations; other agencies	Criminal Investigations Section	Consumers	Consumers	Consumers	Consumers	Consumers; other agencies
Inquiries Received	3,100 to 3,900 (yearly average)	5,760 (1975)	360,000 (1976)	2,500 (1976)	2	2	152,250 (1975)	Varies by program	50,000 (1977 projected)	15,000 (FY77)	135,700 (1976)
Investigations Opened	2	5,000 (1975)	2	111 (1976)	2	1,350 (1976)	4,000 (1975)	Varies by program	5,000 (1977 projected)	12,800 (1976)	5,800 (1976)
Resolves Individual Complaints	Yes	Yes	Yes	Yes	No	Yes	Varies by office	Yes	Yes	Yes	No
Seeks Restitution for Individuals	Yes	Yes	Yes	Yes	No	Yes	Varies by office	Yes	Yes	Yes	No
Seeks Restitution for Classes	No	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Most Complaints Referred to Another Agency	Yes	No	Yes	No	No	No	No	No	Yes	No	No
Enforcement Mechanisms	None	Industry-wide investigations; civil actions seeking costs of investigation and prosecution, restitution, and fines; issue Assurance of Discontinuance	Use of media; Consumer Beware	Civil actions seeking costs of investigation and prosecution; injunctions; restitution; and fines; criminal prosecution	Promulgate binding trade regulation rules; industry-wide investigations; investigational subpoenas and hearings; cease and desist orders; civil injunctions for violations of rules or orders; civil actions seeking fines, restitution, other consumer redress	Arrest, referral for criminal prosecution	Depending on jurisdiction, civil actions seeking costs of investigation and prosecution; injunctions, restitution, and fines and/or criminal prosecution	Legal advocacy before agencies and in state and federal courts	Investigational subpoenas and hearings; binding arbitration (by consent); cease and desist orders; including costs of investigation; referral for legal action, including injunction, fines, and restitution	Investigational subpoenas and hearings; binding arbitration (by consent); cease and desist orders; including costs of investigation; referral for legal action, including injunction, fines, and restitution	Administrative action resulting in order letters returned to sender, prevent payment of postal money orders, referral to Department of Justice for criminal prosecution and possible restitution.

* Reflect nation-wide data.

** Participant in Economic Crime Project

*** Refers to full and part-time personnel/attorneys, paralegals, investigators.

by the project staff member.* Much of this effort was completed on site so that any problems arising during the examination of a case could be discussed immediately with a person acquainted with the investigation.

The seven on-site field visits occurred at the agencies listed in the following table.

Table 3
On-Site Field Visits to Agencies

-
- Attorney General's Office, Phoenix
 - Montgomery County Office of Consumer Affairs, Maryland
 - American Association of Retired Persons
 - Economic Crime Project
 - Governor's Office of Consumer Affairs, Atlanta
 - Police Department Fraud Detail, Miami
 - District Attorney, Sacramento
-

Although two of these seven agencies are located in Washington, D.C., the data received from the American Association of Retired Persons (AARP) and the National District Attorneys Association's Economic Crime Project are national in scope. Senior citizens across the country seek assistance in solving consumer problems (particularly nonreceipt of mail order merchandise) from AARP; participating agencies in the ECP forward their case data to NDAA.

An overall picture of the sources of the 383 events is shown in Figure 1. Although we stressed the identification of sources which would supply representative consumer fraud events rather than geographic sampling, it is interesting to note the distribution of the sources of these data.**

*Detailed information about abstract preparation appears in the next section.

**All known represented locations are depicted; for example, the seven CFA stations which submitted cases are shown. However, D.C. based national headquarters staffs did not identify specific regional sources of data.

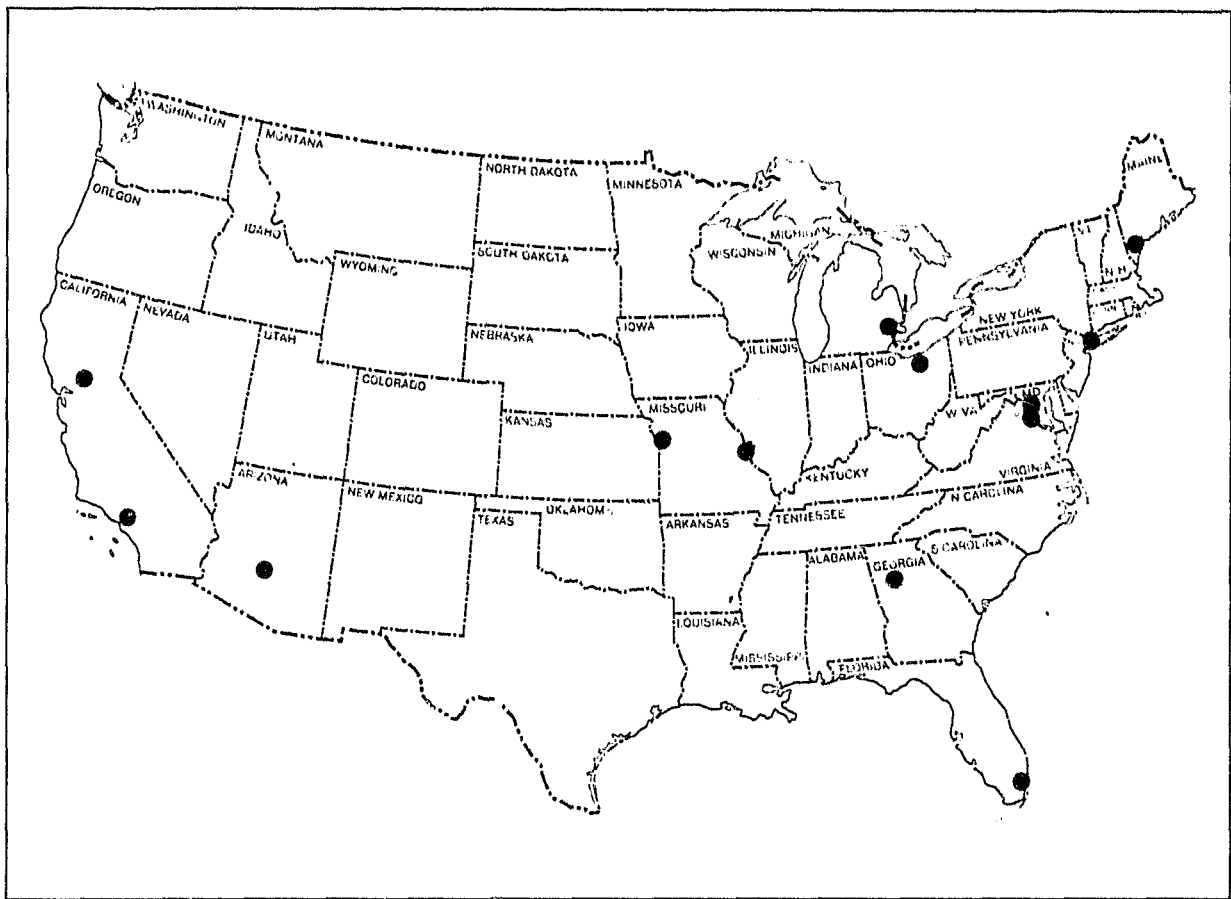


Figure 1. Sources of Phase I Data

In the course of collecting the consumer fraud events, there were some surprises. One was the low number of consumer fraud examples available in the records of some agencies. Obtaining 50 cases per agency was too optimistic a request. Each radio station submitted only a few examples, although one agency, Call for Action, forwarded 54 events. The Attorney General's Office in Phoenix, whose Fraud Section is less than three years old, had less than 30 consumer fraud cases. For the most part, the supply of events from the 11 participating agencies appears to be nearly exhausted. When we seek a larger pool of consumer fraud events in Phase II, new sources will have to be tapped.

Another unexpected outcome was the repetition among types of cases. For example, many of the fraud examples provided by AARP closely paralleled those from Montgomery County OCA. A few agencies independently selected identical cases for our use. In general events vary far less than expected.

D. Preparing Abstracts

Each of the case histories received from the 11 data sources was reviewed to determine whether it contained information appropriate for an abstract. If so, the information was condensed into a one or two page abstract. The number of cases both collected and used in the Phase I data base is shown in Table 4. Each abstract contains three parts: a) a complaint summary which as closely as possible reflects the tone used by the consumer when describing a grievance to an agency; b) an investigation* component which describes the results of an agency's efforts to collect evidence about the complaint; and c) the outcome which states what happened and whether the consumer received any redress. An abstract also records information about: a) whether the case was open or closed and if open, for how long; b) the general geographic location of both the merchant and the consumer; c) the type of business operated by the merchant; and d) the sex, age and other characteristics of the consumer if they could be determined. A sample of abstracts appear as Appendix C.

The comprehensiveness of information contained in each abstract reflects the nature and amount of the individual case data received from an agency. The range in the size of case files examined was enormous and typically depended upon whether the file was compiled about a merchant or an individual consumer. A file on a merchant often occupied an entire file drawer; an individual consumer file usually contained no more than a few dozen pages and in some situations, was merely a card or a page describing the complaint. The complaint collection, information recording and investigative procedures differed widely by agency and had an impact on the abstract. When examining a case file on a merchant which contained a number of complaints, a complaint considered representative of the group was selected for the abstract. If the nature of the complaints differed, additional abstracts were prepared from the same file. When an agency and a consumer interacted frequently in an attempt to resolve a complaint, much more information about the problem was there to be abstracted.**

*This varied by agency and was influenced both by agency mandate and by staff workload.

**Not all files contained complaints from consumers. A few agencies submitted staff-initiated cases which resulted either from a routine monitoring function or from related investigations of a specific industry area, such as automobile repair.

Table 4. Phase I data collection of cases

	Number of Cases Collected	Number of Abstracts	Number of Cases not Used
*United States Postal Service, Fraud Division	46	49	
Federal Trade Commission, Headquarters Office	35	33	2
Attorney General, Economic Protection Division, Phoenix	27	25	2
Call for Action			
Intercity Network, N.Y.	13	13	
Washington, D.C. WTOP	5	5	
Detroit, Mich. WJR	13	11	2
St. Louis, Mo. KMOX	3	3	
Cleveland, Ohio WERE	14	11	3
Hollywood, Calif. KFWB	11	10	1
Miami, Fla. WCIX	1	1	
Montgomery County Office of Consumer Affairs, Maryland	61	48	13
American Association of Retired Persons	23	23	
Governor's Office of Consumer Affairs, Georgia	43	43	
Miami Police Department, Fraud Detail	21	18	3
District Attorney, Sacramento, Calif.	29	29	
Neighborhood Legal Services/Legal Washington, D.C. Aid	14	14	
Lewiston, Maine	5	4	1
Kansas City, Missouri	9	9	
National District Attorneys Association, Economic Crime Project	35	34	1
TOTALS	408	383	28

*Three cases supplied enough information to prepare additional abstracts.



IV. DESCRIPTIVE RESULTS

A. Characterizing the Data

The data base was supposed to capture as diverse a range of events as possible so that most types of reported offenses would be collected. This section addresses the adequacy of the size and scope of our sample as a fair representation of known consumer fraud events. We claim no quantified representativeness for this pool; our aim was to gather information about the types of cases viewed as examples of consumer fraud.

The Phase I data are characterized by the following features:

1. population mix that includes low and middle income groups, and special interest groups such as the elderly;
2. nonadjudicated and adjudicated complaints, the latter involving administrative or judicial forums;
3. agency-initiated and consumer-initiated cases;
4. public and private sector agency representation;
5. cases supplied by local, state and national agencies;
6. closed cases and those currently being investigated; and
7. cases which include follow-up data of an agency's investigation.

We believe that the cases represent a substantial portion of the range of events that would be obtained if we had continued our data collection activities. We visited agencies which were recommended because of their experience in handling consumer problems or because their complaints represented a segment of the population with perceived unique consumer grievances.

One basis for our confidence in the adequacy of the range of data is the degree to which we found duplication and repetition of cases among agencies. This occurred in two ways: a) a few specific cases, perpetrated on a national scale, appeared in several agency files (e.g., a land development scheme, a special low-cost vacation offer); and b) cases where virtually identical fraud was committed independently by offenders in two different locations (e.g., a franchise operation, selling magazine subscriptions). The repetition surfaced much earlier than anticipated;

this suggested that the variety was less than expected and also that the necessity for extensively delimiting types of cases in Phase II would be eliminated.

Agencies specialize in handling specific types of consumer fraud transactions. For example, the volume of mail fraud occurrences from USPS obviously was higher than from any other agency; the FTC gave us a substantial number of false and misleading advertising offenses. An interesting aspect of our experience is that the types of schemes supplied by these sources were also well represented by the other agencies. All sources produced mail order schemes; a major contributor (second to USPS) was AARP. False advertising complaints also were scattered among the sources. The point is that, excluding USPS and the FTC, their "types of schemes" would still have been adequately represented.

The nature of each agency's involvement in consumer problems and the extent of an agency's enforcement power seemed to influence the type of data we collected. Agency-initiated complaints typically aim to bring a merchant into compliance, and thus contain sparse data about individual consumer concerns. Such cases are represented in FTC and some local agency files. A major difference between these cases and consumer-oriented cases is the amount of information available about the direct interaction between the merchant and consumer. Most local agencies devote their energies toward seeking individual consumer redress, prior to dealing with a merchant's questionable behavior. We prefer case material at a level where the exchange between a merchant and a consumer is documented. The greater the distance between an individual consumer and the agency handling the complaint, the less information on file about the complaint. Investigators assigned to specific cases typically record all contacts with involved parties; the process used to handle a case can thereby be examined in some detail.

Naturally, the organization of case files dictated what we could retrieve. Files organized by individual complaints permitted an opportunity to gain some in-depth knowledge about a particular allegation. Investigations against a merchant tend to be overwhelming, especially if the case has been open for years. It's easy to lose the sequence of activities because the files are poorly maintained, correspondence is missing, etc.

B. The Descriptive Dimensions

In the proposal for this project, we noted that many dimensions had been used to describe consumer fraud events. Some of these appeared promising as bases for developing a typology, while others did not. We also noted that a dimension might be useful for other purposes, even if it were not adequate as a basis for a typology. In communicating our results, for example, it might be desirable to have some common and well-understood descriptors that would provide a meaningful frame of reference for the various audiences of interest.

In Phase I, we therefore sought as much descriptive information as was believed feasible. After several iterations, we settled on a list of 24 dimensions as potential descriptive classes. The 24 dimensions contain a total of 157 categories, some of which have subcategories. This descriptive system follows.

Descriptive Dimensions

I. Type of Product or Service Involved

1. PRODUCTS

- 111 Automobiles and other vehicles
- 112 Automotive products and supplies
- 113 Books, recordings, and periodicals
- 114 Food, personal care, and related items
- 115 Garden products and plants
- 116 Health products and drugs
- 117 Home furnishings and appliances
- 118 Jewelry, watches, coins, stamps, and the like
- 119 Outdoor recreational goods, toys, musical instruments
- 120 Wearing apparel
- 121 Land/real estate
- 122 Other products

2. SERVICES

- 211 Appliance and equipment repairs
- 217 Automobile or other vehicle related
- 213 Business opportunities
- 214 Educational
- 215 Employment
- 216 Financial, including loans
- 217 House related
- 218 Housing locator
- 219 Moving and storage
- 220 Photographic
- 221 Publishing and marketing
- 222 Self-improvement
- 223 Shipping and travel
- 224 Yard related
- 225 Other services

3. OTHER

- 311 Charity
- 312 Contest
- 313 Collection agency or other holder
- 314 Credit reporting agency
- 315 Miscellaneous

4. UNKNOWN

2. Consumer Characteristics

1. BY AGE

- 11 Young
- 12 Middle
- 13 Elderly

2. BY INCOME

- 21 Unemployed
- 22 Poor
- 23 Retired
- 24 Middle
- 25 Wealthy

3. BY SEX

- 31 Female
- 32 Male
- 33 Couple

4. BY OTHER GROUPINGS

- 41 Military
- 42 Widow/widower
- 43 Rural

44 Uneducated or undereducated

45 Miscellaneous

5. UNKNOWN

3. Merchant Characteristics

1. MANUFACTURER

- 11 No additional information
- 12 Local, no additional information
- 13 Local, type of product in question only
- 14 Local, several products
- 15 Interstate, no additional information
- 16 Interstate, type of product in question only
- 17 Interstate, several products

2. SELLER

- 21 No additional information
- 22 Local, no additional information
- 23 Local, type of product or services in question only
- 24 Local, several products or services
- 25 Interstate, no additional information
- 26 Interstate, type of product or services in question only
- 27 Interstate, several products or services

3. LENDER

- 31 No additional information
- 32 Local
- 33 Interstate

4. HOLDER

- 41 No additional information
- 42 Local
- 43 Interstate

3a. Is Merchant Established?

- 1. ESTABLISHED
- 2. NOT ESTABLISHED
- 3. UNABLE TO ASCERTAIN FROM AVAILABLE DATA

4. Other Involved Parties

- 1. MANUFACTURER
- 2. SELLER
- 3. LENDER
- 4. HOLDER
- 5. OTHER
- 6. NONE
- 7. UNABLE TO ASCERTAIN

5. Nature of the Initial Personal Contact Between Consumer and Merchant

- 1. MAIL
- 2. TELEPHONE
- 3. AT CONSUMER'S HOME
- 4. AT MERCHANT'S REGULAR PLACE OF BUSINESS
- 5. AT THE REGULAR PLACE OF BUSINESS OF ANOTHER INVOLVED PARTY
- 6. AT SOME LOCATION OTHER THAN "3", "4", or "5"
- 7. NO CONSUMER INVOLVED IN THE COMPLAINT
- 8. UNABLE TO ASCERTAIN

6. Nature of Complaint

1. DECEPTIVE PRICING, INCLUDING MIS-REPRESENTATION AS TO "SALE" OR VALUE
2. UNAVAILABILITY OF ADVERTISED PRODUCTS OR SERVICES
3. MISREPRESENTATION AS TO WARRANTIES
4. MISREPRESENTATION AS TO BENEFITS DERIVED FROM PURCHASE
5. FAILURE TO DELIVER ALL OR PART OF PURCHASE
6. DELIVERY OF POOR QUALITY PRODUCTS OR SERVICES, INCLUDING DEFECTIVE INSTALLATION
7. DELIVERY OF PRODUCTS OR SERVICES WHICH DIFFER FROM THOSE PURCHASED
8. OVERCHARGING OR CHARGING HIDDEN COSTS
9. REFUSAL TO HONOR WARRANTY
10. UNDUE DELAY IN PERFORMING REPAIRS
11. PERFORMING PHONY OR UNNECESSARY REPAIRS
12. FAILURE TO GIVE AN AGREED REFUND OR EXCHANGE, OR CREDIT A RETURN
13. COLLECTION OR HARASSMENT PROBLEM

7. Nature of the Alleged Fraud

1. MISREPRESENTATION OF A MATERIAL FACT
2. OMISSION OF A MATERIAL FACT
3. HALF-TRUTH
4. OTHER

8. Primary Medium Used to Perpetrate the Alleged Fraud

1. RECORDED
 - 11 Labeling/Packaging
 - 12 Mail
 - 13 Pamphlets/Circulars
 - 14 Periodicals (newspapers/magazines)
 - 15 Yellow Pages
 - 16 Television/Radio
 - 17 Other
2. UNRECORDED
 - 21 Oral Representations (face to face)
 - 22 Telephone
 - 23 Other

9. Transactional Stage Where the Alleged Fraud Was Perpetrated

1. INDUCEMENT
2. AGREEMENT
3. PERFORMANCE
4. POST-PERFORMANCE
5. COLLECTION
6. UNABLE TO ASCERTAIN

10. Transactional Stage Where the Alleged Fraud Became Apparent (to the complainant)

1. INDUCEMENT
2. AGREEMENT
3. PERFORMANCE

4. POST-PERFORMANCE
5. COLLECTION
6. UNABLE TO ASCERTAIN

11. Dollars Involved in the Individual Transaction

1. Under \$5.00
2. \$5 to \$20
3. \$20 to \$100
4. \$100 to \$500
5. \$500 to \$2,000
6. \$2,000 to \$10,000
7. \$10,000 to \$50,000
8. Over \$50,000
9. Unknown
10. None

12. Dollars Involved in the Overall Scheme

1. Under \$100
2. \$100 to \$1,000
3. \$1,000 to \$5,000
4. \$5,000 to \$25,000
5. \$25,000 to \$100,000
6. \$100,000 to \$500,000
7. Over \$500,000
8. Scheme involved, amount of dollar loss unknown
9. Unclear whether scheme involved

13. Dollar Loss to the Individual Complainant

1. Under \$5.00
2. \$5 to \$20
3. \$20 to \$100
4. \$100 to \$500
5. \$500 to \$2,000
6. \$2,000 to \$10,000
7. \$10,000 to \$50,000
8. Over \$50,000
9. Unknown
10. None

14. Dollar Loss in the Overall Scheme

1. Under \$100
 2. \$100 to \$1,000
 3. \$1,000 to \$5,000
 4. \$5,000 to \$25,000
 5. \$25,000 to \$100,000
 6. \$100,000 to \$500,000
 7. Over \$500,000
 8. Scheme Involved, amount of dollar loss unknown
 9. Unclear whether scheme involved
 10. None
-

15. Agency Receiving the Complaint

1. FEDERAL GOVERNMENT
 - 11 Attorney General/U.S. Attorney
 - 12 Federal Trade Commission
 - 13 United States Postal Service
 - 14 Other Department or Agency
2. STATE GOVERNMENT
 - 21 Attorney General
 - 22 Consumer Affairs Office
 - 23 Other Department or Agency
3. LOCAL GOVERNMENT (COUNTY/MUNICIPALITY)
 - 31 District Attorney or Equivalent
 - 32 Consumer Affairs Office
 - 33 Other Department or agency
 - 34 Police Department
4. PUBLICALLY-FUNDED ORGANIZATIONS
 - 41 Legal Aid/ Legal Services Program
 - 42 Economic Crime Project (National District Attorneys Association)
 - 43 Other
5. PRIVATELY-FUNDED ORGANIZATIONS
 - 51 Better Business Bureau
 - 52 Volunteer/grass roots
 - 53 Media/Call For Action
 - 54 American Association of Retired Persons
 - 55 Project HELP
 - 56 Other

16. Source of the Complaint Leading to Agency Action

1. ONE CONSUMER
2. SEVERAL CONSUMERS
3. ANOTHER MERCHANT
4. WITHIN THE AGENCY ITSELF
5. ANOTHER AGENCY
 - 511 U.S. Attorney General/U.S. Attorney
 - 512 Federal Trade Commission
 - 513 United States Postal Service
 - 514 Other Federal Department or Agency
 - 515 State Attorney General
 - 516 State Consumer Affairs Office
 - 517 Other State Department or Agency
 - 518 Local District Attorney or equivalent
 - 519 Local Consumer Affairs Office
 - 520 Other Local Department or Agency
 - 521 Local Police Department
 - 522 Legal Aid/Legal Services Program
 - 523 Economic Crime Project (National District Attorneys Association)
 - 524 Other Publically-funded organization
 - 525 Better Business Bureau

- 526 Volunteer/grass roots organization
- 527 Media/Call For Action
- 528 American Association of Retired Persons
- 529 Project HELP
- 530 Other Privately-funded organization

6. OTHER**17. Earlier Agency Involvement**

1. FEDERAL GOVERNMENT
 - 11 Attorney General/U.S. Attorney
 - 12 Federal Trade Commission
 - 13 United States Postal Service
 - 14 Other Department or Agency
2. STATE GOVERNMENT
 - 21 Attorney General
 - 22 Consumer Affairs Office
 - 23 Other Department or Agency
3. LOCAL GOVERNMENT (COUNTY/MUNICIPALITY)
 - 31 District Attorney or equivalent
 - 32 Consumer Affairs Office
 - 33 Other Department or Agency
 - 34 Police Department
4. PUBLICALLY-FUNDED ORGANIZATIONS
 - 41 Legal Aid/Legal Services Program
 - 42 Economic Crime Project (National District Attorneys Association)
 - 43 Other
5. PRIVATELY-FUNDED ORGANIZATIONS
 - 51 Better Business Bureau
 - 52 Volunteer/grass roots
 - 53 Media/Call For Action
 - 54 American Association of Retired Persons
 - 55 Project HELP
 - 56 Other
6. PRIVATE ATTORNEY
7. NONE
8. UNKNOWN

18. Relief Sought by the Consumer

1. ADVICE ONLY
2. PERFORMANCE AS PROMISED
3. EXCHANGE MERCHANDISE
4. REFUND OR PARTIAL REFUND
5. MONEY TO COVER CONSEQUENTIAL LOSSES
6. INVESTIGATION OR ACTION FOR THE BENEFIT OF THE PUBLIC
7. REVENGE/SATISFY MATTER OF PRINCIPLE
8. NO INDIVIDUAL CONSUMER COMPLAINED

19. Duration of the Case Within the Agency

1. Under 1 month
2. 1 to 3 months
3. 3 to 6 months
4. 6 to 12 months
5. 12 to 18 months
6. 18 to 24 months
7. Over 24 months
8. Still pending when received
9. Unknown

20. Parties Held Responsible

1. MERCHANT
2. THIRD PARTY
 - 21 Manufacturer
 - 22 Seller
 - 23 Lender
 - 24 Holder
 - 25 Other
3. ACTION TAKEN, NO PARTY HELD RESPONSIBLE
4. NO ACTION TAKEN OR REFERRAL
5. STILL PENDING (or still pending in the referral)

21. Relief Obtained by the Consumer

1. ADVICE ONLY
2. PERFORMANCE AS PROMISED
3. EXCHANGE MERCHANDISE
4. REFUND OR PARTIAL REFUND
5. MONEY TO COVER CONSEQUENTIAL LOSSES
6. INVESTIGATION OR ACTION FOR THE BENEFIT OF THE PUBLIC
7. REVENGE/SATISFY MATTER OF PRINCIPLE
8. NO INDIVIDUAL CONSUMER COMPLAINED
9. STILL PENDING; REFERRED
10. NO ACTION TAKEN; NO RELIEF OBTAINED; CASE CLOSED WITHOUT RESOLUTION; OR UNKNOWN

22. Action Taken by the Agency

1. ADMINISTRATIVE
 - 11 Advice only
 - 12 Investigation only
 - 13 Referral
 - 14 Consent order or other agreement
 - 15 Administrative order
 - 16 Still pending
2. CIVIL
 - 21 Settlement, including Consent Order/judgment
 - 22 Judgment (following litigation)
 - 23 Still pending
3. CRIMINAL
 - 31 Guilty plea accepted
 - 32 Conviction
 - 33 Acquittal
 - 34 Still pending—indictment only
4. NONE

23. Nature of the Action Taken by the Agency

1. REFERRAL
 - 111 U.S. Attorney General/U.S. Attorney
 - 112 Federal Trade Commission
 - 113 United States Postal Service

- 114 Other Federal Department or Agency
- 115 State Attorney General
- 116 State Consumer Affairs Office
- 117 Other State Department or Agency
- 118 Local District Attorney or equivalent
- 119 Local Consumer Affairs Office
- 120 Other Local Department or Agency
- 121 Local Police Department
- 122 Legal Aid/Legal Services Program
- 123 Economic Crime Project (National District Attorneys Association)
- 124 Other publically-funded organization
- 125 Better Business Bureau
- 126 Volunteer/grass roots organization
- 127 Media/Call For Action
- 128 American Association of Retired Persons
- 129 Project HELP
- 130 Other privately-funded organization
- 131 Private attorney

2. ADMINISTRATIVE CONSENT ORDER OR OTHER AGREEMENT

- 21 Cessation of activity
- 22 Taking of some corrective action
- 23 Restitution or refund
- 24 Payment of money to cover consequential losses
- 25 Costs incurred by agency
- 26 Other

3. ADMINISTRATIVE ORDER

- 31 Cessation of activity
- 32 Taking of some corrective action
- 33 Restitution or refund
- 34 Payment of money to cover consequential losses
- 35 Costs incurred by agency
- 36 Other

4. CIVIL SETTLEMENT, INCLUDING CONSENT ORDER/JUDGMENT

- 41 Cessation of activity
- 42 Taking of some corrective action
- 43 Restitution or refund
- 44 Payment of money to cover consequential losses
- 45 Costs incurred by agency
- 46 Other

5. CIVIL JUDGMENT

- 51 Cessation of activity
- 52 Taking of some corrective action
- 53 Restitution or refund
- 54 Payment of money to cover consequential losses
- 55 Costs incurred by agency
- 56 Other

6. CRIMINAL GUILTY PLEA OR CONVICTION

- 61 Fine only
- 62 Imprisonment
- 63 Fine and imprisonment
- 64 Fine and probation or suspended sentence
- 65 Probation or suspended sentence only
- 66 Restitution
- 67 Sentencing is pending

7. NONE/UNKNOWN

Frequency distributions for each dimension for each agency follow.

Table 5. Descriptive Dimensions: Frequency Distribution by Agency

Dimension 1: Type of Product or Services Involved

	1. Products												2. Services													3. Other					4. Unk	TOTAL			
	111	112	113	114	115	116	117	118	119	120	121	122	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	311	312	313			314	315	
American Association of Retired Persons	1		3				5				3		2	1	3								2	1	2									23	
Attorney General, Phoenix	5		1			4						1	2	2	3				3	1				3									2	27	
Call for Action	2		8		1		8	6	1	3	1	5	4		2		1		2				3	2	2						1			52	
District Attorney, Sacramento	1	1	1	7		1	3		3		1	1	1		1	1	2	1	1			1			1		1							29	
Economic Crime Project	3	2	3	3		4						1		1	2				2	1		1	3	2	2		1		2				1	34	
Federal Trade Commission	1	2	1	3		3	5		2	7	1	1						1						2					1	3				33	
Governor's Office of Consumer Affairs, Atlanta	3		3				5		2			1	2	10	5		1		5			1	3		1				1					43	
Miami Police Fraud/Forgery Detail						3	2							2				1	5				2		1	1	1							18	
Montgomery County, Md., Office of Consumer Affairs	1	2	6	2		1	8	1	3		1	2	5	6		1	2		5	1				1			1							49	
Neighborhood Legal Services Program	6			2		1	5									3		1						2	1		1			3		2		27	
United States Postal Service	1		5		1		7	8	3	6		1			6	1		4				2			1	1			1				1	49	
TOTAL	No.	24	7	31	17	2	10	48	22	14	16	7	13	16	22	22	6	6	8	23	3	0	5	13	13	11	2	5	0	5	6	1	2	4	384
	%	6.2	1.8	8.1	4.4	.5	2.6	12.5	5.7	3.6	4.2	1.8	3.4	4.2	5.7	5.7	1.6	1.6	2.1	6.0	.3	—	1.3	3.4	3.4	2.9	.5	1.3	—	1.3	1.6	.3	.5	1.0	100

Table 5 (continued)

Dimension 2: Consumer Characteristics

	1. By Age			2. By Income					3. By Sex			4. By Other Groupings					5. Unk	TOTAL
	11	12	13	21	22	23	24	25	31	32	33	41	42	43	44	45		
American Association of Retired Persons			23						7	11	5							46
Attorney General, Phoenix									4	10	10					1		25
Call for Action	3		4						25	9	5					9	6	61
District Attorney, Sacramento			1						4	14	7					4		30
Economic Crime Project									3	2	2					27		34
Federal Trade Commission									1	2						30		33
Governor's Office of Consumer Affairs, Atlanta			1		1				11	16	3					2	11	45
Miami Police Fraud/Forgery Detail									9	9								18
Montgomery County, Md., Office of Consumer Affairs	1		2						17	25	5							50
Neighborhood Legal Services Program	2				27				16	7	4							56
United States Postal Service	2	1							7	20					1	12	5	48
TOTAL	No.	8	1	31		28			104	125	41				1	85	22	446
	%	1.8	.2	7.0		6.3			23.3	28.0	9.2				.2	19.1	4.9	100

Dimension 3: Merchant Characteristics

1. Manufacturer							2. Seller							3. Lender			4. Holder			Dimension 3a: Is Merchant Established?					
11	12	13	14	15	16	17	21	22	23	24	25	26	27	31	32	33	41	42	43	1	2	3	TOTAL 3	TOTAL 3a	
					1	1	1		2	1	12	4								14	7	2	22	23	
									14	3		3	5							21	3	1	25	25	
							8	4	18	1	3	12	8							15	26	13	54	54	
		1				2			15	4		4	2		1					22	7		29	29	
					1	2	2	1	9	2		8	9							25	7	2	34	34	
						10			7	2		5	5			1			3	33			33	33	
							1		20	3		11	8							28	14	1	43	43	
							9	3	2	3	1		6							1	15	2	18	18	
				2			9	1	12	2	7	9	6							35	4	9	48	48	
							2		8	3	1	6	3	3			1		1	22	3	2	28	27	
					2		1		8		2	14	22							26	23		49	49	
		1		2	4	15	33	9	115	24	26	76	68	3	1	1	1		4	242	109	32	383	383	
		.3		.5	1.0	3.9	8.6	2.3	30.0	6.3	6.8	19.8	17.8	.8	.3	.3	.3		1.0	63.2	28.5	8.4	99.9	100.1	

Table 5 (continued)

Dimension 4: Other Involved Parties

Dimension 5: Nature of the Initial Personal Contact
Between Consumer and Merchant

	1	2	3	4	5	6	7	TOTAL
American Association of Retired Persons	2	2			5	13	1	23
Attorney General, Phoenix	3		1		2	19		25
Call for Action	8	6		1	7	32		54
District Attorney, Sacramento	4	5	2		2	17		30
Economic Crime Project	3	2		1	2	26		34
Federal Trade Commission	2	1			2	28		33
Governor's Office of Consumer Affairs, Atlanta	5	5		1	11	21		43
Miami Police Fraud/Forgery Detail		1			4	13		18
Montgomery County, Md., Office of Consumer Affairs	4	1			13	30		48
Neighborhood Legal Services Program		3	1	1	2	20		27
United States Postal Service	1	2	2		8	36		49
TOTAL No.	32	28	6	4	58	255	1	384
TOTAL %	8.3	7.3	1.6	1.	15.1	66.4	.3	100

1	2	3	4	5	6	7	8	TOTAL
14		2	4		3			23
4		5	15			1		25
22		12	15	2	1	1	1	54
4	1	4	15	1	1	3		29
5	4	5	9	2	3	6		34
4	2	2	3			24		35
9	5	8	19		2			43
		7	5		6			18
4	5	13	26				1	49
3	3	4	16		1			27
37	2	3	3		1	2	1	49
106	22	65	130	5	18	37	3	386
27.5	5.7	16.8	33.7	1.3	4.7	9.6	.8	100.1

Table 5 (continued)

Dimension 6: Nature of Complaint

	1	2	3	4	5	6	7	8	9	10	11	12	13	TOTAL
American Association of Retired Persons				6	10	2	1	4	1			4		28
Attorney General, Phoenix	2			1	3	3	2	2	3		3	5	3	27
Call for Action	2	2		2	29	8	2	2	5	3		2		57
District Attorney, Sacramento	9	2		5	4	5	1	5			1	1	1	34
Economic Crime Project	2	1		13	6	5	2	4			2		1	36
Federal Trade Commission	9			6	1	2	4	3					8	33
Governor's Office of Consumer Affairs, Atlanta	3	5	1	4	8	8	4	3	1		8	1	1	47
Miami Police Fraud/Forgery Detail					9	1	1	3			3		2	19
Montgomery County, Md., Office of Consumer Affairs	3	5		3	14	4	1	9	4	4	2	3	2	54
Neighborhood Legal Services Program	5	1		1	1	3		2	2			6	9	30
United States Postal Service	1			11	35	1	1					7	4	60
TOTAL No.	36	16	1	52	120	42	19	37	16	7	19	29	31	425
TOTAL %	8.5	3.8	.2	12.2	28.2	9.9	4.5	8.7	3.8	1.6	4.5	6.8	7.3	100.

Dimension 7: Nature of the Alleged Fraud

	1	2	3	4	TOTAL
American Association of Retired Persons	15	2		6	23
Attorney General, Phoenix	19			6	25
Call for Action	32	3	1	18	54
District Attorney, Sacramento	26	2	1		29
Economic Crime Project	30	1		3	34
Federal Trade Commission	25	8			33
Governor's Office of Consumer Affairs, Atlanta	35	2		6	43
Miami Police Fraud/Forgery Detail	14			4	18
Montgomery County, Md., Office of Consumer Affairs	28		3	17	48
Neighborhood Legal Services Program	14	1		12	27
United States Postal Service	26			23	49
TOTAL No.	264	19	5	95	383
TOTAL %	68.9	5.0	1.3	24.8	100

Table 5 (continued)

Dimension 8: Primary Medium Used to Perpetrate the Alleged Fraud

Dimension 9: Transactional Stage Where Alleged Fraud Was Perpetrated

	1. Recorded								2. Unrecorded			TOTAL
	1	11	12	13	14	15	16	17	21	22	23	
American Association of Retired Persons	3		1	2	9				8			23
Attorney General, Phoenix			2		5		1		17			25
Call for Action	5		7	1	8	1		1	26	6		55
District Attorney, Sacramento		7	3		6		2		11			29
Economic Crime Project	2	3	3	2	13		3		9	4		39
Federal Trade Commission		9	5		15		5	2	1	1		38
Governor's Office of Consumer Affairs, Atlanta	2	1	3	1	12	1	3	1	17	3		44
Miami Police Fraud/Forgery Detail							1		15	2		18
Montgomery County, Md., Office of Consumer Affairs		1	3		9		1		29	7		42
Neighborhood Legal Services Program			4		3		3		16	2		28
United States Postal Service	5		5	8	24		3		5	1		51
TOTAL No.	17	21	36	14	104	2	22	6	154	26		402
TOTAL %	4.2	5.2	9.0	3.5	25.9	.5	5.5	1.5	38.3	6.5		100.1

	1	2	3	4	5	6	TOTAL
	9	6	7		1		23
	7	9	8	1			25
	12	10	12	3	17		54
	18	3	5		3		29
	20	8	2		4		34
	26	3			4		33
	23	8	9		3		43
	4	4	3		7		18
	14	10	14	3	7		48
	7	10	5	1	4		27
	15	7	2	1	24		49
	155	78	67	9	74		383
	40.5	20.4	17.5	2.3	19.3		100

Table 5 (continued)

Dimension 10. Transactional Stage Where Alleged Fraud Became Apparent

Dimension 11. Dollars Involved in Individual Transaction

	1	2	3	4	5	6	TOTAL
American Association of Retired Persons			16	4	3		23
Attorney General, Phoenix		1	3	12	9		25
Call for Action		1	34	15	4		54
District Attorney, Sacramento	3	1	12	12	1		29
Economic Crime Project			20	10	4		34
Federal Trade Commission			13	7	13		33
Governor's Office of Consumer Affairs, Atlanta		4	16	21	2		43
Miami Police Fraud/Forgery Detail			6	9	3		18
Montgomery County, Md., Office of Consumer Affairs	1	1	24	13	9		48
Neighborhood Legal Services Program		1	4	10	12		27
United States Postal Service		2	39	4	2	2	49
TOTAL No.	4	11	187	117	62	2	383
TOTAL %	1	2.9	48.8	30.5	16.2	.5	99.9

1	2	3	4	5	6	7	8	9	10	TOTAL
2	6	4	2	5	3			1		23
	4	2	7	4	2	1		5		25
	9	17	4	8	2			14		54
3	4	1	6		5			4	6	29
	3	4	4	3	1			18	1	34
		2	1	1				29		33
3	6	6	11	8	4	1		2	2	43
1	1	4	5	4			1	2		18
2	8	12	13	5				6	2	48
	3	2	5	11				6		27
4	13	11	3	7	3			8		49
15	57	65	61	56	20	2	1	95	11	383
3.9	14.9	17.0	15.9	14.6	5.2	.5	.3	24.8	2.9	100

Table 5 (continued)

Dimension 12: Dollars Involved in the Overall Scheme

	1	2	3	4	5	6	7	8	9	TOTAL
American Association of Retired Persons					1			13	9	23
Attorney General, Phoenix								17	8	25
Call for Action					1		2	18	33	54
District Attorney, Sacramento			1			3		19	6	29
Economic Crime Project			1	2	1		1	22	7	34
Federal Trade Commission								22	11	33
Governor's Office of Consumer Affairs, Atlanta						1		23	19	43
Miami Police Fraud/Forgery Detail	1					1		8	8	18
Montgomery County, Md., Office of Consumer Affairs				1				10	37	48
Neighborhood Legal Services Program								14	13	27
United States Postal Service		1	7	4		3	7	10	17	49
TOTAL	No.	1	1	9	7	2	8	10	176	383
	%	.3	.3	2.3	1.8	.5	2.1	2.6	46.0	100.0

Dimension 13: Dollar Loss to the Individual Complainant

1	2	3	4	5	6	7	8	9	10	TOTAL
2	6	4	4	3	3			1		23
	3	2	6	4	1			6	3	25
	7	12	5	7	1			17	5	54
3	3	1	1		1			5	15	29
	2	3	4	2				19	4	34
		2	1	1				29		33
3	4	6	7	3	3	1		5	11	43
1	1	4	5	3			1	2	1	18
1	5	9	4	2				2	25	48
	1	2	2	5				9	8	27
3	2	2	1	5	2			8	26	49
13	34	47	40	35	11	1	1	103	98	383
3.4	8.9	12.3	10.4	9.1	2.9	.3	.3	26.9	25.6	100.1

Table 5 (continued)

Dimension 14. Dollar Loss in the Overall Scheme

	1	2	3	4	5	6	7	8	9	10	TOTAL	
American Association of Retired Persons					1			12	10		23	
Attorney General, Phoenix								17	8		25	
Call for Action							2	18	34		54	
District Attorney, Sacramento			1			1		17	6	4	29	
Economic Crime Project				1	1		1	22	7	2	34	
Federal Trade Commission								22	11		33	
Governor's Office of Consumer Affairs, Atlanta						1		23	19		43	
Miami Police Fraud/Forgery Detail	1					1		7	9		18	
Montgomery County, Md., Office of Consumer Affairs				1				10	37		48	
Neighborhood Legal Services Program								13	14		27	
United States Postal Service		1	3	4		2	7	11	17	4	49	
TOTAL	No.	1	1	4	6	2	5	10	172	172	10	383
	%	.3	.3	1	1.6	.5	1.3	2.6	44.9	44.9	.26	100

Dimension 15. Agency Receiving the Complaint

	1. Federal Government				2. State			3. Local				4. Public			5. Private						TOTAL
	11	12	13	14	21	22	23	31	32	33	34	41	42	43	51	52	53	54	55	56	TOTAL
American Association of Retired Persons																		23			23
Attorney General, Phoenix					25																25
Call for Action																	54				54
District Attorney, Sacramento								29													29
Economic Crime Project													34								34
Federal Trade Commission		33																			33
Governor's Office of Consumer Affairs, Atlanta						43															43
Miami Police Fraud/Forgery Detail											18										18
Montgomery County, Md., Office of Consumer Affairs									48												48
Neighborhood Legal Services Program												27									27
United States Postal Service				49																	49
TOTAL	No.	33	49		25	43		29	48		18	27	34				54	23			383
	%	8.6	12.9		6.5	11.2		7.6	12.5		4.7	7.0	8.9				14.1	6.0			99.9

Table 5 (continued)

Dimension 16: Source of the Complaint Leading to Agency Action

	1	2	3	4	5	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	6	TOTAL	
American Association of Retired Persons	21	2						2		3										1							29	
Attorney General, Phoenix	6	18																								1	25	
Call For Action	35	15		3						1																	54	
District Attorney, Sacramento	7	6	2	3							6	7	1		3												35	
Economic Crime Project	5	11		5			6	1		2			6	1	2												39	
Federal Trade Commission	3	2	3	20					3											1					1	1	34	
Governor's Office of Consumer Affairs, Atlanta	19	23									2											1					45	
Miami Police Fraud/Forgery Detail	14	4																									18	
Montgomery County, Md., Office of Consumer Affairs	38	10																		1							49	
Neighborhood Legal Services Program	21	6																									27	
United States Postal Service	14	31																									45	
TOTAL	No.	183	128	5	31			6	3	3	6	8	7	7	1	5					3		1			1	2	400
	%	45.7	32.0	1.2	7.7			1.5	.8	.8	1.5	2.0	1.8	1.8	.2	1.2					.8		.2			.2	.5	99.9

Table 5 (continued)

Dimension 17: Earlier Agency Involvement

		1. Federal Government				2. State			3. Local				4. Public			5. Private									
		11	12	13	14	21	22	23	31	32	33	34	41	42	43	51	52	53	54	55	56	6	7	8	TOTAL
American Association of Retired Persons			3	4	1	3		2	1	1						5		1			1	3	9		34
Attorney General, Phoenix								1		1	1	1				5		1			3	4	12		29
Call for Action			1	1		4	1	1	1	2						4		1					43		59
District Attorney, Sacramento		1	2	1	1	1	8	12	4	1	4					3		2				1	4		45
Economic Crime Project			7	1	1	3			10	1	2												14		39
Federal Trade Commission			5		4	1				1						4							21		36
Governor's Office of Consumer Affairs, Atlanta			1	2	1	3	3	1	1							3		2				3	26		46
Miami Police Fraud/Forgery Detail																							18		18
Montgomery County, Md., Office of Consumer Affairs								1		1		1				2		1				2	43		51
Neighborhood Legal Services Program			1	1	1	1				1													23		28
United States Postal Service		1				1	1	1				2				1		1				1	41		50
TOTAL	No.	2	20	10	9	17	13	19	17	9	7	4				27		9			4	14	254		435
	%	.4	4.6	2.3	2.0	3.9	3.0	4.4	3.9	2.1	1.6	.9				6.2		2.1			.9	3.2	58.4		99.9

Table 5 (continued)

Dimension 18. Relief Sought by the Consumer

Dimension 19. Duration of the Case Within the Agency

	1	2	3	4	5	6	7	8	TOTAL
American Association of Retired Persons	1	8		16		1			26
Attorney General, Phoenix	1	6	1	12		4		1	25
Call for Action	1	27	2	21	1			5	57
District Attorney, Sacramento		2		9	2	13		5	31
Economic Crime Project		1		12		8		13	34
Federal Trade Commission						6	2	25	33
Governor's Office of Consumer Affairs, Atlanta	2	9		21	1	10			43
Miami Police Fraud/Forgery Detail		2		10		6			18
Montgomery County, Md., Office of Consumer Affairs		16	1	28	1	13	2		61
Neighborhood Legal Services Program	6	2		18	1				27
United States Postal Service		16	1	22		7		8	54
TOTAL	11	89	5	169	6	68	4	57	409
	2.7	21.8	1.2	41.3	1.5	16.6	1.0	13.9	100

1	2	3	4	5	6	7	8	9	TOTAL
3	3	6	3		1		7		23
1	5	5	2	2		1	9		25
4	4	5	6				24	11	54
2	2	5	5	6	1	6	2		29
4	2	3	5			3	1	16	34
	2	3	6	13	2	7			33
3	6	6			2		25	1	43
3	2						12	1	18
8	16	14	2		1		7		48
4	6	1	4	1		1	8	2	27
5	13	6	4	6	1	10	3	1	49
37	61	54	37	28	8	28	98	32	383
9.7	15.9	14.1	9.7	7.3	2.1	7.3	25.6	8.3	100

Table 5 (continued)

Dimension 20. Parties Held Responsible

	1	21	22	23	24	25	3	4	5	TOTAL
American Association of Retired Persons							3	16	4	23
Attorney General, Phoenix	14						1	5	5	25
Call for Action	12	1					6	18	17	54
District Attorney, Sacramento	24						1	3	1	29
Economic Crime Project	28						1	5		34
Federal Trade Commission	33									33
Governor's Office of Consumer Affairs, Atlanta	24		1				1	4	13	43
Miami Police Fraud/Forgery Detail	8							5	5	18
Montgomery County, Md., Office of Consumer Affairs	26	1					5	8	8	48
Neighborhood Legal Services Program	9						3	6	9	27
United States Postal Service	42			1			5		2	50
TOTAL	No.	220	2	1	1		26	70	64	384
	%	57.3	.5	.3	.3		6.8	18.2	16.7	100.1

Dimension 21. Relief Obtained by the Consumer

	1	2	3	4	5	6	7	8	9	10	TOTAL
American Association of Retired Persons	5			1					14	3	23
Attorney General, Phoenix	1	2		3		7		1	9	2	25
Call for Action	1	5		1				1	31	15	54
Economic Crime Project				6	2	13		5	3		29
District Attorney, Sacramento				5		9		13	3	4	34
Federal Trade Commission						6	2	25			33
Governor's Office of Consumer Affairs, Atlanta		1		6		11			21	4	43
Miami Police Fraud/Forgery Detail	3					1			13	1	18
Montgomery County, Md., Office of Consumer Affairs	1	11		17	1	9	1		8	5	53
Neighborhood Legal Services Program	3	1		7	1	1			10	4	27
United States Postal Service		10		18		6		7	2	7	50
TOTAL	No.	14	30	64	4	63	3	52	114	45	389
	%	3.6	7.7	16.5	1.0	16.2	.8	13.4	29.3	11.6	100.1

Table 5 (continued)

Dimension 22. Action Taken by the Agency

	1. ADMINISTRATIVE						2. CIVIL			3. CRIMINAL					4. NONE	Total
	11	12	13	14	15	16	21	22	23		31	32	33	34		
American Association of Retired Persons	6		13	1		1									2	23
Attorney General, Phoenix		2	3	2		2	10		6							25
Call for Action	3		25	6		8	1					2			10	55
District Attorney, Sacramento		1	3	3			15		2		5			1		30
Economic Crime Project		3	3	9	1		8	1	3		3			2	1	34
Federal Trade Commission				31			2									33
Governor's Office of Consumer Affairs, Atlanta			4	8		17	2		4	1	1	1		3	3	44
Miami Police Fraud/Forgery Detail	1	2	1			11				1				1	1	18
Montgomery County, Md., Office of Consumer Affairs	1	8	10	26		1			1						2	49
Neighborhood Legal Services Program	2	1	5	9		5			4						2	28
United States Postal Service		2	1	20	1	2					14	10	2	1	1	54
TOTAL	No.	13	19	68	115	2	47	38	1	20	2	23	13	2	8	393
	%	3.3	4.8	17.3	29.3	.5	11.9	9.7	.3	5.1	.5	5.9	3.3	.5	2.0	100

Table 5 (continued)

Dimension 23. Nature of the Action Taken by the Agency

		1. REFERRAL																					2.					
		111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	21	22	23	24	25	26
American Association of Retired Persons			2	9		1		1																				1
Attorney General, Phoenix				2					1												1	1		1	1			
Call for Action			1	1		17		2		3		3				1		2						6				
District Attorney, Sacramento		1			1				1															2	1			
Economic Crime Project			1			3			1														6	3				
Federal Trade Commission																							8	23				
Governor's Office of Consumer Affairs, Atlanta					2	1			1														1	4	4			
Miami Police Fraud/Forgery Detail										1																		
Montgomery County, Md., Office of Consumer Affairs		2	3	5		4	1	2	1	1													1	14	16	1		
Neighborhood Legal Services Program		1		1		1																3		2	5	2		
United States Postal Service											1												1	11	11			
TOTAL	No.	4	7	18	3	27	1	5	5	5		4				1		2			1	4	17	66	38	3		1
	%	1.3	2.2	5.8	1.0	8.7	.3	1.6	1.6	1.6		1.3				.3		.6			.3	1.3	5.4	21.2	12.2	1.0		.3

V. ANALYSIS OF THE DATA

A. Requirements for a Typology

The organization of consumer fraud offenses requires the development of a sound rationale derived from an adequate data base. The rationale should be useful for leading to solutions that ultimately result in a lower occurrence of consumer fraud. These data, assembled into a typology, suggest approaches for intervention strategies and provide a framework for subsequent data collection.

It is impractical and counterproductive to consider each offense as unique and unrelated to any other offense; therefore, the data must be organized within some framework which classifies consumer fraud offenses. The reduction of the offenses into a number of categories is designed to help us comprehend the mechanism of the offenses and thereby enhance the development of intervention strategies.

For a framework to meet these aims, it must: a) accommodate the diversity of offenses we have collected; b) permit aggregation of information across superficially different instances that are basically similar; and c) be compatible with or suggestive of ways in which each subset of offenses may be vulnerable to generalizable intervention strategies.

In the course of the analysis of the 383 case histories, three approaches to a taxonomic scheme have been devised. The development of each of these approaches, the findings derived from testing case histories against each scheme, and the ability of the scheme to meet the three criteria stated above are discussed on the following pages.

B. A Thematic Approach

Not all losses to consumers during transactions can, or should, be characterized as fraud. Very often, the problem will have stemmed from an inadvertent and unintentional error on the part of a merchant or its staff. Mistakes do occur even in the best run businesses, and any of these may lead to nondelivery of ordered merchandise, the manufacture and sale of isolated defective products, billing or pricing errors, or misprinted advertisements. Labeling an event as fraudulent suggests more than just loss, it implies some degree of culpability on the part of the merchant--that in some way the merchant knowingly contributed to the outcome.

If the presumption of merchant culpability is made, it is possible to examine any instance of apparent consumer fraud to determine the ingredients which yielded this outcome. Even a cursory use of this approach suggests that some amount of forethought is essential--not so much to attract the consumer (an everyday business practice) or to take advantage of his or her gullibility (a very easy assignment) but then to succeed at keeping any illgotten gains. To take one very simple example, the problem facing a short-change artist is not to return less than expected but also to take steps which avoid detection long enough to permit reaping the consequent rewards. Doing the deed is easy, getting away with it is not.

In order to better understand consumer fraud, then, it is important to identify the variety of techniques a merchant might use to successfully take advantage of what otherwise would be a normal transaction. Although we can only assume much of what may have taken place, there are a limited number of schemes which will fit the circumstances of a fraudulent deal. These "themes" or patterns of merchant actions integral to fraud can provide useful insights into how the scheme operates and what conditions are essential to its success.

The approach used for isolating these themes was to sort the set of consumer fraud examples into families based on similarities in merchant actions. As the core of each pattern was identified, it was described and other cases were added which contained similar features. The fifteen categories developed in this way were sufficient to account for 372 of the 383 instances that had been collected (11 were rejected as not properly examples of consumer fraud). Not all examples were perfect fits, of course, and further work could be done on refining the categories and defining their features. Nevertheless, the following patterns seem to account for much of what is happening.

a. Brooklyn: Consumer never receives a product or service which has been paid for in advance. There is an "understandable" delay between payment and delivery during which the merchant disappears.

examples:

- (1) Digital watches are offered by mail-order, but none ever are received.

- (2) TV sets are offered during a telephone call, but after payment is made at the meeting place the seller disappears
- (3) Magazine subscriptions are solicited door-to-door, but payment never reaches the publisher.

features:

- merchant is not a regular dealer, has no place of business, and would be difficult to contact
- usually a "one-time" offer extended for a limited time period
- price appears to be fair or a modest bargain
- order acknowledgments or receipts for payment may be provided for assurance during the delay.

b. Emperor's Clothes: Consumer is led to believe a paid-for product or service is being delivered when it is not. The lack of delivery is disguised by merchant assurances and superficial evidence.

examples:

- (1) Paid a service to remove a bad credit rating, but later found nothing had been done
- (2) Paid fees to an invention marketing service, but considerable time has gone by with no results
- (3) Charges were made for auto parts that were not replaced or repaired.

features:

- the lack of delivery would be difficult to detect
- repeat or continued purchases from the same merchant are common
- the merchant frequently suggests the need for the product or service, acting as a knowledgeable expert
- vanity services and difficult-to-observe repairs often are involved.

c. Trusty Label: The product is mislabeled as to content, condition, amount, or source. Difference generally is not great and would be difficult to detect, but could influence price or produce comparisons.

examples:

- (1) Fabric mislabeled as to content, with proportion of wool overstated by 10% or more
- (2) Used-car odometer was rolled back by one-third of its actual mileage
- (3) Packaged salami weighed less than indicated on the wrapper.

features:

- effectiveness of mislabeling depends on consumer confidence as to the truth of labels
- discrepancies rarely would or could be detected by the consumer without technical assistance
- most discrepancies are small, but can result in considerable profit to the merchant in the aggregate.

d. Entrapment: The consumer is maneuvered into being obligated for future payments, which may be larger or less escapable than had been anticipated. The merchant's actions typically are legal although often unconscionable.

examples:

- (1) Agreed to door-to-door offer to have lawn work done and hedge trimmed, and then was presented with bill for \$1464.
- (2) A 19-year old was talked into signing a contract with a health spa at \$24 per month for the rest of his life and then learned it was uncancellable
- (3) Took car for transmission repairs at estimated \$35 but then was told more work was required than anticipated and that car could not be reassembled unless paid \$485.

features:

- the consumer often is unhappy, but believes he has little recourse
- the transaction usually involves a product or service that would be sought infrequently
- high-pressure sales tactics often are used to obtain the initial agreement
- frequently involves encouraging installment or credit purchases where the cost of credit is not fully understood beforehand.

e. Rolllover: Goods or services that have been at least partially paid for are repeatedly delayed and, before they are complete, the merchant may declare bankruptcy. During this period, the merchant accepts payments while being unable or unwilling to perform.

examples:

- (1) After receiving a downpayment of one-half of the amount for house repairs, the company went out of business
- (2) Ordered coins by mail but the dealer replied those were out-of-stock; substitute merchandise was offered but requests for a refund were ignored
- (3) A layaway deposit was made on a suit but the store went out of business before payments were complete.

features:

- inquiries about delays frequently are unanswered and request for refunds are refused
- substitute merchandise frequently is offered
- there usually is an established place of business and, frequently, the merchant has been in business some time
- the consumer almost never is aware of the merchant's impending insolvency, and believes delays are due to ineptness, unavailable supplies, or other causes
- the merchant is likely to have a growing backlog of unfilled orders.

f. Come-and-get-it: Offers premiums, special prices, or other inducements to attract customers, but then discourages, refuses or otherwise makes it difficult to impossible for the consumer to obtain the inducement.

examples:

- (1) Advertised tires "not in stock" either during sale or period of rain check; substitutes offered at higher prices
- (2) Advertised gift of free turkey not honored after used car is purchased
- (3) Price on sign at gasoline station available only at one of ten pumps, located out of the way.

features:

- frequently involves bait-and-switch sales practices
- ads typically omit indication of "limited quantities" or "limited time" even when these are very short
- consumer often becomes aware of what is happening before making a purchase and yet does so anyway.

g. Squeeze: The consumer, because of prior investment or the urgency of the problem, is under pressure to pay more for a product or service than he normally would. The merchant limits the consumer's options by erecting a temporary monopoly.

examples:

- (1) After making a downpayment on a used auto, was told credit was not large enough for the intended purchase, and that the downpayment was not refundable although it could be applied toward the purchase of a less desirable car
- (2) Paid \$35 for TV repairs which were unsatisfactory, and then told that further repairs would cost \$155.

- (3) While stopping for gas on trip, station attendants apparently slashed inside of tires requiring overpriced replacements.

features:

- the need for the product or service often is created by the merchant
- frequently involves a "50/50" or comparable guarantee, with the ultimate price to the consumer equal or more to what would be paid elsewhere
- frequently involves collection of a downpayment and refusal to refund in cash
- the "squeeze" is applied before the transaction, and the consumer often is aware of what is happening before agreeing to an exorbitant price or substitute product.

h. Gilded Lily: Claims are made which lead the consumer to believe the product or service will result in more benefits than actually will be received. Because many factors may affect outcomes, these claims usually are difficult to disprove.

examples:

- (1) Advertising claims a mouthwash will reduce sore throats and colds, but this is not medically proven
- (2) Figure salon suggested reductions in clothing sizes not attainable without also exercising and dieting
- (3) Advertised "commemorative" Lincoln penny turns out to be an ordinary penny.

features:

- claims typically are implied rather than explicit, and the ads may be literally true
- the product or service is provided and, generally, the cost is not enormously excessive for what actually is received
- although the product or service often has some value, it probably would not have been purchased in the absence of the misleading claims.

i. Dust-Off: Customer is provided with a clearly defective or unsatisfactory product or service, and the merchant stalls or otherwise refuses to correct the problem.

examples:

- (1) Had an oven thermostat replaced, but the new one doesn't work and the merchant refuses to do anything about it
- (2) Purchased a sofa which is falling apart after seven months

- (3) Purchased a floor covering which shrank away from walls; complained but merchant was nonresponsive.

features:

- generally, the problem is that the product realistically lacks merchantability; this may or may not be characteristic of that merchant, and may not be his fault
- both new and used products may be involved as well as unsatisfactory repairs or services, real property
- in some instances, the consumer may be an unreasonable perfectionist as seen by the merchant.

j. Bargain Hunter: Product or service offered at what is claimed to be a sizable discount has no unusual value. The cost to the consumer turns out to be as much or more than what it would be regularly.

examples:

- (1) Guitar is advertised as 35 percent off, but the reduced price is the normal selling price
- (2) Consumer pays fee to take advantage of claimed vacation rates at hotel which turns out to be no bargain
- (3) "Free" encyclopedia set offered with purchase of additional books at exorbitant prices.

features:

- transaction often begins with notification of having "won" a contest
- the size of the indicated discount often is very large
- a "fee" often is requested as a condition of eligibility
- the offer often involves a complex "package" which makes price comparisons difficult.

k. Cold Shoulder: Requests for refunds, cancellations, or return of deposit are not honored even though they fall within the legal cooling-off period or are a condition of the transaction.

examples:

- (1) Purchased book by mail with guaranteed full refund if not satisfied; returned book but refused refund
- (2) Paid 1/2 down on door-to-door solicited magazine subscription; tried to cancel within 3-day cooling-off period but company ignored cancellation request
- (3) Paid a deposit on a tour charter and tried to cancel for health reasons within allowable period but travel agency refuses to refund.

features:

- consumer generally has evidence, but the merchant simply refuses to make the refund
- often involves products and services typically sold on a commission basis.

1. Vigoroush: The merchant adds untypical charges for supplying products or services to increase profits, including subtracting handling charges on returns or exorbitant finance charges.

examples:

- (1) Consumers billed one half cent additional per gallon heating fuel, and were told this was an "error" only if they complained
- (2) Consumer charged 25 percent of the purchase price of an article as a return fee
- (3) Full price of bonus "free" film charged to consumer's credit card.

features:

- variety of techniques used to "pad" costs include adding sales tax where it should not be charged, charging for repairs during warranty period, charging for unneeded repairs, and charging for unordered merchandise
- generally occurs with mail-order merchandise or with repairs.

m. The Other Guy: Consumer finds it difficult to resolve a dispute because of the involvement of a third party. Often involves a holder-in-due-course, "independent contractor," or insurance tie-in.

examples:

- (1) Contractor never finished room addition, but bank had already paid the contractor and refused involvement in the dispute
- (2) Contractor recommended by the insurance company failed to perform but the insurance company refused to allow the consumer to use another contractor
- (3) Data processing school was not responsible for salesman's claims of job placement because he was performing as an "independent contractor."

features:

- shares many features with other schemes, such as Dust-Off or Squeeze if collusion is assumed
- collusion between the participating parties often seems evident.

n. Slipshod: Mail order merchandise fails to arrive and customer is unsuccessful in complaining to merchant. There is no evidence of intent to defraud, but the merchant seems unable to determine whether orders have been filled.

examples:

- (1) Ordered item by mail which was not received and the merchant did not reply to inquiries; investigation showed no pattern of nondelivery
- (2) Prepaid for clothing items which were delayed and then wrong items received; returned for refund which was not received; investigation showed merchant had evidence that the refund had been sent
- (3) Had been subscribing for horoscope for five years; but this time did not receive; investigation showed merchant sent item prior to investigation.

features:

- all are mail order, mostly involving established suppliers
- problem is not nondelivery itself, but merchant's inability and/or unwillingness to verify legitimacy of complaints or follow through on them.

o. Credit Violations: Miscellaneous consumer complaints about poor, misleading credit practices; violation generally is illegal but occurred anyway. Two subgroups:

- (i) collection agency practices (debt harrassment)
- (ii) misrepresentation as to terms of contract

examples:

- (1) Purchased TV/stereo on finance but couldn't make payments; store harrassed wife although she was not a cosigner
- (2) Collection agency suggested it would take legal action it was not authorized to take
- (3) Freezer meat merchant indicated credit available but did not disclose required information on cash price, downpayment, repayment schedule, percentage rate, and financed price.

feature:

- action is usually illegal, but occurred anyway; amount of harm to consumer in the sense of consumer fraud may be small.

p. Non-fraud: Business practices that are improper but not constitute consumer fraud.

examples:

- (1) Dispute over work done by contractor who apparently had a good record

- (2) Fire destroyed laboratory and prepaid orders for film resulted in nondelivery
- (3) Realtor for house purchase suggested filling out papers at lower than agreed price so he could avoid taxes
- (4) Consumer learned two loan applications had been submitted in his name to a loan company
- (5) Although merchant stated not to mail-in coins, consumer did so anyway and claimed their value at up to \$1000 each.

Table 6. Distribution of Cases by Category

Category	Frequency	Percent*
Brooklyn	38	10.2
Emperor's Clothes	23	6.2
Trusty Label	22	5.9
Entrapment	33	8.9
Rollover	37	9.9
Come-And-Get-It	28	7.5
Squeeze	22	5.9
Gilded Lily	39	10.5
Dust-Off	44	11.8
Bargain Hunter	17	4.6
Cold Shoulder	10	2.7
Vigorish	15	4.0
The Other Guy	9	2.4
Slipshod	24	6.5
Credit Violations	11	3.0
	<u>372</u>	<u>100.0</u>
Non-fraud	11	
	<u>383</u>	

*of 372 cases

This typological system has both advantages and disadvantages. As it was intended to do, it classifies instances of consumer fraud using a workable number of categories which can be communicated easily. It also emphasizes the characteristics of each category that may be amenable to manipulation through properly designed interventions. For example, it points out that claims in the Gilded Lily scheme usually are implied rather than explicit, and that the need for products or services falling under the Emperor's Clothes scheme often is suggested by the merchant rather than by the consumer.

On the other hand, the categories created during this analysis are not fixed. A different person working with the same set of materials might create a different categorical system although there is apt to be a considerable amount of overlap. It also should be recognized that the classification of any one event could be argued; most events, in fact, contain elements of more than one scheme and judgment had to be used in terms of which components probably were most significant. Both the Brooklyn and Rollover schemes involve nondelivery, for instance, and the information available on any one event often was insufficient to decide where it truly belonged.

Finally, it should be evident that most of the cases considered for this analysis were not really successful. The plan or scheme did not work out for the merchant, often because of greed or carelessness. On the other hand, most of the descriptions are sufficiently detailed to suggest ways of designing a consumer fraud that will be considerably more successful. The Bargain Hunter may be attracted by an offer of "free oil filter with oil change" only to discover that the total cost is as much or more than would have been paid elsewhere. And the Brooklyn might be made particularly lucrative by deliberately extending the waiting period, as in advertising during September for the delivery of gift fruit boxes at Christmas.

C. Transactional Sequence

This approach attempts to organize a consumer fraud typology around a prototypic transaction between the merchant and the consumer. Ideally, consumer fraud cases would reveal recurrent behavior patterns of the principal actors in the transaction. If this turned out to be true, we would know not only the category of fraud, but would also see promising opportunities for intervention strategies. Prototypic transactional sequences are viewed as having the following four components:

- a. Inducement: refers to the appeal or the attraction offered by the merchant that led to the consumer's interest;
- b. Obligation or agreement: refers to the action by the consumer that demonstrates a commitment. The consumer has been won over and is willing to proceed further in the transaction;

- c. Intermediate activities: refers to actions by the merchant which introduce something that is not congruent with the original agreement entered into by the consumer; and
- d. Outcome: refers to the final event which, from the consumer's viewpoint, identifies the major grievance in the transaction.

An iterative process was used to determine the subcategories of each component. An initial set of 43 abstracts was examined; similar features within each component were grouped to form subcategories. For example, all which offered business opportunities as the inducement were placed in one cluster; those promising self-improvement or increased personal appeal were grouped into another cluster. The classification procedure continued until all abstracts were used. After sorting was completed for the first component, the same abstracts were then sorted on the second. Ultimately, each abstract was examined on each component. The subcategories were not determined in advance; they emerged from the data presented by the abstracts. The scheme was then tested by classifying additional cases. Additions and modifications were made as suggested by the data.

After several iterations, the following set of subcategories seemed to provide a sufficient classification scheme.

- I. *Inducement.*
 - A. *Business or investment opportunity, financial gain*
 - 1. *Operating franchise*
 - 2. *Working at home*
 - 3. *Investment in item that may appreciate*
 - 4. *Retirement property*
 - 5. *Sales positions; brokers*
 - B. *Self-improvement*
 - 1. *Special lessons or training; "how-to" guides*
 - 2. *Publication and marketing services for unknown authors*
 - 3. *Physical fitness programs; unique diets*
 - 4. *Who's who listings; talent promotions*
 - 5. *Educational products or services*
 - 6. *Cosmetic features, e.g., hair replacement procedures*
 - 7. *Dating service*

- C. *Substantial savings*
 - 1. *Consumer must purchase immediately to receive "good" offer*
 - 2. *Consumer pays tiny fraction of implied real cost and really should not expect this; "winning" a prize*
 - 3. *Appears to be a good value*
 - 4. *Available only in limited quantities*
 - 5. *Personal loans without securities requirements*
 - 6. *Credit sales with no/or hidden finance charges*
- D. *Unique features not found in competitive line*
 - 1. *Products unavailable at retail outlet*
 - 2. *Item one may not reasonably expect access to*
 - 3. *Gimmick*
- E. *Timeliness of offer*
 - 1. *Offer made on consumer's premises*
 - 2. *Opportunity came near holiday; seasonal delivery*
 - 3. *Emergency situation*
 - 4. *Special event; vacation package*
 - 5. *Proximity to retirement*
 - 6. *Employment service/home or apartment listings*
- F. *Implied or express warranty; guarantee; cancellation clause*
 - 1. *Entertainment ticket*
 - 2. *Advertised product; reputable firm; use of brand name*
 - 3. *Automobile purchase*
 - 4. *Home improvement/inspection*
 - 5. *Product repair or service*
- II. *Obligation or Agreement.*
 - A. *Pay for all or part of merchandise or service at the time of purchase*
 - 1. *Home solicitation*
 - 2. *Retail outlet*
 - 3. *On the street*
 - B. *Prepay for mail order purchase prior to delivery of merchandise*
 - C. *Signs an agreement or contract with the merchant*
 - 1. *Long term obligation requiring periodic payments*
 - 2. *Immediate payment and/or some non-financial personal investment*
 - 3. *Merchandise surrendered for servicing*
- III. *Intermediate Activities.*
 - A. *Merchant suggests an additional product or service*
 - 1. *Differs from one mentioned in inducement*
 - 2. *Extension of original idea*
 - 3. *Options offered because merchant experiences "difficulty" in honoring terms*

- B. *Merchant is reluctant to interact with consumer.*
 - 1. *Inquiry regarding differences between oral agreement and written contract are disregarded*
 - 2. *Inquiry (letters or phone) regarding delays ignored*
 - 3. *Hassle over arrangements*
- C. *Merchant adds undisclosed costs/charges*
 - 1. *Loan transaction*
 - 2. *Credit/installment purchase*
 - 3. *Base price inaccurately represented*
- D. *Consumer signs agreement involving a third party (no subcategories)*
- E. *Consumer decides to cancel (no subcategories)*

IV. *Outcome.*

- A. *Nonreceipt or partial receipt of merchandise or service*
 - 1. *Mail order*
 - 2. *Home solicitation*
 - 3. *Franchise operation*
 - 4. *Referral service*
 - 5. *Nondelivery from retail outlet*
- B. *Larger and different investment required of consumer*
- C. *Products and/or services do not correspond to what was offered/expected*
 - 1. *Inferior or defective product or service*
 - 2. *Substitute item/service received or offered*
 - 3. *Value of product or service worth substantially less than cost*

Each of the 383 abstracts in the Phase I data set was reviewed; 334 were classifiable according to the transactional sequence. Forty-nine (13 percent) cases out of 383 were not classifiable for the following reasons:

- The activities did not suggest fraud (15);
- Consumers were not included in the transaction (5); and
- The case contained insufficient information (29).

Of the 334 consumer fraud events, 124 did not contain an Intermediate Activity; in some transactions the sequence is surprisingly simple.

Since the classification system presented above would contain more than 20,000 cells in a cross-tabulation, it could not be used to convey

information on the sample sizes to be obtained in this project. The detailed classification of the 334 cases is presented in Appendix B.

Analysis at a higher level is more informative. The table below presents the frequency distributions of each category within the four major components.

Table 7. Summary of Frequencies by Subcategory

Category		Number	Percent of Total	Abbreviated Description
I. INDUCEMENT (n = 334)	A	34	10	Business opportunity
	B	49	15	Self-improvement
	C	85	25	Substantial savings
	D	36	11	Unique features
	E	40	12	Timeliness of offer
	F	90	27	Warranty; guarantees
II. OBLIGATION (n = 334)	A	140	42	Pays all or part at time of purchase
	B	86	26	Prepays mail order prior to delivery
	C	108	32	Signs agreement with merchant
III. INTERMEDIATE ACTIVITIES (n = 210)	A	63	30	M suggests additional product/services
	B	111	53	M non-interaction with C
	C	19	9	M adds undisclosed charges
	D	10	5	C signs contract involving third party
	E	7	3	C decides to cancel
IV. OUTCOME (n = 334)	A	116	35	Non/partial receipt of merchandise
	B	49	15	Large and different consumer investment required
	C	168	51	Product/services do not correspond to what expected

The table shows, for example, that in 27 percent of the cases the consumer was induced into a transaction because the product/service was accompanied by a warranty or guarantee (Category IF). In an additional 25%, the inducement was a substantial savings (Category IC). When we turn to Category II (Obligation), more than 40 percent of the cases require payment for all or part of the merchandise at the time of purchase (Category IIA).

When the occasion arises for additional interaction between the merchant and the consumer, Category III (Intermediate Activities), the data show that the merchant is reluctant to become involved. As a result, phone calls and letters of inquiry go unanswered. The fourth component, IV (Outcome), reveals that in 50 percent of the cases, the consumer receives a product or service which does not correspond to what was anticipated at the time of purchase.

While this frequency information is interesting, it is too fine-grained to be maximally useful. A cross-tabulation would still provide 270 cells. At the next level of generality, there are only 54 possible combinations of categories. The cross-tabulation at this level shows the following results.

Table 8.
Cross-Tabulation of Transactional Sequence

I. INDUCEMENT	A	B	C	D	E	F	Total	Percent of Total
II. OBLIGATION	A B C	A B C	A B C	A B C	A B C	A B C		
III. OUTCOME								
A	2 8 7	7 3 4	5 (21) 5	2 (23) 1	13 2 1	3 3 7	117	35
B	0 4 4	2 1 11	6 1 10	0 0 0	0 1 3	4 0 2	49	15
C	1 0 8	8 4 9	(20) 8 9	3 6 1	15 0 5	(49) 2 (20)	168	50
Totals	3 12 19	17 8 24	31 30 24	5 29 2	28 3 9	56 5 29	334	100

From the table we see that forty percent of the abstracts fell into the five sequences shown below:

Table 9.
Highest Combinations of Sequences

Outcome	COMBINATION		NUMBER OF ENTRIES	PERCENT OF TOTAL
	Inducement	Obligation *		
C	F	A	49	15
A	D	B	23	7
A	C	B	21	6
C	C	A	20	6
C	F	C	20	6
				40

Each of these combinations or sequences of events that occurred between the merchant and the consumer is a profile of what happened. These profiles are characterized below, followed by some cases which exemplify the sequence. The examples have been abbreviated from the abstracts to show the critical elements of the transactions--they illustrate the profile.*

- CFA *Consumers were induced into purchasing a product or service because of an implied or express warranty or guarantee. Most of the transactions took place at a retail outlet, where the consumer paid for all or part of the merchandise/service at the time of the purchase. Within a relatively brief time following the business transaction, the consumer became aware that the product or service did not correspond to what was offered or expected.*

*The complete abstracts are found in Appendix C.

- Case A47 Each of three times my television set was allegedly repaired by a local service, it malfunctioned . . . the repair service received compensation for the work . . . a few days after the last repair I called the company again but it had relocated and left no forwarding address or phone number.
- Case G1 My \$6,500 "new" Ford truck, purchased from a local dealer, turned out to be a used van . . . paid for at the time of sale . . . dealer refused to supply a new van and misrepresented the repairs completed on the one sold to me.
- Case E2 Reputable manufacturer of sleep-inducing drugs advertised that extra tablets in prepackaged 36-tablet bottle amounted to up to 49¢ savings . . . paid for tablets without calculating validity of claim . . . later comparisons of cost per unit showed that savings of only 21¢ possible on 36-tablet bottle . . . company later admitted that 49¢ savings only possible when compared to 8-tablet bottle . . . a size not commonly available.
- Case E21 Responded to newspaper ad by a local restaurant for a \$5.95 dinner . . . one full gallon of clams with chowder, rice and all the trimmings . . . received less than advertised amount of clams and no rice, as promised in the ad, until I mentioned the ad to the waitress . . . ad been running for several months . . . later determined the cook had been instructed to reduce portions.
- ADB *Consumers were attracted by the opportunity to acquire items typically not found in a retail outlet, such as a gimmick. These items were purchased by mail; the order was prepaid prior to the expected delivery of merchandise. The consumer either received none or only part of the merchandise.*
- Case A50 I ordered two books by mail . . . both orders were accompanied by a check to cover the cost plus handling . . . I was not at home to receive the first book, so the post office returned it to the sender . . . my four letters of inquiry have been ignored, including an order for a different (additional) book . . . my first transaction with this firm was four months ago . . . my checks have been cashed but I've received nothing from the company.
- Case D38 Thirty days ago I ordered zoological specimens by mail . . . prepaid for all merchandise . . . check cashed but no merchandise received . . . even six months later . . . no refund forthcoming.
- Case D15 A \$22 check accompanied my order for six Bicentennial gold plated dollars . . . acknowledgement of my order and notice of six-month delay in shipment accompanied another offer for

more coins . . . eight months following original order, a court-appointed receiver for the company informed me the company's funds exhausted and solicited my order of silver plated coins (\$33 plus a money-back guarantee) as a first step toward ultimate receipt of my set of gold plated dollars.

Case C20 The unusual plants for which I paid \$26, were almost dead when they arrived . . . balance of order never received . . . my mail order was prepaid . . . four years later the merchant has not fulfilled the balance of my original order . . . the same ad I responded to still appears in national publications.

Case C19 My Unitology forecast has not arrived . . . first time in five years this has happened . . . my \$5.50 check sent with the mail order has been cashed . . . company has not responded to two letters of inquiry.

• ACB *Saving money enticed consumers to obligate themselves to purchase a specific product or service. There were many inducements to save: the product was available only in limited quantities, the consumer had an opportunity to purchase something for a small fraction of its implied real cost, or the product appeared to be a sound value for the price asked. These products or services were available by mail, provided the payment accompanied the order. The outcome was that either no merchandise or a partial amount of the order was forwarded to the consumer.*

Case C32 I ordered a radio, stereo and turntable at a tremendous discount from an incentive program offered through the local educators association . . . mailed a personal check for \$267.45 with my order . . . seven months of delays and promises have resulted in no merchandise . . . now there is no phone listing for this "program" organization.

Case K39 I have not received my home office storage unit which I ordered by mail six months ago . . . phone calls of inquiry resulted in empty promises of delivery when they caught up with large number of orders received . . . paid special sale price of \$395 (reduced from \$445) plus \$25 shipping charge . . . confirmation received, acknowledging payment.

Case B20 I am unable to receive an \$18 refund for a membership fee in a vacation association . . . as members my wife and I were to have the opportunity to spend a few nights in any of several Florida cities . . . the fine print on the reverse side of our membership certificate disqualifies us because of age, although age was not mentioned in the original solicitation . . . no reply to my letters.

- CFC *A guarantee or an implied or written warranty encouraged consumers to purchase almost any product or service. Products advertised by a reputable firm, automobile purchases, home improvement services or product repairs were all included. The consumer's obligation began by signing an agreement or a contract which typically required a long-term obligation and/or some non-financial personal investment. Often the consumer supplied the merchandise for servicing. The resultant product or service did not meet the consumer's original expectations.*

Case A20 The agreement stated the contractor would paint the interior and exterior of my house for \$1200 . . . midway in the completion of this task, during which time he damaged some shrubbery, the contractor discontinued work . . . on five separate contacts, the painter agreed to complete the job . . . he never fulfilled his commitment.

Case G10 The development company informed us that our \$30,000 condominium was completed . . . prior to complying with his request to sign the final papers and return them by mail, we visited the site . . . we noted several deficiencies which needed to be adjusted before the building was complete . . . we later learned the contractor was released . . . appears the development company had no intention of finishing the job.

Case D24 I purchased an electric clock on sale (\$30) because the store was relocating . . . the clock had a one-year guarantee . . . when it stopped running after three days I contacted the new store and was asked to return the clock so it could be sent to the manufacturer for repair . . . six months later I still had no clock . . . during my last conversation with the manager he refused to take action because the clock was purchased on sale . . . he was not responsible for any statements made by the clerk.

- CCA *Customers were lured into purchasing a product or service because of the prospect of a substantial savings. The item was available at low cost and appeared to be a good value. All or part of the merchandise or service was paid for at the time of purchase, either during a home solicitation or at a retail outlet. The product or service did not correspond to what was offered or expected; the consumer received an inferior or defective product; oftentimes a substitute replaced the item ordered.*

- Case A14 I responded to a telephone solicitation offering brand-name vacuum cleaner bags for a special price prior to an increase . . . I paid in full on delivery . . . when I later opened the package I discovered the bags were an inferior quality.
- Case A17 The radio converter cost \$17.77, special price, and limited quantities were available . . . paid full sum at the time of purchase . . . two months later the ad is still running in the local press.
- Case K28 At an auction, I paid \$2500 for a four-wheel vehicle . . . motor locked 20 minutes after I used it . . . motor is not new as advertised and will require \$1,000 worth of repairs . . . dealer refused to make adjustment on purchase.
- Case K2 A wholesaler offered a new gas range with a two-year warranty on parts and services, at a substantial saving . . . the delivered range had structural damage and evidence of prior use . . . we received no satisfactory response to our request for another range or a refund either from the dealer or the local outlet for this equipment.

How well does this approach meet the three primary criteria for a taxonomic system: a) to communicate information on consumer fraud by accommodating a diversity of offenses; b) to aggregate information across superficially different examples; and c) to identify intervention strategies appropriate to a given pattern of offenses. Our conclusions are as follows:

- a. On communication. The typology communicates information about consumer fraud in two ways; i) it is our judgment that the profiles reveal the basic nature of the transaction as demonstrated by the five profiles on the preceding pages; and ii) the frequencies of occurrence reveal areas of emphasis (e.g., in 50 percent of the classified abstracts, the consumer received a product or service which did not correspond to what s/he expected). On this criterion, the transactional scheme appears strong.
- b. On aggregation. The scheme also meets this criterion. There was little difficulty in classifying diverse cases of consumer fraud; the sequence permits the aggregation of externally different cases.

The possibility of 54 three-way combinations of activities appears suitable; this is not a fixed limit and with a larger data base, expansion (which is clearly permissible), might be desirable. The 334 cases were tested against an expanded version, but for the Phase I data base, 54 possible sequences are adequate. Forty percent of the cases fell into five of these 54 combinations.

- c. On pinpointing countermeasures. The transactional sequence offers three virtues: i) it describes the sequence of the transaction; ii) knowledge of the sequence suggests points where it can be interrupted; and iii) it provides a framework for the review of existing laws to search for new applications. A profile suggests when a strategy should best occur (at the beginning, middle or end of a sequence) and whether or not existing strategies may address more than one element of a sequence (e.g., Inducement and Obligation).

Countermeasures can be derived from a profile. For example, knowledge about the sequence guides the selection of an intervention point. In some fraudulent occurrences, strategies directed toward "recovery" may be sufficient, especially if the consumer did not suffer. In such cases, strategies which ease a return to the status quo because a buyer wishes a refund may be satisfactory intervention approaches, but only if the consumer is not punished in the process of securing a refund. If, on the other hand, a consumer did suffer--e.g., made numerous unsuccessful phone and mail contacts to obtain the refund, took a day's unpaid leave from work to settle the issue with the merchant, etc.--then an intervention strategy designed to "recover" would be unsatisfactory. In such situations, countermeasures should be "preventive" in nature and occur at the beginning of a sequence. For example, a media campaign reporting a local merchant's reluctance to provide a refund for defective merchandise might effectively reduce such occurrences.

Strategies which already exist for one type of fraud might be transformed or generalized to fit another class. From our preliminary analysis, the following new applications were suggested:

- CFA • Cooling off periods be instituted at retail outlets and/or prepayments be placed in escrow until agreed upon time when a consumer accepts or returns the merchandise; or
- Add a specific product description to an express warranty which the consumer and merchant review together at the time of the purchase. If the product does not correspond to this description, the sale becomes null and void.
- ADB • Mail order establishments must purchase bonds, if payment accompanies order. If business becomes insolvent, consumers may collect refunds, up to limit of bond; or
- Mail order houses must periodically register with regulatory board or postal authorities to permit monitoring of operations. Non-compliance results in discontinuance of business activities; or
- Devise standards (general or very specific) of "uniqueness" or exclusivity; tough penalties result from noncompliance.
- ACB • Delay in transfer of money from consumer to merchant. For example, prepayment orders on special offers could be placed in interest bearing account or escrow until satisfactory delivery of merchandise within specified time period.
- CFC • Consumers who signed long-term contracts involving future performance (e.g., construction of a home) must receive a copy of developer's plans for subsequent comparison between final product and original plans.

Two points should be noted: a) the illustrative examples listed above may be generalizable to more than one sequence; and b) the level of effectiveness of existing countermeasures will be explored by NCLC during Phase II. The findings from this research will contribute to our suggestions for practical intervention strategies.

Our efforts to date in designing a taxonomic scheme suggest that a useful approach in reaching the ultimate outcome of identifying opportunities for intervention strategies and their subsequent development can be achieved by the transactional sequence.

D. A Network Approach

A brief mention of two approaches previously described leads to the third suggested approach. At one extreme is the "thematic approach." This approach consists of a critical examination of each case and the extraction of only those features which, in the opinion of the analyst, comprise its "essence." The analyst assigns a priori weights to those features of a case which are considered essential and gives a weight of zero to all remaining features. Cases are sorted into piles of similar cases, thus creating categories; new piles are created to accommodate nonsimilar cases. This approach is subject to two types of criticism. First, no operationally-defined set of dimensions or rules for assigning dimensional values to particular cases usually exist. Hence, classifications based upon this approach may be unreliable. Second, an approach such as this is based upon the subjective opinions of the analyst as to which dimensions are important. Due to their inherent lack of testability, such subjectively-derived taxonomies cannot serve as the basis of a scientific analysis of consumer fraud.

At the other extreme is the "descriptive approach."* By including as many dimensions as can be specified without arbitrary selection, elimination, or weighting, standard data analysis procedures (e.g., cluster analysis, discriminant analyses, etc.) can be employed to create taxonomic categories on the basis of "affinity" or similarity. In this approach, the taxa or categories are created ex post facto. This approach to taxonomic development can definitionally accommodate any new case and aggregate existing information. Furthermore, such an approach is founded on the repeatability and objectivity of the assignment of dimensions to cases.

*The descriptive dimensions featured in Section IV B will not be considered as the sole basis for a typological scheme; they do not address the "process" of the offense.

The major objections to this approach to taxonomic developments are twofold. First, the categories created by numerical analyses are statistical creations and are probably meaningless with respect to any exogenous considerations, such as countermeasure development or interpersonal communication. Second, the statistical procedures require a large amount of data handling in order to produce reliable groupings and hence cannot be performed expeditiously.

The two remaining approaches to taxonomic development fall between these two extremes. The "transactional approach" selects a reduced number of dimensions, operationally defines each dimension, and assigns equal weights to them. Furthermore, "values" along these dimensions are not restricted; there are essentially an infinite number of different types of inducements, intermediate activities, etc. The aggregation rule for this approach is basically statistical; cases are grouped according to their similarity (or identity) of values on each of the dimensions. Obviously, there can be an extremely large number of potential or actual categories that result from the application of a "narrow" aggregation rule (e.g., a rule which requires all values on all dimensions to be identical). However, this seeming disadvantage is potentially compensated for by the substantial improvement of this approach (as compared to the other approaches) with respect to the criterion of relevance to countermeasures. Presumably, the dimensions are selected on the basis of potential applicability of countermeasures. For example, the specification of "types of inducements" was made with the presupposition that, if a particular type of inducement was a component of many frauds, actions could be developed which would be directed at that particular aspect.

There are three main objections to this approach. The first is similar to the criticism of the descriptive approach in that the aggregation rule allows for the creation of a limitless number of categories and therefore does not meaningfully increase the information content as compared to a simple case-by-case listing. Second, it could be argued that the selection of dimensions is subjective; other dimensions might be more

meaningful and/or useful for any particular purpose (such as countermeasure development). Another criticism of this approach is logistic: as each new case is examined, it must be judged against a large number of (potentially overlapping) values on each dimension. Aside from the fact that necessary information might not be available in the case description, this judgmental process requires a thorough understanding on the part of the analyst of all the definitions and nuances of each dimension. This requirement for analyst expertise may limit the potential usefulness of this approach.

The final approach to be discussed is intrinsically similar to the transactional scheme in that it also selects a reduced number of dimensions, operationally defines each dimension and assigns equal weight to them. "Values" along these dimensions are restricted to binary and tertiary decisions. This "network" approach is structured around a characterization of the consumer-merchant transaction in terms of a sequential network of questions and answers. Significant "nodes" (with respect to both loci of potential countermeasures and critical exchanges in the transaction) have been identified from a review of the cases; these nodes have been translated into binary (or tertiary) questions and a logical sequence for addressing these questions has been developed. It should be emphasized that each node is not a defining attribute of a consumer fraud "type"; rather, it is assumed that each specific case has a pattern of answers. It is also assumed that different fraud "types" will manifest themselves as distinctive patterns (as is true for the thematic and transactional approaches).

The initial derivation of the present set of questions was accomplished by operationalizing the descriptions of "thematic" frauds, which were described previously. Next, successive iterations of the question set were performed as more cases were examined. As these iterations were accomplished, it became apparent that an organization could be developed which would enable the analyst to address the questions in a systematic fashion--for example, by skipping subgroups of irrelevant questions or by repeating other questions when appropriate (e.g., when the case involves a series of merchant-consumer transactions). The resulting organizational network is shown in Figure 2. In this figure, numbered questions are contained in rectangles, with arrows leading the analyst to succeeding questions, depending upon the answer. The figure also indicates, for each node, possible examples of existing legal countermeasures and/or locations in the network

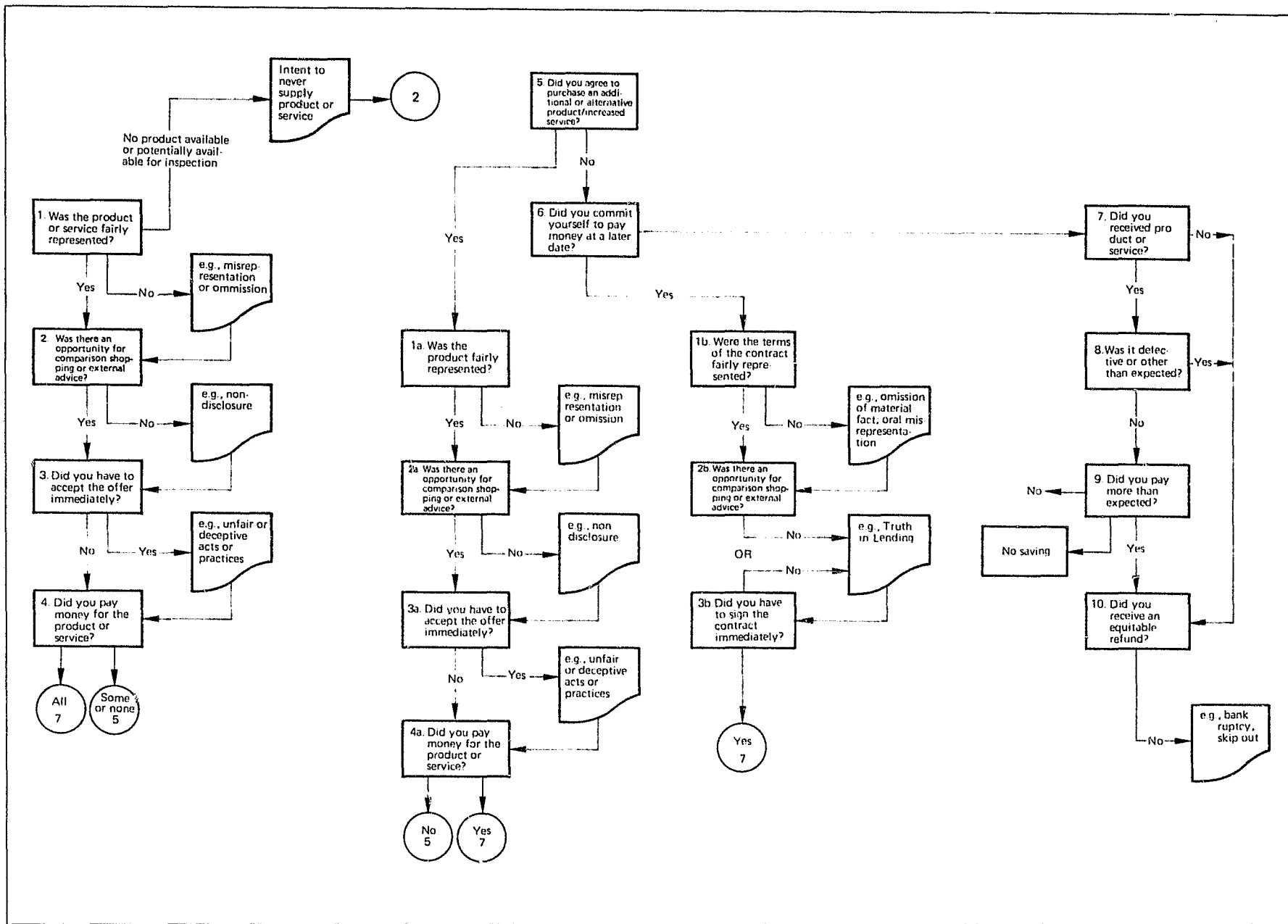


Figure 2. A NETWORK ANALYSIS

where countermeasures would be applicable. These are contained in irregularly-shaped outlines.

The following section briefly describes the questions contained in the present structure. Also, the results of an initial analysis of 47 case abstracts wherein each was processed through the network will be described. Naturally, it is assumed that modifications, amendments, and deletions to these questions will be made as more cases are examined.

There are three subsets of questions. The first subset of questions (1-4) depicted below, are directed toward the initial steps in the transaction--the time when the consumer contemplated the purchase and the conditions under which the decision to purchase was made.

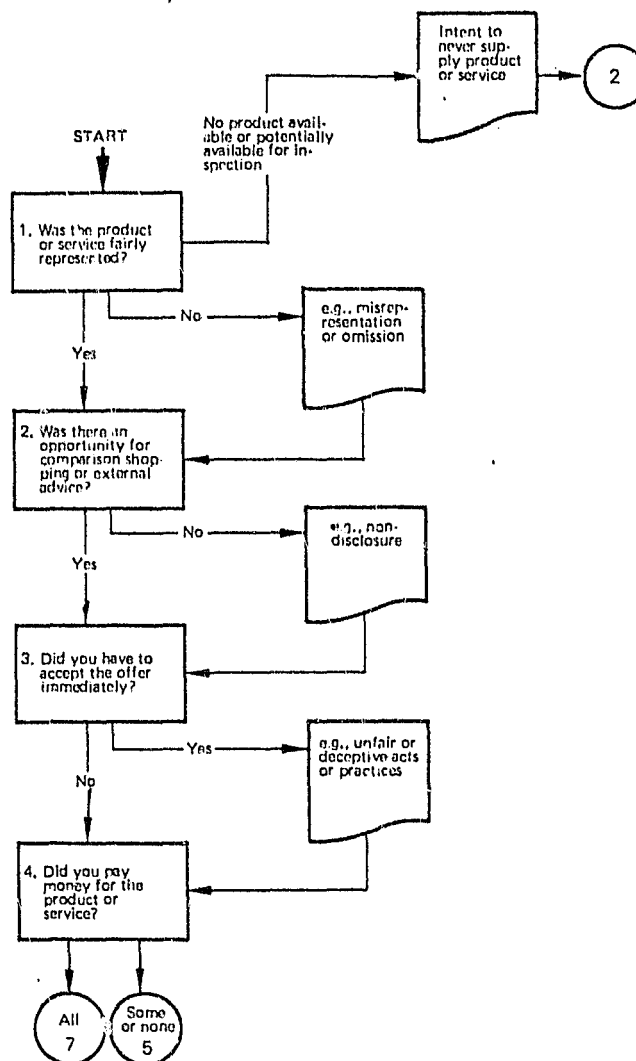


Figure 3. Questions 1-4

Question 1. Was the product or service fairly represented?

Operationally, this question can be translated into a procedure: Compare the product or service to the advertised product or service. Are the two identical? There are three possible results of this procedure. First, the two may match; second, the two may be different; or third, no comparison can be made because no product or service is available or potentially available for inspection. In the latter two cases, possible areas of investigation have been indicated. For the cases examined, 49% were judged to have a "no" answer, 36% were "yes," and the remaining 15% could be classified as "no product available or potentially available for inspection." Again, it should be stressed that an answer other than "yes" to this question does not in and of itself constitute a clearly defined consumer fraud; rather, the node itself is an indication of a potential source of fraudulent activities. Thus, simply because a product or service is not available to the consumer for examination at the time of purchase, this circumstance does not preclude a legitimate transaction. To consider a trivial example, when one buys a can of tuna, one cannot examine the contents to see if what is contained in the can is actually tuna. *However, it is our opinion that the circumstances wherein the consumer cannot examine the product or service prior to purchase is a predisposing condition to fraud. Similarly, it is our contention that if the actual and advertised product or service could be compared prior to purchase, one of the principal predisposing conditions to fraud would be eliminated. These last arguments are common to each node in the network and should be kept in mind throughout this discussion.*

Question 2. Was there an opportunity for comparison shopping or external advice?

Operationally, this question asks whether the consumer was given sufficient information to compare the value of the product or service to alternative purchases. The provision for "external advice" was made to accommodate those circumstances where the typical consumer would not ordinarily have the resources to evaluate the necessary and sufficient data even if they were provided at the time of purchase. In such cases, the consumer should have the opportunity to consult additional resources prior to the actual transaction. Although the answer to this question is shown as dichotomous, it is often difficult to specify what "sufficient information" is for any

particular circumstance. Furthermore, product or service "value" is not a unitary concept; different consumers assign different weights to the costs and benefits of any product or service. Nevertheless, it was not difficult to determine those cases where there was insufficient information to enable any consumer to legitimately "shop around," even without the presumption of guilt on the part of the merchant. In the cases examined, 53% were judged as providing very limited or no opportunities.

Question 3. Did the consumer have to accept the offer immediately?

Operationally, this question refers to the moment when the consumer had to agree to the purchase in relation to the availability and deliverance of the product or service. Cases were assigned a "yes" answer if, under the circumstances, the consumer lost his opportunity for the purchase by not accepting "on-the-spot." Cases also received a "yes" answer if the consumer had to make an expenditure prior to or as a precursor to the examination of a product or service. A "no" answer was assigned to those cases where a time component was not part of an advertisement. Thus, a sale of half-price sofas (in the absence of further information) would be assigned a "no" answer, while a one-day, no-return sale of half-price sofas would be assigned a "yes" answer. A total of 60% of the cases examined received a "yes" answer.

Question 4. Did the consumer pay money for the product or service?

This question is actually a vehicle to direct the analyst to other locations in the network. Thus, if the consumer had to pay the entire price at the time of purchase, the middle section of the network becomes irrelevant and the analysis can proceed directly to Question 7. Alternatively, in cases where the consumer's role in the transaction is not completed at the time of purchase, the analysis proceeds to Question 5.

The sequence of questions initiated by Question 5 appears below. It is used when the consumer's involvement in the transaction increases due to a commitment broader than the one at the time of purchase.

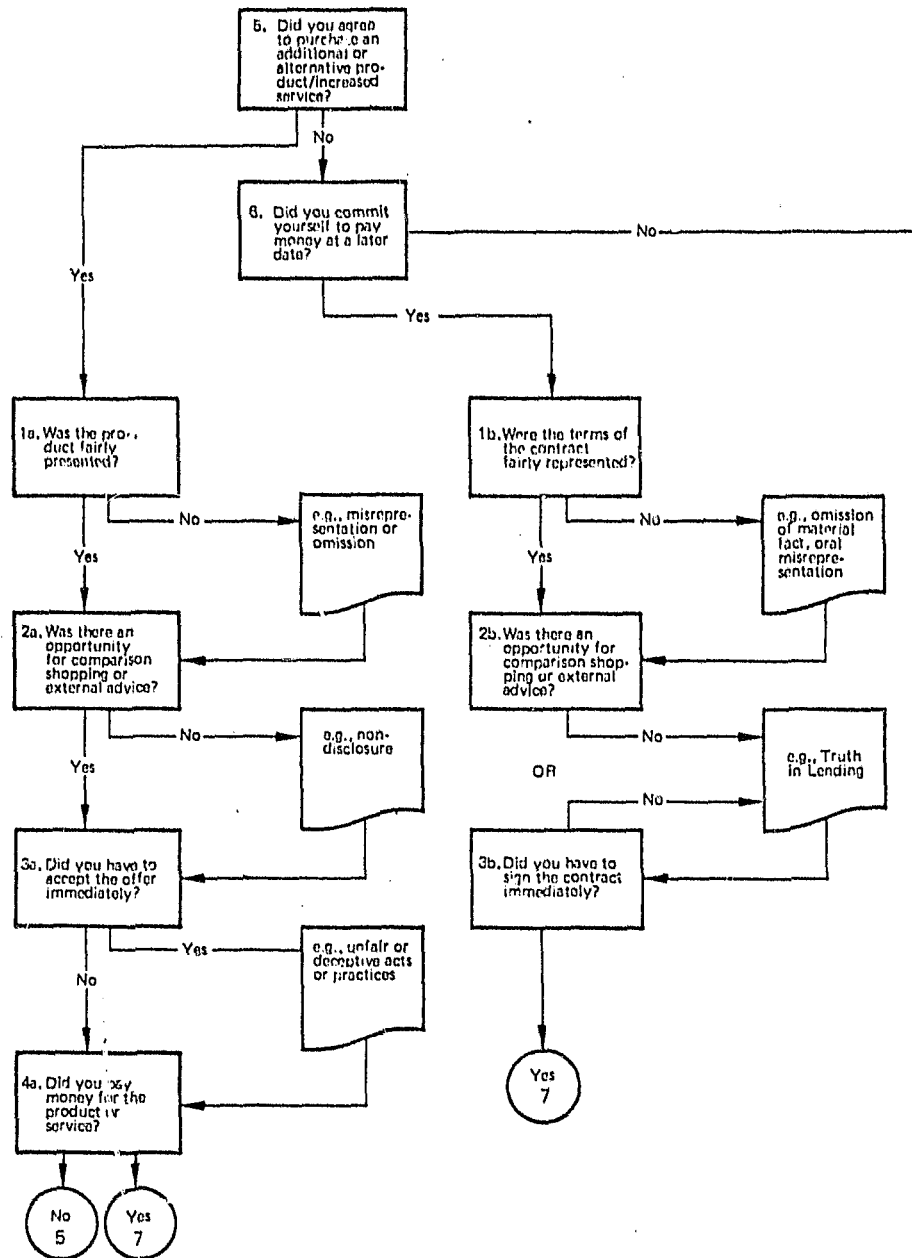


Figure 4. Questions 5-7

Question 5. Did the consumer agree to purchase an additional or alternative product or increased service?

and

Question 6. Did the consumer commit himself to pay at a later date?

Again, these are directional questions which attempt to subdivide cases where the consumer has not completed his part of the transaction at the time of initial contact. A distinction is made between cases where the consumer agrees to purchase something other than the originally

advertised (or desired) item ("yes" to Question 5) and those where the consumer signs an agreement or arranges for further financing ("yes" to Question 6).

If a particular case (as can be seen in the diagram) is assigned a "yes" response to Question 5, the analysis then essentially reverts to Questions 1 through 4. However, this time the secondary product or service is the focal point: questions regarding the adequacy of the representation of the product, the opportunity for comparative shopping, and the immediacy of the offer are addressed for the new transaction. For the cases processed through the network 11% were assigned a "no" response to question 1a, 15% received a "no" response for question 2a and 15% received a "yes" response for question 3a. The schematic organization allows for as many iterations or exchanges as occur in any particular case; the iterations terminate when all components of the transaction have been analyzed.

Parallel to the sequence of questions resulting from a "yes" answer to Question 5 are those asked if a case is assigned a "yes" answer to Question 6. Cases that reach this stage of analysis are primarily those involving credit arrangements, long-term contracts, or refinancing plans. Essentially, questions 1b, 2b and 3b consider the contract or financial arrangement as an additional product. The analyst must consider whether the terms of the contract were fairly represented, whether the consumer was given the opportunity for comparison shopping or external advice, and whether the consumer had to agree to the contractual terms immediately. Of the cases reviewed, 13% were assigned a "no" response to question 1b and 17% were assigned a "no" response to questions 2b and 3b.

The final subset of questions (7 through 10) illustrated below, are directed towards aspects of the transaction occurring after the consumer has completed his "side of the bargain"--the product or service (or lack thereof) that the consumer actually received.

The first of these issues is:

Question 7. Did the consumer receive a product or service?

In 32% of the cases reviewed, the answer to this question was "no." Again a cautionary note is appropriate: there is no presupposition of wrongdoing or guilt attached to a "no" answer to this question. Conversely,

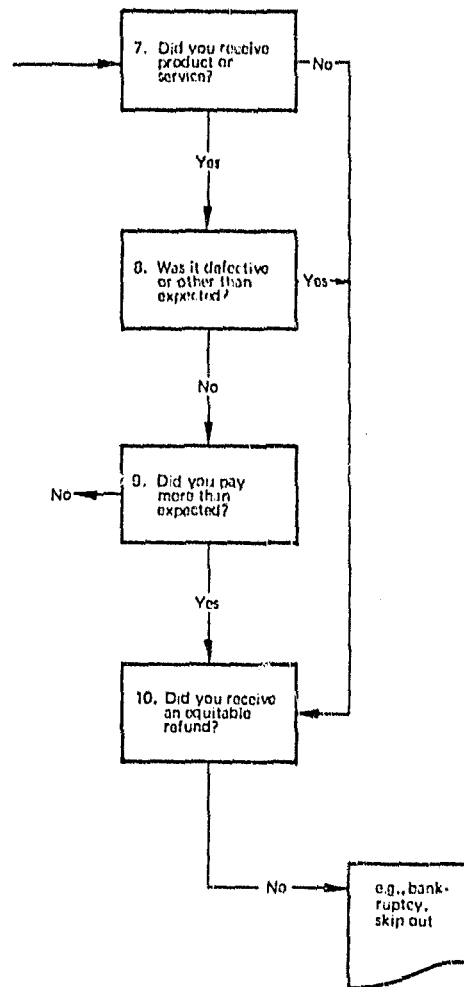


Figure 5. Questions 8-10

a "yes" answer does not imply that no fraud has taken place. Given that a product or service was delivered, the next issue is:

Question 8. Was it defective or other than expected?

A total of 53% of all cases reviewed were assigned a "yes" answer to this question. Next, again assuming that a product or service was received, the analysis addresses the issue of consumer expectations:

Question 9. Did the consumer pay more than expected or fail to realize an expected saving?

This question is operationally restricted to financial costs, although it is realized that many "hidden costs" are not monetary. Thirty-six percent of the cases reviewed received a "yes" answer to this question,

CONTINUED

1 OF 3

with 30% assigned a "yes" due to extra charges and 6% due to failure to realize expected savings.

The final question is more of a terminal node than a critical issue:

Question 10. Did the consumer receive an equitable refund?

Operationally, this question contains a time element: In order to avoid a "no" answer, the merchant must have refunded the payment or exchanged the merchandise in a "reasonable" amount of time. With two exceptions, all cases reviewed were assigned a "no" answer to this question. However, it is our belief that many actual frauds are designed to convince consumers that an equitable refund has been made when the perpetrator actually realizes a substantial profit on the exchange. Therefore, this "node" is one where countermeasures could and should be developed.

In summary, this approach has a number of good and poor features when compared to the other suggested approaches. Each feature is described below. There are five areas where the existing network could be improved.

1) The number of categories that result from the application of this taxonomic approach is independent of the case content. For example, aggregates could be created by grouping cases with identical answers on 8 out of 10 questions, and so on; there is no a priori reason for any particular aggregation rule. A potential solution to this problem is to consider this network as a hierarchical organization, rather than a sequential organization. Thus, for example, there could be three generic "classes" of cases, where categorization is based on the answers to Question 1; within each "class" there could be two "families," depending upon the answers to Question 2, and so on. Levels of description in such a hierarchy become more specific as one identifies lower levels; that is, any case must "fit" all descriptors of higher order categorical membership.

2) The existing network is nondiagnostic with respect to fraud "outputs." This scheme does not aid the analyst in pinpointing specific indicators of fraud nor aid in the further refinement of the definition of

consumer fraud. In other words, this network does not distinguish between cases of fraud and legitimate transactions. We believe that this is a spurious objection in that, unless the definition of consumer fraud is operationalized, no taxonomic scheme can differentiate frauds from nonfrauds except by fiat. On the other hand, any operational definition of a fraud could be incorporated in the network without substantial damage to the existing structure.

3) Similar to the previous criticism, the network as it currently exists is not diagnostic with respect to existing "legal misdeeds." That is, the examples of potential violations contained in the diagram are not very helpful in determining what specific violations occurred in any particular case.

4) The existing network does not "handle" refund schemes, insurance swindles, charity schemes, and so on. That is, there are types of fraud cases that do not fit this network with respect to the present set of critical nodes.

5) Types of frauds that are conceptually distinguishable become indistinguishable when processed through this network.

On the other hand, there are several distinct positive features of this approach:

1) This approach provides a structure for the organization of existing consumer fraud legislation and actual or potential countermeasures. A proposed countermeasure could be evaluated in terms of its projected impact on this existing structure.

2) The questions and answers can (for the most part) be unambiguously applied. The operational specification of each question and the relative simplicity of the judgments substantially improve the reliability of classifications.

3) There is a substantial improvement in ease of communication of case descriptions among analysts. This is a result of the reduction in the number of dimensions and attributes which must be evaluated for each particular case.

4) This network maintains the potential for the essentially limitless variations on common fraud "types." That is to say that rather than losing potentially important information (as occurs when a case is assigned to a pre-existing category), the information is retained in the case description, while still enabling the analysts to capitalize on commonly-occurring features.

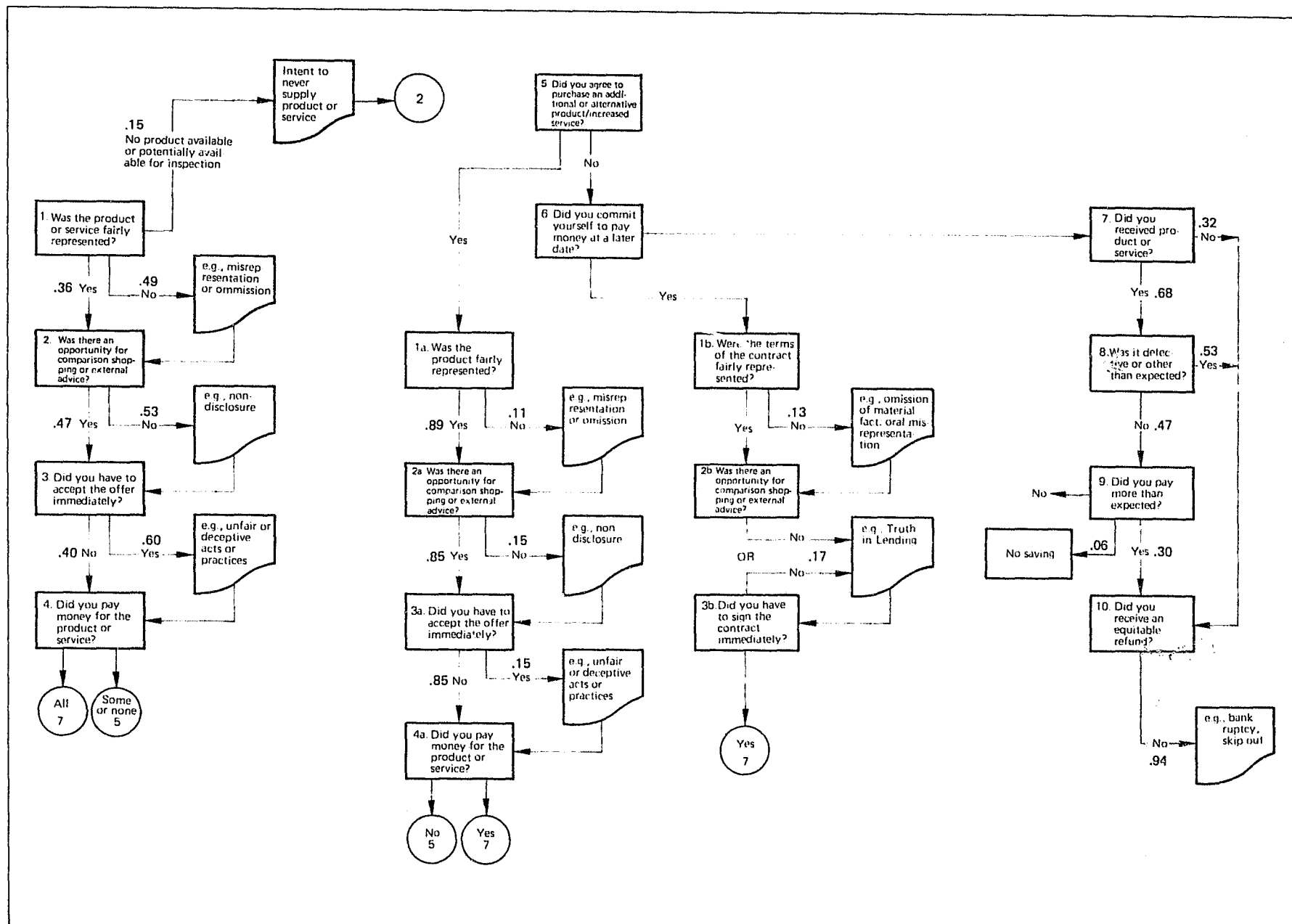


Figure 6. A NETWORK ANALYSIS: Processing 47 abstracts through the network; a summary distribution by percent.

VI. REFINED DEFINITION OF CONSUMER FRAUD

*If any one cheats me with false cards
or dice, or by false weights and measures,
or by selling me one commodity for another,
an action on the case also lies against him
for damages, upon the contract which the law
always implies, that every transaction is
fair and honest.*

*Blackstone's Commentaries*¹

As observed by Blackstone in 1803, not all consumer transactions are fair and honest. Unfortunately, it was only a short time later that the law completely evolved away from the notion of an implied contract of fairness and honesty. It was replaced by the doctrine of caveat emptor, which remains the rule except where standards of unfair or dishonest conduct are defined by legislation or case decisions. Such statutes generally fall into one of two categories. Some generically proscribe unfair or deceptive acts and practices, and are subject to variant judicial interpretation owing to their generality. Others concern only specific practices or areas, e.g., the use of undersized apple barrels. In either case, the consumer often enters into transactions to acquire needed products, services, or credit at his peril, partly because no satisfactory definition of fraud exists.

Many legal authorities maintain that fraud is better left undefined. The underlying rationale is that "the fertility of man's invention in devising new schemes of fraud is so great that courts have always declined to define it, reserving to themselves the liberty to deal with it in whatever form it may present itself."² Accordingly, if fraud is defined, ways will always be found to circumvent the scope of the definition. However, while lack of a definition of fraud may not hamper the case-by-case function of the courts, any increase in the understanding of consumer fraud processes and the development of effective countermeasures is dependent upon the existence of a definition which specifies the boundaries of the problem. For this reason, one of the goals of this project is the generation of an objective and unambiguous definition of consumer fraud.

At the beginning of this project, AIR and NCLC offered the following preliminary definition of consumer fraud:

A transaction which includes soliciting funds for the purchase or use of consumer goods, services, or credit in which the supplier engages in deceit, misleading statements or conduct, an inability to perform, or the misrepresentation or nondisclosure of information required by law or needed by a consumer to understand the merits or conditions of the transaction.

During Phase I, a number of existing definitions of "consumer fraud," and such other terms as "fraud," "deceit," "unfair and deceptive practice," and "economic crime," were compiled from such diverse sources as Black's Law Dictionary, two legal encyclopedias, Webster's New International Dictionary, the Encyclopedia Britannica, and various individuals, including law enforcement officials. These definitions were used to supply inputs for potential refinements of the definition. The first activity was the specification of the dimensions required to formulate a viable definition.

Selection of Dimensions. The preliminary definition suggests three conceptual dimensions, two expressly and one by implication.

In referring to "a transaction which includes soliciting funds for the purchase or use of consumer goods, services, or credit," the preliminary definition envisions a certain *Type of Transaction* (dimension 1) which is further described by naming a "supplier" and "consumer." Also included is a list of *Prohibited Actions* (dimension 2) which might constitute consumer fraud, namely "deceit, misleading statements or conduct, an inability to perform, or the misrepresentation or nondisclosure of information required by law or needed by a consumer to understand the merits or conditions of the transaction." Some of the named actions connote wrongful intent, while "inability to perform" suggests something less than intent or knowledge, e.g., nonperformance. In either case, a separate dimension, *Intent*, is suggested (dimension 3).

Fifteen additional definitions derived from ten sources, were reviewed for additional dimensions. (The dimensions appear as Appendix D, Consumer Fraud Definitions.) Three possible dimensions were considered but

ultimately rejected: *Damage*, *Merchant Advantage*, and *Pattern of Practice*.

A Damage dimension was suggested because loss of some sort is contained or implied in most, if not all, of the other definitions reviewed. However, "damage" does not necessarily follow every instance of fraudulent behavior. For example, early detection or merchant ineptness may operate to prevent actual losses by consumers despite the existence of a scheme to defraud. This dimension was therefore unnecessary.

The second dimension which was eliminated, Merchant Advantage, is a mirror image of Damage (to the consumer). This dimension would have separated gratuitous representations from those which are intended to directly or indirectly profit financially or otherwise benefit a merchant. Such a distinction would be consistent with the law's general hesitancy to penalize those making gratuitous statements, even if they prove to be inaccurate and damaging.³ It was rejected in order to stress the behavioral aspects of consumer fraud. Again, although "damage" and "merchant advantage" may be requisites to legal recovery in individual cases, they need not be included in the definition.

The third discarded dimension, Pattern of Practice, was only briefly considered. This dimension would focus upon the number of instances in which a merchant engages in the fraudulent activity. It was excluded because such a dimension is evidentiary rather than definitional in nature.

The three retained dimensions, *Type of Transaction*, *Prohibited Action*, and *Intent*, were next compared to the five traditional elements of the common law tort action of deceit, which are:

- Misrepresentation of a material fact;
- Knowledge of such falsity by the perpetrator;
- Intent by the perpetrator to induce some action or inaction by the victim;
- Reliance by the victim on the misrepresentation in taking the action or inaction; and
- Damage to⁴ the victim as a result of such reliance.

Two of the common law elements, "misrepresentation" and "intent," coincide with selected dimensions (Prohibited Actions included misrepresentation). The common law requirement of "knowledge" by the perpetrator

is tantamount to Intent, and does not require the creation of a new dimension. Similarly, victim "reliance" is implicit in the fact that a transaction took place. The "damage" requirement has been previously discussed and rejected. The dimension not included in the traditional tort elements, Type of Transaction, reflects the specific context in which this particular definition is to apply, while the tort may arise in any setting.

Based on this review, we believe the dimensions requisite to formulating a satisfactory definition of "consumer fraud" are:

- Type of Transaction;
- Prohibited Actions; and
- Intent.

While these dimensions could be further divided and subdivided, e.g., Prohibited Actions could include misrepresentation and nondisclosure, each of which may be further subdivided, they generically embody all essential components of the definition.

The above three dimensions were used to generate Table 10, Consumer Fraud Definitions. The following sections discuss each of the dimensions individually and will include our recommendations for the form in which each dimension will be incorporated into a refined definition of Consumer Fraud.

Dimension-by-Dimension Analysis.

● *Type of Transaction* The purpose of this dimension is to provide parameters for describing consumer transactions and to identify the types of parties which may enter into them.

The preliminary definition specifies as relevant those transactions involving the solicitation of funds for the purchase or use of consumer goods, services, or credit. The other 15 definitions (see Table 10) add little. However, since consumer transactions may involve soliciting property as well as funds, or the surrender of legal rights, the definition should be expanded to so reflect. Further clarification would follow the addition of "lease" to "purchase or use" of the items named.

Table 10. CONSUMER FRAUD DEFINITIONS*

Source	Term Defined	DIMENSION 1 Type of Transaction	DIMENSION 2 Prohibited Actions	DIMENSION 3 Intent
AIR/NCLC PRELIMINARY DEFINITION	Consumer fraud	Purchase or use of consumer goods, services, or credit	Deceit; misleading statements or conduct; misrepresentation or non-disclosure of information required by law or needed to understand the transaction	May be unintentional (Implied)
CARLSON	Consumer fraud	Sale of merchandise	Lying; not telling the complete truth	Intentional only (implied)
GREEN	Consumer fraud	Consumer	Crime committed by nonphysical means	Intentional only (implied)
NCLC (1972)	Unfair and deceptive practice	Consumer	Acts or practices which are unfair, not honest when taken as a whole, deceptive, or misleading	May be unintentional
BLACK/WEBSTER (1)	Fraud	--	Perversion of truth	Intentional only
BLACK/WEBSTER (2)	Fraud	--	False representation of fact, whether by words or conduct, by false or mis- leading allegations, or by concealment of that which should have been disclosed	Intentional only
BLACK (3)	Fraud	--	False suggestions; suppression of truth	Intentional only
WEBSTER (3)	Fraud	--	Acts, omissions, concealments used to obtain advantage against conscience or which violate trust and confidence	--
ENCYCLOPEDIA BRITANNICA	Fraud	--	False pretense	Knowledge of falsity or lack of belief in truth; reckless, careless of truth
CORPUS JURIS SECONDUM	Fraud	--	Acts, omissions, concealments involving a breach of duty; taking undue or unconscientious advantage	--
AMERICAN JURIS- PRUDENCE 2d (1)	Fraud	--	Anything calculated to deceive; acts or words which suppress truth; silence	--
AMERICAN JURIS- PRUDENCE 2d (2)	Fraud	--	Deceitful practices contrary to the plain rules of common honesty	Intentional only
AMERICAN JURIS- PRUDENCE 2d (3)	Fraud	--	Unlawful appropriation of another's property	Intentional only
AMERICAN JURIS- PRUDENCE 2d (4)	Fraud	--	Making one state of things appear to be the true state of things, while act- ing on the knowledge of a different state of things	Intentional only
BLACKSTONE	Deceit	--	Acting contrary to good faith and honesty	Intentional only (implied)
FINN AND HOFFMAN	Economic crime	--	Illegal acts committed by nonphysical means and by concealment or guile	Intentional only (implied)

* For the complete text and source of these definitions, see Appendix D.

The preliminary definition envisions a transaction which involves a "consumer" and a "supplier." The refined description substitutes "merchant" for "supplier;" the generic term is less likely to connote limited applicability. "Consumers" are understood to include borrowers as well as buyers, plus all those intended or reasonably expected to be influenced by the merchant's representations or omissions. Similarly, "merchants" may be manufacturers, sellers, lenders, collection agencies, assignees, or those arranging transactions for others, e.g., agents or brokers.

After considering various alternatives, this dimension will be incorporated into the definition of "consumer fraud" by making generic reference only to the Type of Transaction. Supplementary definitions of the terms "consumer transaction" and "merchant" would accompany the primary definition in order to amplify this dimension.

● *Prohibited Actions* The preliminary definition cited three types of prohibited practices: deceit, misleading statements or conduct, and misrepresentation or nondisclosure of information required by law or needed by a consumer to understand the merits or conditions of the transaction.⁵ The examination of the additional sources revealed that fraudulent actions are subject to generic characterization as misrepresentations, nondisclosures and other unfair or deceptive practices. Several varieties of each were included in the 15 definitions, the other sources researched, and in the actual examples collected during Phase I of this study.

Where positive acts are defined as fraudulent behavior, most sources envision situations where the merchant makes a representation of the existence of a material fact which does not exist.⁶ In so doing, they often allude to "deceit", or such semantic equivalents as deceptive acts or practices, lying, perversion of truth, false pretense, and false representation of facts. Reference is sometimes made to words or conduct which convey a misleading impression. Deceit may concern not only facts relating to the transaction itself, but also to information purportedly possessed by the actor.

Examples of false factual representations which occur in consumer transactions are promises made in the absence of any intention to perform and oral misstatements concerning the content of written contracts.

Misrepresentation is also manifest in ambiguous statements capable of more than one meaning or in literally true statements which create false impressions in the minds of consumers. For example, advertisements in which each sentence, if considered separately, is literally true, may mislead nonetheless due to omission, method of composition, or the like. A merchant might also cover up the truth or remove an opportunity otherwise available to the consumer by which discovery of a material fact might result, as when a consumer is discouraged from reading a contract before signing it. The various types of misrepresentation all may be perpetrated orally, in writing, or by conduct, and may arise by implication alone.

Conversely, nondisclosure of information may be as fraudulent as positive assertion of nonexistent facts. The definitions and other sources reviewed generally speak in terms of concealment, suppression or omission of material facts. Evasive answers to consumer inquiries may also constitute fraudulent concealment. The communication of a half truth, whereby a merchant fosters the belief that one set of facts is applicable while knowingly acting on a different set of facts, is considered fraudulent.⁷ Fraudulent nondisclosure may also arise if a merchant acquires new information which makes previous representation false or misleading, and fails to provide the new information to persons involved in a transaction. The characterization of any nondisclosure as fraudulent depends upon whether an obligation to disclose exists. Such an obligation refers to all "material facts." Of course, a merchant is obliged to give full disclosure concerning all matters which he voluntarily elects to disclose.

It is conceivable that certain fraudulent behavior might not be easily recognizable as either misrepresentation or nondisclosure. For this reason, many of the definitions include "catchall" terms. Terms used to serve this purpose include "unfair" acts or practices; taking undue or unconscientious advantage; or engaging in acts violating trust, confidence, good faith, or common honesty, or breaching a legal or equitable duty.⁸ However, it is our opinion that incorporating any of these terms into the definition would add ambiguity and uncertainty as to what acts are fraudulent but this course seems preferable to making the definition unduly restrictive.

To capture the essence of our review into the consumer fraud definition, we utilized supplementary definitions of key generic terms in the preliminary definition. In the refined definition, subordinate definitions will be provided for "misrepresentation" and "nondisclosure." Since both relate to "material" facts, a supplementary definition of "material fact" is also necessary.

The preliminary definition included misrepresentation or nondisclosure of "information required by law" as prohibited actions, but this reference will be deleted from the refined definition. Inclusion presupposes that every legislative body which has passed a relevant law has satisfactorily defined consumer fraud. Thus, reference will be made only to misrepresentations or nondisclosure of a "material" nature.

● *Intent* A brief review of the manner in which the law governing misrepresentation has dealt with "intent" provides a suitable frame of reference for discussion of this dimension. In the process, it will become apparent that far more is involved than mere wrongful intent. Equally relevant are knowledgeability and the degree of care exercised by merchants in the course of consumer transactions.

Misrepresentation is encountered in many guises under the law, and is not confined solely to consumer transactions. While many types of improper conduct may be abetted by false representations,⁹ three distinct legal actions could arise as a result of misrepresentation: deceit, negligence, and breach of warranty. These three actions were most clearly distinguished by the degree of intent or standard of care associated with affixing liability.

The common law tort of deceit is unique in that it alone gives rise to a distinct legal action for fraud. Specifically protected is the right to formulate business judgments without being misled by others, i.e., not to be cheated.¹⁰ As noted earlier, evidence of intent to deceive is, in most jurisdictions, necessary to establish the tort of deceit. However, this requirement has eroded over time, to the extent that many courts require no evidence of wrongful intent to deceive. Where intent can be proven, courts often award punitive damages to the victim. Although the law generally protects only the intended victims, statements which can be acted upon by any member of a large class may justify recovery by an individual class member who suffers loss.¹¹

In contrast to traditional deceit, negligence has never demanded proof of wrongful intent as a requisite to recovery. Four elements are usually associated with successful actions for negligence:

- A legal duty establishing a certain standard of conduct for the protection of another against unreasonable risk;
- Breach of that duty;
- Existence of a reasonable causal connection between the breach and some resulting legal injury (often called proximate causation); and
- Actual loss or damage resulting to another. ¹²

To avoid liability for negligence, one must use the degree of care which would be exercised by a "reasonable person" under the circumstances. ¹³

A misrepresentation of fact is one recognized type of negligent conduct. ¹⁴ Another is the use of any instrumentality (including other persons) which is known, or should be known, to be so incompetent, inappropriate, or deceptive that such use involves unreasonable risk to others. ¹⁵

Although it has been soundly rejected at common law by almost all courts, the concept of "degrees of negligence" should be mentioned. The concept recognizes distinct degrees of legal fault corresponding to required degrees of care, using such qualifiers as "slight," "ordinary," and "gross" negligence. Theoretically, slight negligence would arise where there is failure to use great care, ordinary negligence for failure to use ordinary care, and gross negligence for failure to use even slight care. Gross negligence differs from ordinary negligence only in degree, and not in kind. In practice, however, the drawing of satisfactory lines of demarcation between degrees of negligence has proven to be virtually impossible.

Strictly speaking, "negligence" does not include conduct which recklessly disregards the interests of another person. ¹⁶ Conduct which is "willful," "wanton," or "reckless" (terms usually applied interchangeably), sometimes called "aggravated negligence," is considered by many to occupy a middle position between negligence and intentional misconduct. Involving what might be called "quasi intent," such conduct is viewed as qualitatively different from mere failure to exercise reasonable care. Not surprisingly,

however, many courts have found it difficult to adequately indistinguish between gross negligence and willful, wanton, or reckless conduct.

Negligence, in any degree, involves an actor who does not desire the adverse consequences which follow or does not know they are substantially certain to occur, although the risk is sufficient to lead a "reasonable person" to foresee such consequences. Willful or reckless conduct involves unreasonable behavior in conscious disregard of a perceived risk, whose outcome is often predictable. In contrast, intentional misconduct involves not only knowledge and appreciation of a risk, but also substantial certainty of the outcome. In many cases, the differences among negligence (foreseeable risk), "quasi intent" (conscious disregard of known risk), and intent (substantial certainty) are only matters of degree.

Several significant characteristics distinguish the torts of deceit and negligence. For example, honest belief in the accuracy of a representation when made might defeat a deceit action. For example, if a merchant can demonstrate that he honestly believes his representation, he probably could not be convicted of "deceit." However, an opposite result may be likely in a negligence case. Conversely, negligence may be successfully defended by proving that the plaintiff was also negligent; neither deceit nor willful, wanton, or reckless conduct may be negated by such a showing. In some jurisdictions, punitive damages may be awarded for willful, wanton, or reckless conducts as well as intentional deceit.¹⁸ Such damages are not assessed in negligence cases. Finally, the scope of negligence is more broad than deceit, in that potential liability exists as to all persons that should reasonably have been foreseen as subject to injury or loss. As noted previously, recovery for deceit is usually available only to those who were intentionally misled.

The third distinct legal action which may arise as a result of misrepresentation is breach of warranty. A "warranty" here means an affirmation of fact relating to goods or services sold in a consumer transaction in order to induce a purchase. The failure of such a representation is viewed quite differently than deceit or negligence by the law. Not being a tort action, breach of warranty seeks to vindicate rights created by or associated with a contractual relationship.¹⁹ Strict responsibility is

imposed for breach of warranty, and liability requires neither intent nor negligence, and may follow totally innocent misrepresentations.

As with deceit and negligence, a unique legal obstacle may be encountered in warranty cases, although not necessarily in the form of an available defense. Since breach of warranty is a contract action, the "parol evidence rule" may exclude as evidence proof of oral warranty representations which conflict with the substance of a written contract,²⁰ on the theory that the latter includes all terms understood by the parties to constitute the agreement. Such an evidentiary exclusion, which may easily make proof of breach of warranty impossible, does not apply to tort actions.

Despite the "textbook" distinctions which differentiate the three described types of action, the courts have freely applied the elements associated with one to the others. For example, some go so far as to impose strict responsibility in deceit actions. Equally confusing is the extent to which many courts and legislatures have muddied the waters within a given type of action, e.g., the degrees of negligence. As one might expect, the defenses available and evidentiary rules to be followed in individual cases are anything but clear. For our purposes, it is sufficient to observe that American jurisprudence has shown, and continues to show, a marked tendency toward eliminating the need to prove wrongful intent or other serious misconduct before the fact, and toward reducing the number of legal impediments to compensating the victims of misrepresentation. Consideration of intent or fault is often limited to reaching a determination as to whether punitive damages are warranted rather than whether liability exists.

Without question, all intentional misrepresentations and nondisclosures of material facts are fraudulent. That even the law has gone far to eliminate the fault requirement, is indicative of the need to carefully consider what standard is appropriate for the consumer fraud definition (e.g., strict responsibility, negligence, or whatever). To what degree should the definition look to the ultimate result to the consumer, the initial intention of the merchant, or the behavior of the merchant? Or, as stated in one treatise,²¹ to what extent is it desirable and practicable to permit reliance by one party upon the statements of another in the marketplace?

Returning to the preliminary definition, the inclusion of "inability to perform," or nonperformance, is suggestive of an approach stressing behavior or outcome, rather than original intent. Since most of the other definitions reviewed closely parallel common law deceit and discuss or connote wrongful intent (see Table 10), they provide little guidance. The 1972 NCLC definition,²² which includes unintentional acts or practices which ultimately prove to be unfair or deceptive, emphasizes results rather than intent. In addition, state UDAP statutes, as well as the Federal Trade Commission Act after which they are patterned, also favor this "results" approach.

The foregoing discussion suggests several possible standards for defining consumer fraud in the Intent dimension, ranging from wrongful intent to innocent misrepresentation:

- Intent to deceive, mislead, or convey a false impression;
- Making a representation in the absence of any belief that it is true;²³
- Making a representation with willful, wanton, or reckless disregard as to whether it is true or false;
- Honest, but unreasonable, belief that a representation is true;
- Failure to use reasonable care in ascertaining the truth of a representation believed true, or in the manner of expression;
- Failure to possess the degree of skill or competence required by a particular business or profession;
- Inability to perform; and
- Innocent misrepresentation.

The degree to which emphasis is placed on intention, behavior, or result will be largely determined by which of the above are incorporated into the consumer fraud definition.

As noted above, the preliminary definition included generic reference to misrepresentation, nondisclosure, and other unfair or deceptive acts or practices. The Intent dimension will be incorporated in the revised

definition by including "whether intentional or unintentional." A supplementary definition of "unintentional" establishes the degree to which intent, knowledgeability, and fault are relevant in characterizing consumer fraud.

In conclusion, a generic definition of consumer fraud has been formulated, which is made specific through the addition of several qualifying definitions.

Accordingly, consumer fraud is defined as:

A consumer transaction which involves merchant misrepresentation or nondisclosure of a material fact, whether intentional or unintentional.

As used in the above definition, the following meanings are intended to apply:

Consumer transaction is a transaction in which a merchant solicits or obtains money or property from, or the surrender of some legal right by, a consumer, for the purchase, lease, or use of goods, services, or credit by the consumer for personal, family, or household purposes. As used here, a consumer is any person who is a party to, or receives an offer from a merchant to enter into, a transaction, or any person intended or reasonably expected to be influenced by the representations made or omitted in the course of a consumer transaction.

Material fact is any fact to which a consumer attaches importance in making the decision to enter into a consumer transaction, including, but not limited to, any fact related to the merits, terms, or conditions of the transaction.

Merchant is any person, group, or entity which manufactures consumer goods or which directly or indirectly offers, supplies, or arranges for supplying such goods, services, or credit to consumers, or any assignee or agent of any of these.

Misrepresentation means (1) any false, deceptive or misleading representation of any material fact, whether communicated orally, in writing, or by conduct, regardless of whether expressed or by implication; (2) any ambiguous representation which is reasonably capable of more than one meaning; or (3) any representation which is literally true but which tends to create a false impression in the absence of qualification.

Nondisclosure means (1) concealment, suppression, or omission, whether active or passive, of any material fact or information; (2) communication of a half truth, i.e., disclosing facts likely to mislead in the absence of additional undisclosed facts; or (3) failure to provide subsequently acquired information making a previous representation untrue or misleading to any person known to be still acting in reliance on it.

Unintentional, as it relates to prohibited actions, means, (1) absence of any belief as to truth or falsity; (2) reckless or wanton disregard as to truth; (3) honest, but unreasonable, belief as to truth; (4) failure to use reasonable care in ascertaining believed truth; (5) failure to exercise reasonable care in the manner of expression used; (6) failure to possess the required degree of skill or competence; (7) inability to perform/nonperformance; or (8) innocent misrepresentation.

This definition presently includes all identified descriptors, which would amount to incorporation of a strict responsibility standard. It is likely to be modified at a later date.

FOOTNOTES

1. 4 Blackstone's Commentaries 166 (1st ed. 1803, reprinted 1969).
2. 37 Am. Jur. 2d Fraud and Deceit §1.
3. W. Prosser, Law of Torts 715, 721, 728 (3rd ed. 1964). But, in some instances, the law does not impose such a "benefit" requirement. Am. Jur., supra, §7.
4. Prosser, supra, at 700. See, also, Am. Jur. §12; 37 C.J.S. Fraud §3.
5. "Inability to perform," also included in the preliminary definition, relates to outcome rather than to behavior, assuming it is unforeseen by the merchant. It is therefore not considered a "prohibited action" for the purposes of this discussion.
6. See Appendix D.
7. See Appendix D, definitions 1b, 3j; Prosser, at 710, 711.
8. See Appendix D.
9. For example, the tort of false imprisonment might be accomplished by falsely representing that one possesses the legal authority to arrest. Prosser, at 697.
10. Harper and James, The Law of Torts §7.1 (1956).
11. Id., at §7.2.
12. Prosser, at 146. See, also, Restatement, Second, Torts §281; Harper and James §16.1.
13. Prosser, at 153, 154; Restatement, supra, §283; Harper and James §16.2.
14. Restatement, §304.
15. Id. at §307. See, also, Restatement §302A, which states that an act may be negligent if the actor realizes or should realize that it involves an unreasonable risk to another through the neglect or reckless conduct of a third party.
16. Restatement §282a.
17. Prosser, at 187, 188.
18. Restatement §282e.
19. A tort action may lie for honest misrepresentations of fact if they pertain to the personal knowledge of a seller. Harper and James §7.7.
20. Prosser, at 727.
21. Harper and James §7.4.
22. See Appendix D.
23. Such action is considered intentional. Harper and James §7.3.

VII. SUMMARY

Three main objectives were to be met during Phase I of this research. Now that the details have been presented, it is possible to look back and assess what has been accomplished and what remains to be done.

A. Case Material

The collection of nearly four hundred representative examples of consumer fraud from a variety of agencies has provided us with much of the substance that was sorely lacking at the outset of this study. At that point, we only could speculate on the content that might be revealed by a tangible data base. With the needed descriptions in hand, it is evident that many of our earlier suppositions about what is happening were off the mark. Taking the set of examples as a whole, we were surprised by several general findings. The following impressions may help convey the flavor of what is represented.

1. Perhaps the most noticeable feature was the lack of elegance among all but a few cases. Most reported consumer fraud is far from sophisticated in either planning or execution. While there were some exceptions, like the man who offered transit tokens by mail at a substantial discount or the bogus contraceptive device sold with a 90-day "full satisfaction" guarantee, most examples were devoid of real imagination. It takes little forethought to renege on an advertised gift turkey to used car buyers or accept payment for a remodeling job and then never show up to do the work.

2. A related common thread was the typical greed and carelessness of the merchants involved. Although, as with all of these observations, we have only cases where the fraud was detected, it is likely that many schemes would have worked much longer had the merchant avoided excesses. A few scratches on a "new" stove might be tolerable, but the purchaser does not expect to find baked-on grease in the oven and soiled burner pans. And charging several hundred dollars for less than an hour's yard work is certain to invite complaints.

3. Aside from a few "you just won our contest" lead-ins, most of the examples are relatively indistinguishable at the beginning from everyday, honest transactions. In this sense, any of us easily could become a victim of the various kinds of schemes described by the cases that were collected.

By and large, the only three characteristics that seemed more prevalent in these examples than they might be in ordinary transactions were that the products or services tended to be those not routinely purchased; that the prices would vary from one consumer to the next and thus were negotiable (as, auto repairs or invention marketing services); and that delivery was delayed after payment had been made.

4. The fact that some practice is clearly against the law, such as mislabeling dyed mink as natural, failing to disclose credit terms, or refusing a refund request within the cancellation period, did not seem to preclude its use. A distinct violation certainly seems to afford the consumer an edge during the complaint process, but legal prohibitions may have only limited deterrent value. It thus would be a mistake to focus only on preventive measures while ignoring retribution in combatting consumer fraud.

5. There was little evidence in most of the cases that the victim was particularly gullible. Instead, we found that most consumers who felt cheated ended up being frustrated by the circumstances. They often showed exceptional patience in attempting to gain satisfaction from the merchant--in extreme cases waiting four years for a promised refund or stringing jewelry at home for a full year without payment--before complaining to an agency. More often than not, consumer victims seem to be aware of their probable loss long before they attempt to take action and we suspect that they either are too inexperienced or too embarrassed to seek more timely assistance.

6. Most of the examples pertained to frauds that were neither systematic nor highly profitable. Very few involved large numbers of victims or sizable amounts in the aggregate (the mail-order digital watch scheme is one notable exception). Very often, there was an indication that the same merchant was serving other consumers with satisfaction, and that the fraudulent event was not that person's or firm's typical practice. And when a loss did occur, it seemed to cost the consumer far more in time and aggravation than in dollars.

We do not yet know what to make of these observations except to reconfirm the obvious, that consumer fraud is far from simple and therefore will be difficult to prevent. On the other hand, we believe that there

are specifiable offenses which could be dealt with effectively--one example, perhaps, is the door-to-door seller of magazine subscriptions who, although equipped with literature, receipts and other trappings, represents no one and personally pockets all payments. Dealing with particular schemes one-at-a-time may not do much, on the other hand, to alleviate the widespread hurt that is typical of consumer fraud in general.

B. Typology Development

Three distinctive typologies for organizing fraudulent events were devised during this phase of the study. The first, the Thematic Approach, categorizes instances into inductively generated groups based on characteristic merchant actions. The second, or Transactional Approach, examines the different sequences of interactions between the merchant and the consumer. And the third, the Network Approach, analyzes fraudulent events with an emphasis on the disposing conditions that made the fraud possible. These three typological systems, together with the matrix of descriptive dimensions devised to classify various parameters of consumer fraud offenses, create opportunities for characterizing these offenses in a number of different ways to meet different purposes.

Our intention had been to select but one typological system at this point for use during the remainder of the study. We did not anticipate the development of alternatives which all referred to the fraudulent process, but which were not mutually exclusive. The three systems which were generated employ substantially different approaches and yield somewhat different outcomes. Furthermore, we see no compelling reason for choosing among them prior to the compilation of Phase II data. Slightly more effort will be required to sort and classify the individual cases to be collected during the next phase, but that information can then be used to help determine which approach is optimal for which purposes.

Additional cases will provide a better basis for judging the reliability and utility of each system, and its ability to generate new insights into how consumer fraud operates and how it might be controlled. It also may be that the depth of information available on Phase II cases may be insufficient to meet the needs of one or more of the systems. And, finally, all three systems deserve some further attention and refinement which will be possible only with the addition of new case material.

C. Defining Consumer Fraud

Although each of the three typologies is capable of categorizing offenses, none adequately distinguishes between fraud and nonfraud without reference to the outcome of the transaction. Any fraud--including even the most deliberate varieties--may not be identified as a fraud if the problem is corrected by the merchant in time. Theoretically, at least, this places the full burden on the consumer's willingness and ability to complain, a standard which clearly penalizes those very segments of the population which may be disproportionately victimized in the first place. One of our aims in refining the definition of consumer fraud has been to produce a standard which moves away from outcomes and toward the actions which constitute fraud.

The advantages of a data-based definition lie in its ability to reflect what consumers suffer rather than what experts believe. In this sense, the kinds of negligence on the part of a merchant which lead to consumer losses due to lack of competence or concern are as central to what is happening as those schemes which are painstakingly planned and executed. Once again, our data contain a very large proportion of cases where the merchant's act was far from subtle. And while we have to wait for Phase II findings to get some fix on distribution of cases along this dimension, this extreme clearly will be far from unrepresented.

But it is not a simple matter to create a definition which is both comprehensive and unambiguous. If we limit our terms to those which have been given definitive statutory meaning, then we almost certainly fail the test of comprehensiveness by leaving out frauds which utilize an action which is not well defined. But if we include such undefined terms as "unfair" then we introduce ambiguity which must be dealt with by someone else. We have not resolved this dilemma and will continue to tamper with the definition during the second phase.

VIII. PLANS FOR PHASE II

The goals of Phase II are: to develop quantitative profiles for each pattern of consumer fraud identified by the typological framework; to assess the status and applicability of existing legal sanctions to these patterns of fraud; to survey and assess the success of the strategies incorporated in the major intervention approaches; and to identify measurement techniques which might be used to monitor the domain of consumer fraud.

The preparation of profiles associated with each conceptual pattern of consumer fraud will require the collection and processing of approximately one thousand additional instances, which will again be solicited from a number of diverse sources. We have a list of candidate sources. While no final selection has been made, our experience in Phase I suggests that the office of the District Attorney in San Francisco, the Economic Crime Project in Denver, office of the Prosecuting Attorney in Seattle, and New York City's Department of Consumer Affairs should be given strong consideration. Phase II data collection will be far more efficient than the Phase I effort because of the more specific focus which is now possible.

For each of the principal patterns, the status of existing legal sanctions will be examined, using the NCLC Phase I report as the source of data. A trial of the procedure, using the principal sequences revealed by the transactional approach, was completed in Phase I. The procedure is perfectly straightforward and will not require a major effort in Phase II.

Two other activities will be accomplished in Phase II. The principal effort of NCLC will be to identify and assess the intervention strategies being used to combat consumer fraud. One sub-task will be a review of the criminal justice literature and related publications to obtain preliminary estimates of how well the various strategies are working, what obstacles have been encountered, and what suggestions have been made for improvement. A second sub-task will involve an in-depth study of six states, to examine in detail the history and current experience with the strategies being employed. The findings from these two sub-tasks will be supplemented by telephone interviews with specialists knowledgeable about a particular

approach. The final product will be a synthesis of the findings as a "state of the art" report.

The other Phase II activity will be an attempt to identify measurement techniques which might be used to monitor consumer fraud and to assess the impact of new intervention strategies. No adequate tool is currently available to determine trends, and we do not know the frequency of occurrence, cost to victims, or populations as targets of specific frauds. The need for a systematic way to identify trends is essential to most control strategies.

The practical application of data collected during the first two phases will occur in Phase III when intervention strategies will be designed. These strategies will aim at curtailing consumer fraud by attempting to disrupt the circumstances which allow the fraud to occur, thus preventing the fraudulent situation from happening. Types of strategies are expected to differ from one pattern of offense to another, depending on which stage in the fraudulent transaction will be most vulnerable to countermeasures. Intervention techniques may include methods of early detection, appropriate consumer education and more stringent enforcement.

For each strategy, an implementation procedure will be developed in terms of probable cost, practicality, and potential effectiveness. Where applicable, research recommendations and/or model legislation will be suggested.

APPENDIX A

ADVISORY PANEL

A. Advisory Panel

A panel of experts which represents a range of activities related to consumer fraud meets periodically, both to review project plans and accomplishments and to advise the project staff about priorities and directions. The composition of the panel reflects a mix of law enforcement agencies, consumer advocacy groups, divisions of government agencies created especially to handle consumer fraud activities, and organizations from the private sector involved in projects designed to combat white-collar crime. The following individuals agreed to serve on our panel:

*Mr. David Austern
ABA Committee on Economic Crime
Washington, D.C.

Mr. Dean Determan, Vice President
Council of Better Business Bureaus
Washington, D.C.

Ms. Barbara Gregg, Director
Office of Consumer Affairs
Montgomery County
Rockville, Maryland

Professor Arthur Leff
Yale Law School
New Haven, Connecticut

*Mr. Robert Leonard, Chairman
Economic Crime Project
National District Attorneys Association
Flint, Michigan

Mr. Edward Merlis, Chairman
Staff Counsel, Commerce, Science
and Technology Committee
U. S. Senate
Washington, D.C.

Mr. Frank Nemic, General Manager
Chief Inspector's Office
Fraud and Prohibited Mailings
Division
U. S. Postal Service
Washington, D.C.

Sgt. Fred Postel, Supervisor
Fraud Detail
Miami Police Department
Miami, Florida

Mr. Salvatore Sangiorgi
Assistant Regional Director
Federal Trade Commission
New York, N.Y.

*Ms. Patton Wheeler, Executive
Director
Committee on the Office of
Attorney General: NAAG
Raleigh, North Carolina

*Unable to attend the first two meetings.

Interested LEAA personnel are welcome to and have participated in the meetings held during Phase I. If appropriate, individuals knowledgeable in certain aspects of consumer fraud, such as intervention strategies, may be invited to attend the meeting when a specific topic is to be discussed.

The panel is scheduled to meet five times during this project; each meeting will occur at a terminal or intermediate point in the study to allow panel members to provide input on planned activities and to critique drafts of our products. Anticipated activities for the panel include the following:

Phase I	<u>Meeting</u>	<u>Activities</u>
	#1	Discuss definition and scope of consumer fraud; suggest appropriate data sources.
	#2	Review accomplishments; discuss strengths and weaknesses of suggested typologies; plan for Phase II.
Phase II	#3	Review the incident and impact data associated with each pattern of consumer fraud offense to determine where new or existing countermeasures will have the greatest potential; advise on priorities of countermeasures which deserve immediate attention; recommend implementation strategies and dissemination of Phase II data.
Phase III	#4 and #5	Benchtest the proposed countermeasures for practicality and cost effectiveness; assist in conversion of concepts for countermeasures into designs for practical action programs; help to identify the costs, implementation requirements, and potential side effects of each countermeasure.

The panel has met twice--in October, 1976 and April, 1977. As mentioned in Section IIB, the panel contributed to our pool of data sources by mentioning some specific sites which were potential reservoirs of consumer fraud cases, and also by suggesting some guidelines useful in collecting the cases.* During the second meeting, panel members offered ideas for modifications in the Phase II data collection effort and reviewed the three alternative typologies.

*Specific details about the panel's participation are described in Section IIB, Data Collection Procedures.

APPENDIX B

FREQUENCIES BY SUBCATEGORY BY AGENCY

		Frequency	Montgomery County, Md., Office of Consumer Affairs	American Association of Retired Persons	Attorney General, Phoenix	District Attorney, Sacramento	Governor's Office of Consumer Affairs, Albany	Call for Action	Miami Police Fraud/ Forgery Detail	Neighborhood Legal Services Program	Economic Crime Project	Federal Trade Commission	United States Postal Service	SUBTOTAL	PERCENT
INDUCEMENT	A	1	0	2	1	1	4	1	0	0	1	0	4	14	10.18
		2	0	1	2	0	1	1	0	0	0	0	1	6	
		3	0	4	0	2	1	0	0	0	0	0	1	8	
		4	0	3	0	0	0	0	0	0	0	0	0	3	
		5	1	0	0	0	1	1	0	0	0	0	0	13	
	Total													34	
	B	1	0	3	0	1	0	2	0	0	0	0	1	7	14.67
		2	0	2	0	0	0	0	0	0	0	0	0	2	
		3	1	0	1	0	1	1	0	2	5	4	0	15	
		4	0	0	0	0	2	3	0	0	3	0	0	8	
		5	0	0	1	1	0	5	0	3	1	1	1	13	
		6	1	0	0	0	0	0	0	0	0	1	0	2	
		7	0	0	0	0	0	0	0	0	1	0	1	2	
	Total													49	
	C	1	1	0	1	1	0	0	0	1	0	0	0	4	25.45
		2	0	2	0	1	2	2	4	2	4	1	1	19	
		3	7	1	4	4	7	7	0	2	3	4	14	53	
		4	0	0	0	0	0	0	0	1	0	1	0	2	
		5	0	0	0	0	0	0	0	1	0	4	0	5	
		6	0	0	0	0	0	0	0	0	0	0	0	2	
	Total													85	
	D	1	1	0	0	0	1	7	0	1	2	0	11	23	10.78
		2	1	0	0	0	1	0	0	0	0	0	1	3	
		3	0	0	0	1	0	1	1	0	2	0	4	10	
	Total													36	
	E	1	5	0	0	2	1	0	6	1	2	0	1	18	11.98
		2	0	0	0	0	0	0	0	0	0	1	1	2	
		3	1	1	1	0	6	0	0	1	9	0	0	10	
		4	0	0	0	0	0	2	2	0	0	0	0	4	
		5	0	0	0	0	0	0	0	0	0	0	0	0	
		6	2	0	1	1	0	1	0	0	1	0	0	6	
	Total													40	
	F	1	0	1	0	0	0	1	0	0	0	0	0	2	26.95
		2	0	0	1	10	1	7	1	5	3	11	1	40	
		3	1	1	5	0	3	1	0	5	0	0	0	16	
		4	1	0	0	0	0	2	0	0	0	0	0	3	
		5	10	0	5	2	5	5	0	0	2	0	0	29	
	Total													90	
	Total													334	

Frequencies by Subcategory by Agency

		Montgomery County, Md., Office of Consumer Affairs	American Association of Retired Persons	Attorney General, Phoenix	District Attorney, Sacramento	Governor's Office of Consumer Affairs, Albany	Call for Action	Miami Police Fraud/ Forgery Detail	Neighborhood Legal Services Program	Economic Crime Project	Federal Trade Commission	United States Postal Service	SUBTOTAL	PERCENT
OBLIGATION	A	1	8	0	4	2	2	6	7	2	2	3	38	41.91
		2	15	3	5	18	15	8	4	4	12	14	98	
		3	0	0	0	0	0	2	2	0	0	0	4	
	Subtotal												140	
	B		3	11	3	0	6	20	0	1	4	0	86	25.74
	Subtotal												86	
	C	1	4	2	8	2	2	7	1	14	3	11	54	
		2	1	5	1	5	10	3	0	4	8	1	41	
		3	2	0	2	0	4	4	0	0	1	0	13	
	Subtotal												108	
	TOTAL												334	
INTERMEDIATE ACTIVITIES	A	1	2	2	1	4	4	1	2	1	3	2	27	30.00
		2	1	0	5	1	5	1	0	5	3	3	15	
		3	0	4	0	0	0	4	0	0	0	0	11	
	Subtotal												63	
	B	1	2	0	3	0	1	0	1	1	0	0	9	52.86
		2	7	8	5	0	5	1	1	1	0	0	76	
		3	4	3	0	3	4	5	1	2	1	0	26	
	Subtotal												111	
	C	1	0	0	0	0	0	0	2	0	0	0	2	
		2	0	0	0	0	0	0	0	1	0	0	6	
		3	0	0	0	3	1	0	1	0	5	1	11	
	Subtotal												19	
	D	0	0	0	2	1	1	0	0	4	0	0	10	4.76
	Subtotal												10	
	E		3	0	1	2	1	0	0	0	0	0	7	3.33
	Subtotal												7	
	TOTAL												210	
OUTCOME	A	1	4	5	2	2	3	14	0	1	0	0	33	35.03
		2	8	0	0	1	2	5	4	0	2	0	24	
		3	0	1	1	0	2	2	0	0	0	0	8	
		4	1	0	0	0	0	0	0	0	0	0	13	
		5	1	0	0	0	0	12	0	0	0	0	7	
	Subtotal												116	
	B		5	1	6	4	6	5	0	10	5	5	49	14.67
	Subtotal												49	
	C	1	7	7	8	12	10	12	5	12	23	23	124	
		2	3	3	0	3	6	0	0	0	0	0	15	
		3	4	4	6	5	10	0	0	0	0	0	30	
	Subtotal												169	
	TOTAL												334	

APPENDIX C

SELECTED SAMPLE OF ABSTRACTS

Consumer:	Adult female	Agency:	Montgomery County Office of Consumer Affairs (OCA)
Address:	Eastern seaboard state		
Merchant:	TV repair business Rockville, Maryland	Case open:	4 months

Complaint. A TV repair service picked up my television on 3 March 1976 and returned it 8 April; the bill for repairs was \$200, which I paid. The set worked well for just a few days, then again needed repair work. The store picked up the set and repaired it within one week. Then the same thing happened -- the TV worked for a few days, then broke. The merchant took the set to the shop a third time, and it operated well just after it was returned, then malfunctioned. I phoned the store the next morning and discovered the company had moved. I want the television set repaired properly or a refund.

Investigation. OCA used the merchant's former address to trace an owner or manager of the shop. The investigator called the Property Assessment office to determine who owned the property on which the shop was located. One of the owners identified a principal in the radio and TV service so OCA wrote to the individual, described the grievance and requested a refund of \$200. A follow-up phone call was made about two weeks later, and the merchant agreed to pay for the repair at another shop and also obtain a guarantee for a stated period for the work. The merchant kept his word and the TV was repaired a fourth time, and it also broke for the fourth time. The TV made another trip to the repair shop.

Outcome. Three weeks after the fifth repair job, the consumer reported that the tv was fixed. She must have been satisfied because OCA closed the case.

Consumer: Adult Male

Agency: AG/EPD

Address: Southwestern State

Case open: Aug. 1976 - Jan. 1977
6 months

Merchant: Local new car dealer

Complaint: In August 1976, I paid \$6,500 for a 1976 Ford truck. The merchant told me the vehicle was new. The first day after my purchase I was stopped by an individual who informed me he had purchased the same van some weeks earlier. Just after he bought the vehicle, the man discovered a defective oil filter gasket which he replaced. He then returned the vehicle to the dealer and demanded a new van. According to my new friend, the car dealer put new rod bearings in the engine of the vehicle he returned and put the vehicle back on the lot. The next day I returned to the car dealer and requested a new vehicle. The owner of the company told me the vehicle had a good engine and he was not going to substitute vehicles everytime somebody "had a whim." The fact that the van was represented as new didn't have any effect on my request. After my conversation with the owner, a salesman told me that the vehicle had only a new rod bearing, not a new engine and that the vehicle would be back on the lot and probably sold to another customer for a higher price. I contacted an attorney.

Investigation: How the office conducted the investigation is unclear. The files contain the documents signed by the consumer at the auto dealer's. All the documents indicated that the consumer was purchasing a new automotive vehicle. The Attorney General succeeded in having an Assurance of Discontinuance issued against the merchant. This decree permits the merchant to disavow knowledge of a violation of the Arizona Consumer Fraud Act. The company had to agree that when soliciting sales of new motor vehicles it had to display a history of each vehicle. The notice should state information such as: if the vehicle's odometer exceeded 45 miles, if the company spent more than \$250 for repairs, if the repairs materially affect the functional operation of the vehicle, or if the vehicle has previously been sold to another customer and repossessed for whatever reason. All these conditions must be fully explained and disclosed to the potential new owner. The company agreed to pay the A.G. \$3,000 for attorney's fees and investigative costs.

Outcome: Nothing indicates what happened to the two victims. Any breach of the assurance within 6 years of the filing would constitute proof of a violation of the consumer fraud statute.

NOTE: The second complaint in this file comes from the first known owner of the vehicle who returned the van to the dealer and who informed owner #2, this complainant, of the van's history.

Consumer: Adult male

Agency: District Attorney
Sacramento County, Calif.

Address: Northern California

Merchant: An East Coast drug company
doing business nationally

Case open: 7 months

Complaint: (No consumer complaint was received by the D.A.'s office; instead, deceptive promotional practices were suspected by an investigator in the agency, who initiated an investigation. The account which follows is that of the investigator.)

I was concerned about package labeling used on a sleep-inducing drug commonly sold over-the-counter in drug stores and supermarkets. Specifically, among other things, the package read: "... Free, up to 49¢ extra retail value... extra tablets packed inside bottle...." I began to wonder about this representation, in terms of whether a savings of "... up to 49¢ ..." was in fact available to the local consumer. I suspected that the purchase of the promotional package would not provide such a substantial savings over the purchase of other sizes of the same product usually available to the consumer.

Investigation: In March 1975, samples of the product were purchased in 16 local retail outlets in several sizes (8, 16, 32, 72, and 124-tablet packages), as well as the promotional one containing 36 tablets. The purchases were intentionally made at those outlets in the local area which charged the highest prices for their products, under the assumption that a greater disparity between the normal 32-tablet size and the promotional 36-tablet size would exist in those stores. A breakdown of cost-per-unit was made for each purchase, and the result was a finding of average savings between purchase of the promotional size versus the size to which it would most probably be compared by a consumer (the 32-tablet size) of approximately 21¢ per package. Communication with the company revealed that the actual basis for their packaging claim was a comparison not only to the cost of its 8-tablet introductory package. (Specifically, because the promotional package had 4 extra tablets in it, as compared to the 32-tablet size, those extra tablets were claimed to be worth 49¢ because the 8-tablet package listed for twice that amount, or 98¢.) During the purchasing phase of the investigation, however, the 8-tablet size was not found to be commonly available, because it was available in only 5 of the 16 outlets shopped.

The merchant admitted the savings would not be as substantial if comparison was made with other package sizes of the product. Sales of the promotional 36-tablet size were stated by the company to be approximately 100,000 packages in an eight-month period in California, suggesting the promotion was found to be persuasive by a large number of consumers. Another aspect considered in the investigation was the size of the type used in the cited representation on the product label. The words "up to" were substantially smaller in size than were other words used, so that a quick glance by a potential consumer might falsely create the impression that the savings would be 49¢. Further investigation revealed similar deceptive labeling practices by the company, through the use of misleading language on promotional packages of a vitamin-mineral supplemental also sold by the company. Again, the consumer was led to believe he or she would gain substantial savings in a specified amount by purchasing the promotional package. A number of communications between the company and the D.A.'s office followed. The latter ultimately concluded that the practices in question were indeed misleading.

Outcome: In October 1975, a complaint, stipulation, and judgment were filed simultaneously, wherein the company agreed, relative to all its sales in California, to refrain from further promotional labeling of the sort found to be deceptive in the above investigation, and to employ only certain specified standards for making future price savings statements in that labeling. It further agreed to use a uniform and minimum print type size in all such labeling. Finally, the company agreed to pay approximately \$10,000 in civil penalties, plus \$1,000 in investigation costs, to the D.A.'s office.

Consumer: Adult female

Agency: District Attorney
Sacramento County, Calif.

Address: Northern Calif.

Case open: 6 months

Merchant: Independently operated
restaurant (one outlet)

Complaint: Yesterday I went to a restaurant to get a clam dinner that I saw advertised in the South Sacramento News. The ad boasts "one full gallon" of steamed clams, with clam chowder, salad, hot bread, butter, and rice, all for \$5.95. When the dinner came, it was very obviously not a full gallon's worth, and they didn't bring the rice until I made reference to the advertisement. Since I didn't get what was advertised, I thought your department would be the place to turn. This ad has been running for several months so there's no telling how many people may have been cheated like I was!

Investigation: The complaint was filed with the Sacramento County Department of Weights and Measures in March 1976. An inspector from that Department visited the restaurant and talked to the hostess, who stated that everything described in the ad was served to each customer. The cook then indicated that everything was served but the rice. The inspector reminded him that rice must be included, as it was stated in the ad. When asked, the cook weighed out three pounds of clams in the shell, to show how he measured the serving portion of clams for each dinner. Since the boss had been complaining about the amount of clams being sold, the cook was told to cut down on the amount in each serving. The inspector warned that a full gallon must be served or the ad must be changed. The cook said he would inform the boss, and also would serve rice. In April 1976, an investigator from the D.A.'s office and the weights and measures inspector patronized the merchant, purchasing two clam dinners per the advertised special. They received all items mentioned in the ad, and took the serving portion of clams with them. Official weighing showed both portions to be considerably less than one gallon each. The merchant was contacted by the D.A.'s office, and asked to substantiate the ad's claims. In May 1976 the D.A. filed a civil complaint against the merchant charging misrepresentation to the consumer, and unfair competition with other merchants because of such practice. It sought \$2500 civil penalties for each act of misrepresentation and for each act of unfair competition, as well as investigative costs.

NOTE: Approximately a month after the above complaint was filed, the editor

of the newspaper running the ad wrote to the D.A.'s office apparently attempting to exonerate the paper from any blame in running the "false" advertisement.

Outcome: In August 1976, a stipulation and final judgment were signed, wherein the merchant was enjoined from the complained misrepresentations, required to notify its employees accordingly, and to pay civil penalties of \$1500.00 (which it did). No recovery or restitution was ordered for any individual consumer complainants. At a later date, the D.A.'s office paid \$225.00 to the Department of Weights and Measures for its investigative expenses.

Consumer:	Adult male	Agency:	Montgomery County Office of Consumer Affairs (OCA)
Address:	Eastern seaboard state		
Merchant:	Mail order	Case	
	Brooklyn, New York	Open:	3 months

Complaint. In mid-January 1976, I ordered a \$3 book from a distributor, which was not delivered by the mailperson because I was not at home to receive the package. I attempted to pick up the book at the post office, but the merchandise had already been returned to the sender. I wrote to the distributors and asked them to return the book, but no response. A second plea (late March 1976) was accompanied by a check for another \$3 to defray additional costs of the return; the check was cashed but the book never arrived. Two weeks later, I mailed a third letter to explain the situation and also to order another book (\$7.95); I enclosed a check for \$9.95 (\$2 handling). The check was cashed; again, no merchandise. My fourth letter, sent registered mail, was addressed to the manager; the receipt shows that the letter was received 30 April. It's early May and I have heard nothing from the company. I am interested in receiving either the merchandise or a refund.

Investigation. In early June, the consumer received a letter from the company, sent four days after OCA wrote to the merchant stating the complaint. The handwritten letter from the company notified the consumer that the company was unable to locate the original order and requested that the consumer document the order. The consumer complied immediately; the distributor did not. At the end of July, the OCA investigator notified the merchant that no reply had been received; a copy of the letter was sent to the U.S. Postal Service.

Outcome. August 5, the distributor informed OCA that the merchandise had been forwarded to the consumer. On 18 August, the consumer verified that he had received his order. Case closed.

Consumer: Adult male

Agency: Call for Action (KFWB)

Address: Florida

Case open: January 1975 - ?

Merchant: Mail order merchandise

Complaint: About a month ago I ordered zoological specimens from the merchant, which I paid for with a \$28.35 money order; it has been cashed. I have not received my specimens and would like a refund.

Investigation: None reported. However, a follow-up call made by CFA six months later revealed that the consumer had never heard from the company.

Outcome: It appears that the consumer never received his specimens or a refund.

Consumer: Adults

Agency: Call for Action (WJR)

Address: Michigan

Case open: March 1976 - January 1977 --
10 monthsMerchant: Mail-order coins
South Carolina

Complaint: In July 1975, I ordered six Bicentennial gold plated dollars and included a \$22 check with my order. Shortly thereafter, I received an acknowledgement which stated that I should allow several months for the order to be filled. A brochure offering a package of six Bicentennial gold-plated half dollars and six Bicentennial gold-plated quarters for \$20 more was sent with the acknowledgement. I have never received any coins, but in February 1976 I did receive two letters and a copy of a court order from an attorney stating that he has been appointed receiver for the company. The coin company does not have the funds to fill their orders, and if I purchase a set of silver-plated Bicentennial coins for \$33, I will receive the gold coins, but if I do not purchase more coins, I will not receive any coins! The receiver promised a money-back guarantee. I don't want to invest any more money.

Investigation: Within a few weeks in March 1976, CFA received four complaints about this problem which were all handled in the same way. The local consumer agency was asked to send complaint forms to the consumers. The consumers were asked to send copies of their documentation to CFA. CFA sent each complainant a copy of a newspaper article regarding the case and receivership plan. The complainants were informed by the Consumer Fraud Agency that the plan was legitimate. In April, about one month after receiving the initial complaint, CFA contacted the judge who had issued the court order and asked the reasons for the order, how the profits from the receiver's plan would be distributed, and could the judge order the profits to be used to honor the original orders. There is no record of a response from the judge.

Outcome: The consumers did not order the silver-plated coins and did not receive the gold coins or a refund. The receiver's plan failed, leaving a backlog of \$100,000 in orders. Two of the principals in the coin company were found guilty of 18 counts of mail fraud in December 1976 and are awaiting sentence. For the consumers to have any chance of receiving a refund, they must send a documented complaint to the USPS.

Consumer: Adult male Agency: USPS
Address: Midwest state Case open: April - May 1976
Merchant: Mail order business

Complaint: Four years ago I responded to an advertisement for unusual plants in a national magazine. I mailed a prepaid order for \$26 worth of plants but only a few of the ordered plants arrived. And they arrived 99% dead. Although the merchant promised to replace them and send the remainder of the order, his promises and excuses have gone on and on for the past four years and I'm still holding the bag! Two years ago I told the merchant I wanted a refund (\$20.10) for the balance of my order which was never received. I threatened to report the non-delivery of merchandise to the postal authorities and this seemed to scare him. He still hasn't sent anything. And to make matters even worse, this man is still advertising in national publications. If this isn't mail fraud what does one call it???

Investigation: Complaint had been initially filed on April 12, 1976 with "Action Line," who turned it over to USPS. When USPS received the complaint, it sent a letter to the merchant and the consumer on May 5, 1976.

Outcome: On June 15, 1976 the merchant forwarded a teller's check for \$19.10 to the consumer.

Note: This was one of three complaints sent to the USPS charging the merchant with unfilled orders and exceedingly slow service. There was no record of judicial action taken against the merchant.

Consumer:	Adult female	Agency:	USPS
Address:	Southwestern state	Case open:	Nov. 1976
Merchant:	Mail order business		

Complaint: I sent a \$5.50 check on September 9, 1976 in response to a magazine advertisement for a Unitology forecast. (Unitology forecast appears to resemble an astrological chart projecting an individual's horoscope for one year). I had been receiving a unitology forecast every year for five years and all but one other exchange was satisfactory. In this case the check has been cashed but I haven't received the merchandise. I wrote a second letter to ask about the delay, but I heard nothing from the company or the woman who runs it. I filed my complaint with the postmaster general in November 1976.

Investigation: The USPS followed their usual procedures of investigation and an inquiry letter was mailed to the merchant on November 17, 1976. They received a response dated November 19, 1976, from the merchant's publishing representatives stating that the merchandise had been forwarded a few days prior to the inquiry.

Outcome: It appears that the case was closed upon receipt of the November 19 letter, but there is nothing in the file to indicate that consumer actually received the merchandise.

Consumer: Adult male
Address: Southern state
Merchant: Discount purchasing

Agency: USPS
Case open: Aug. 1971-Dec. 1975

Complaint. In late August 1971 I contacted the representative of a discount company, who had appeared at our district meeting of Georgia Association of Educators (GAE), to order some of the merchandise his organization was able to obtain at a tremendous discount, only available to GAE! I ordered a stereo record and tape player, AM/FM radio, and turntable. I mailed my personal check for \$267.45 to the representative. When no acknowledgment of my order had arrived after two weeks I called the company. Again, through numerous delays and stalls over a 7-month period, I received no merchandise. Finally, in February of 1972 I again attempted to call and found there was no phone listing. Now I want my money back. I am really looking forward to seeing my professional organization in action and watching the result of dues being used in pursuit of justification that I have paid for 14 years. I do trust that something will be done so that we as teachers have some sort of protection from such an error as could be made by securing a company like this one by our professional organization (GAE).

Investigation. Numerous complaints similar to the one above were received by GAE and turned over to the Postal Inspector in February 1972, after GAE's attorneys tried unsuccessfully to obtain refunds from the merchant. The merchant had left Georgia around mid-February 1972, but was finally located and interviewed by a Postal Inspector in Redwood City, California, in December 1972. The merchant stated he had filled all orders received by him through January 1972. Shortly after the interview with the Postal Inspector, the merchant moved from Redwood City, leaving no forwarding address. Officials of the bank purported to be holding the company account reported no open account in that name. In total, 14 GAE members had lost \$1,435.69 in prepaid orders.

Outcome. In June 1972 an indictment was returned by a Fulton County, Georgia Grand Jury charging the merchant and his wife on two felony counts of theft by taking. The complainant, GAE, decided not to incur the cost of bringing the violator back to Georgia. Meanwhile, GAE made full restitution to its members.

This case was presented by the Postal Inspector on April 5, 1974, to the U.S. Attorney for the Northern District of Georgia. In May 1975, the merchant was indicted by a Federal Grand Jury in Atlanta, charged with using the mails to defraud. In December 1975, the merchant was placed on probation for two years, during which time his sentence required that he make restitution in the amount of \$1,435.69.

Consumer: Adult male

Agency: OCA, Atlanta, Georgia

Address: Southeastern state

Case open: Jan. 77- ?

Merchant: Mail order specialized furniture firm

Complaint: Consumer wrote on 27 Jan. 1977 complaining that he made a purchase through the mail but received neither the merchandise nor his money back (in letter states he is disabled veteran, living off Social Security and disability income, so the loss is considerable to him). The letter indicates in Aug. 1975, consumer ordered an advertised item "from this firm, with payment, using a coupon from a magazine." (The item is a home office storage unit 32x45x21 in furniture wood.) A confirmation was received promptly, acknowledging payment of \$420. (Sale price of \$395, reduced from \$445, plus \$25 shipping.) Because of nondelivery, customer telephoned firm in September, in October, and in November, and was told because of so many orders received, they would be slow in supplying customers.

Investigation: In December 75, a letter was received indicating firm was in bankruptcy, and their inability to complete orders. The letter indicates communications should be addressed to an accounting firm. Consumer wrote this accounting firm for a refund on 22 December and, receiving no reply, wrote them again on 2 February 76. Consumer also notes the firm continued to advertise in magazines through February. On Feb. 4, a form letter was received from the firm stating the firm was out of business and that the accounting firm has no affiliation with it except as an address for communications to the firm. Consumer wrote the firm at that address on 5 Feb. requesting a refund, but received no response.

In August 76 consumer noticed an ad for an identical item of merchandise with a very similar name from a company in California.

Outcome: No action, firm is in bankruptcy in N.Y.

Consumer: Adult male
Address: eastern shore
AARP
Member: Yes

Agency: American Association
of Retired Persons
Merchant: Vacation - land sales
corporation
Case open: 5-25-76 to present
(open case)

Complaint: Last September (1975) I filled out a card that was placed on a table in a restaurant where we were eating, thereby submitting my entry to a sweepstakes for a Florida vacation. Several weeks later I received a notice that, although I have not won a free Florida vacation, I had won an opportunity to spend 5 days and 4 nights in any of several Florida cities. The catch was that I had to pay \$18 to the resort organization, but this sounded like a small sum of money for such a trip so I mailed the \$18. Very quickly after that I received a certificate which stated that my wife and I were members of an association. Later on (February 1976) when my wife and I tried to use the certificate, we read the fine print on the back of it and observed that it was valid only for people between the ages of 21 and 65. Both my wife and I are over 65. Because we were unable to use the certificate we wrote to the resort hotel association asking for a refund of our money. I sent three letters of request to the organization and they never replied. Is there something you can do for other AARP members to prevent them from being caught in the same racket? I might add, that in the original solicitation, there was no mention of an age restriction for this Florida vacation.

Investigation: AARP received the complaint in May 1976. In July, the NCAC wrote to the merchant describing the history of the situation and noting the complaint. NCAC directed attention to item #1 on the certificate which stated that it was valid for people only between the ages of 21 and 65. The merchant was asked to refund the \$18 because the consumer received no service in the 10 months which had passed. If the merchant needed any additional information to resolve the matter, NCAC volunteered to collect it. NCAC's letter was returned within a few days; the P.O. Box was closed to the address on the envelope. On 6 August 1976 NCAC requested the Postal Inspector in Atlanta to consider instituting a mail fraud investigation against the merchant. The letter also referred to an article in Consumer Reports, July 1976, that described a similar suit brought against the resort hotel association by the Pa. Bureau of Consumer Protection. The result of that suit was a disposition

forcing the company to agree to discontinue objectionable practices. By the end of November, NCAC had not received a reply from the Postal Inspector in Atlanta, and mailed duplicate copies of all documentation to him. They await a reply.

Outcome: The case is still open and the ball is now in the court of the Atlanta, Georgia, Postal Inspector.

Consumer: Adult male
Address: Eastern seaboard state
Merchant: House painter

Agency: Montgomery County Office of
Consumer Affairs (OCA)
Case Open: 3.5 Months

Complaint. In April 1976, I signed an agreement with a decorator, pursuant to which he was to paint both the exterior and interior of my house, at a total cost of \$1200.00. Of that amount, \$500.00 was to pay for painting the exterior, and \$700.00 the interior. Under the agreed terms, I was to pay 1/3 of the total (\$400.00) down, and the remainder (\$800.00) upon completion. Instead, I voluntarily paid \$500.00 down, \$100.00 more than agreed, although the decorator insisted I pay \$600.00. He then stopped painting the outside of my house, which had already been started. The interior had never been started at all. I subsequently telephoned the decorator on 5 occasions, on each of which he promised to complete the job. To date, he has failed to do so. I seek satisfactory completion of the exterior of my house (only) because he damaged my shrubbery or, in the alternative, compensation for the cost of paying someone else to finish the job he began.

Investigation. In response to the OCA's initial communication to the merchant, the latter claimed that the work already completed was worth the \$500.00 paid, and that the consumer's own fussiness prevented proper completion of the exterior, and that the interior was never started due to the illness of the consumer's wife plus an impression that nonpayment would follow the completion of further work. A letter was then sent to the merchant advising him that a conference would be scheduled on the matter, which would include exploration of a possible violation of Chapter 11 of the Montgomery County Code. That conference took place at the home of the consumer in early August, at which time the merchant agreed to re-paint the exterior.

Outcome. Within a short time, the merchant re-painted the exterior of the house, at his own expense. Presumably, the job was completed at that time. The OCA file was closed shortly thereafter. Informative literature and a license application were also mailed to the decorator to assist him in obtaining a home improvement license.

Consumers: Husband and wife
Address: Southwestern State
Merchant: Development corporation

Agency: AG/EPD
Case open: one year
March 1975 - March 1976

Complaint: My husband and I signed a \$30,000 purchase contract for a condominium unit in May after reviewing sales brochures and visiting the site where the condominium building would be constructed. Three months later we received a call from the development company informing us that our unit was complete and requesting us to sign the final papers (identity unknown) and return them by mail. We decided to check the completion and immediately realized that the building was nowhere near ready for occupancy. We informed the company that drainage problems surrounding the building were not corrected, the roof to the building leaked, the pool wall was too short to meet specification, the landscaping was not finished, etc. We know several other people who will file similar complaints, listing even more deficiencies in the project. All of us refuse to pay for something we were supposed to receive but obviously will not. It sounds like fraud when a builder informs a buyer that a residential unit is complete when it obviously was not and then releases the contractor from financial obligation and responsibility for completing the job.

Investigation: The investigation revealed additional allegations in 26 complaints such as improper grading of the development resulting in flooding, possible increase in homeowner association fee above rate indicated in current sales brochure, and laundry facilities not included as indicated in sales agreement. The inspector attempted to verify complainants' allegations of deception and false promises by the developer. Approximately 60 homeowners were interviewed; the principals of the development corporation were as well.

Outcome: An Assurance of Discontinuance was signed by the company in February 1976. The company paid the A.G. \$8,500 in lieu of civil penalties and for costs incurred in the investigation. Violation within six years constitutes prima facie proof of a violation. Nothing gained for the victims. The lawsuit against individuals dropped and maintained against corporation for 6 years. Some money given by the company to homeowners association in lieu of restitution.

Consumer: Adult female

Agency: Call for Action (WERE)

Address: Ohio

Case open: ?

Merchant: Furniture store
Ohio

Complaint: Approximately eight months ago I purchased an electric clock that was on sale for \$30 because the store was relocating. I was told the clock was guaranteed for one year and if I had any problems to contact the new store. After three days the clock stopped running. I called the new store and explained what had happened. I was asked to wait for a call back because the clerk who sold all the clocks was in the hospital. I never heard from anyone. I made repeated calls and was always told that no one had spoken to the clerk yet. Finally, I talked to someone who told me that the clerk was no longer employed by the store. She said that the manager instructed her to have me mail the clock to them so it could be returned to the manufacturer for repair or placement.

At Christmas I packed up the clock and sent it to the store; six months later and still no clock. I called to check on it about two weeks ago and again was told I would be contacted. Three days later the manager told me that they couldn't do anything about the clock because I had bought it on sale. When I reminded him about the guarantee, he said he was not responsible for what the clerk promised me. I informed him that it was the new store which had told me to mail in the clock and it would be taken care of. He just laughed. I am very upset; my clock is probably at that store.

Investigation: None reported.

Outcome: None reported.

Consumer: Adult female

Agency: Montgomery County Office
of Consumer Affairs (OCA)

Address: Eastern seaboard state

Case Open: 2 months

Merchant: Telephone sales

Complaint. A representative from a sales company called my home and offered me an opportunity to purchase Electrolux vacuum bags before a planned price increase became effective. Since I believed these were bags made by the Electrolux Company, and that the call was from Electrolux (he knew what brand of vacuum cleaner I had), I ordered a package of 42 bags at 29¢ each. When they were delivered to my home, I discovered immediately they were not manufactured by Electrolux. I phoned Electrolux (I had confused the sales company with Consolidated Foods, the parent company of Electrolux) and learned they planned no price increase on the vacuum bags. They also packaged their bags in 36-unit lots at 25¢ a bag. Electrolux informed me they had received other complaints, similar to mine, about the sales company; we discussed their tactics. I discovered that in one situation, they charged more to clean a vacuum cleaner hose than Electrolux charges for a new one. When I complained to the sales company, they refunded my money when I returned the bags. Despite this action, the apparent deceptive sales practices used by this company disturb me, and I would like these practices investigated, and if possible, corrected.

Investigation. This case differs from others because the consumer received redress for her complaint without OCA as a liaison. She was anxious to eliminate the sales approaches which misrepresented the products and services offered by the company. OCA requested a copy of the merchant's telephone presentations to customers, plus a meeting. The merchant admitted that consumers learned that the company was not a warranty dealer of Electrolux only if they asked. The investigator informed the merchant that the sales presentation could be misconstrued by consumers and that the practice necessitated further inquiry. The inquiry focused on "correct business practices" such as proper disclosure. Soon thereafter, OCA observed phone calls made by six employees of the sales company, and interviewed a delivery man and a repair man. Following this, the investigator spoke to the merchant and explained legal statutes involving misrepresentation of products or services.

Outcome. The merchant agreed to change the sales pitch and provide a copy of the new version to OCA for review. The consumer was informed of the arrangement.

Consumer: Adult male

Agency: Montgomery County Office
of Consumer Affairs (OCA)

Address: Eastern seaboard state

Case open: 4 months

Merchant: Electronic sales

Complaint: A merchant ran an advertisement for an "FM Radio Converter," regularly priced at \$39.95, now on sale for \$17.77. The ad further states that only limited quantities of this item are available. I purchased the converter at the advertised sale price, happy to be one of the lucky customers who bought the converter before the supply was exhausted. Two months after my purchase I am chagrined to note that the merchant is still running the same ad. Apparently the "limited quantities" of converters are really "unlimited quantities." I believe an investigation is needed to determine whether this is false advertising, and then appropriate action taken.

Investigation: The consumer supplied newspaper advertisements to support his allegation; these advertisements appear regularly over a two month period. A written complaint was mailed to the merchant stating OCA's two concerns--the continued use of "limited quantities" on a prolonged ad series and whether \$39.95 is the true regular selling price. OCA requested the merchant to supply: 1) proof that a substantial number of FM converter sales have been made within the last six months at \$39.95 and 2) an inventory of the total number of FM converters in stock during the last three months plus a chronological list of the sale of those items. The merchant referred the request to his lawyer, and approximately six weeks elapsed before the lawyer and his client met with OCA.

Outcome: The merchant agreed to discontinue using the term "limited quantities" in advertising. The consumer was notified by OCA in writing of this resolution.

Consumer: Adult

Agency: OCA, Atlanta, Georgia

Address: Southeastern state

Case open: Oct. 76 - still open

Merchant: An implement dealer
and
a firm of liquidators & auctioneers

Complaint: On 27 July 76 purchased a Hough Payloader Model H-H at auction in Ft. Valley, Georgia, following ad in Macon newspaper 25 July. Advertised as "HH Hough Diesel w/new 6 cyl. Hercules motor, 4-wheel drive, 2-1/2 yard." Paid \$2500.00 for it. After getting it home, I tried it but the motor locked after 20 minutes. Two mechanics have looked at it. They say it is not a new motor and will require a major overhaul at cost of about \$1,000. Also the oil pressure gauge was tampered with to show normal pressure when it actually was low, so engine will lock if operated.

Tried for four months to get the implement dealer to make an adjustment without results, so wrote this letter.

Investigation: Letter to auctioneers was replied to by their attorney, who said the auctioneer always announces that there is opportunity to inspect any intended purchase, and that only title to machinery, equipment or land is guaranteed.

Outcome: Further investigation included obtaining the sales receipt, on which was written "lot 176--Hough Payloader--2500---seller's son guarantees it is in working order" and a stamped "SOLD AS IS." OCA wrote the seller on 3 Nov. 76 regarding his side. (No reply in file, no further information.)

Consumer: Adult female

Agency: OCA, Atlanta, Georgia

Address: Southeastern state

Case open: 1974-1976

Merchant: Housewares sales

Complaint: An ad for "Salad Master Kitchenware" appeared in my local paper. Several characteristics describing the benefits of the cookware were highlighted--waterless, greaseless, most modern, scientific, healthful, time-saving, and money-saving. According to the ad, customers would receive a "set" that normally retails at \$379.95 for only \$89.95. I visited the showroom to purchase a set, but the salesman tried to talk me into switching "his brand" of cookware rather than the advertised set. He displayed a deteriorated and abused set of cookware as an example of what the advertised set would look like after normal use.

The attempt to sell me a much more expensive set of cookware for \$289 angered me so I refused to buy anything. The next day I called the store to inquire about the advertised price and the manager informed me that the set I wanted actually sold for \$499 and it was a mistake to think it would cost only \$89.95. This sounded fishy to me, especially when the manager also tried to convince me about the merit of the "local brand" of cookware compared to the advertised brand (nationally known). I was even more suspicious of this operation when the manager tried to tell me that the advertised goods sometimes caused cancer and that its use was banned by the federal government in all federally funded institutions. It sounded like intentional misrepresentations designed to scare me into purchasing "their" product. Other people must have contacted these merchants; I wonder how many were duped.

Investigation: The nature and extent of the investigation is unclear from the documents in the files; 10 complaints were registered. The scheme, however, was not a simple "bait and switch" because several suits were brought against the merchant by cookware companies whose product was sold only through their own sales organizations, often by home demonstrations only. The merchant advertised "cookware closeouts" and implied that certain brands of cookware (manufactured by these companies) were available through him at considerable discounts. In fact, the cookware he advertised should not have been in his possession by any legitimate means. The ad was designed to encourage customers

into the store, then try to sell the merchant's brand of cookware or other brands sold by them.

The merchant also used several business names in several locations.

Outcome: No documentation about restitution to individuals is mentioned. Several complaints issued by numerous cookware companies through the Superior Court of Georgia identify the fraudulent business practices of the merchant. The complaints include: 1) false or misleading statements about the reasons for price reductions; 2) advertising cookware substantially below the home demonstration prices to cause purchasers of the cookware to cease making payments under their agreed upon installment sales contracts or to rescind sales made to them; 3) implying that the merchant was an authorized distributor of a specific cookware; and 4) falsely representing low prices as a result of a closeout.

In April 1976, the merchant signed an assurance of voluntary compliance issued by the Superior Court.

APPENDIX D

CONSUMER FRAUD DEFINITIONS

1. "Consumer fraud"

- a. A transaction which includes soliciting funds for the purchase or use of consumer goods, services, or credit in which the supplier engages in deceit, misleading statements or conduct, an inability to perform, or the misrepresentation or nondisclosure of information required by law or needed by a consumer to understand the merits or conditions of the transaction.¹
- b. Lying or not telling the complete truth in regard to the sale of merchandise.²
- c. A crime committed by non-physical means in a transaction against a consumer.³

2. "Unfair and deceptive practice"

Any act or practice which is not fair to the consumer, or is not honest when taken as a whole, or is deceptive (even unintentionally), or has a tendency to mislead the consumer...⁴

3. "Fraud"

- a. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right...⁵
- b. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury...⁶
- c. All multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.⁷
- d. All acts, omissions, or concealments by which one person obtains an advantage against conscience over another, or which equity or public policy forbids as being to another's prejudice, as acts in violation of trust and confidence...⁸
- e. A false pretense...made knowingly or without belief in its truth, or recklessly, careless whether it be true or false.⁹

- f. All acts, omissions, and concealments involving a breach of legal or equitable duty and resulting in damage to another, or the taking of undue or unconscientious advantage of another.¹⁰
 - g. Anything which is calculated to deceive,...acts or words which amount to a suppression of the truth, or mere silence.¹¹
 - h. Deceitful practices in depriving or endeavoring to deprive another of his known right by means of some artful device or plan contrary to the plain rules of common honesty.¹²
 - i. The unlawful appropriation of another's property by design.¹³
 - j. Making one state of things appear to a person with whom dealings are had to be the true state of things, while acting on the knowledge of a different state of things.¹⁴
4. "Deceit"
- Personal injuries committed contrary to good faith and honesty.¹⁵
5. "Economic crime"
- An illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, or to obtain business or personal advantage.¹⁶

FOOTNOTES

¹CONSUMER FRAUD: An Analysis of Impact and Opportunities for Intervention, Washington, D.C.: American Institutes for Research and National Consumer Law Center, Inc., April 1976, p. 9.

²Douglas R. Carlson, Assistant Attorney General, Iowa Department of Justice, March 22, 1977, at the National College of District Attorneys' Consumer Fraud Seminar, San Antonio, Texas.

³Dennis G. Green, Assistant District Attorney, Houston, Texas, March 20, 1977, at the National College of District Attorneys' Consumer Fraud Seminar, San Antonio, Texas.

⁴NCLC, Consumer Law Handbook, volume II (1972). "Unfair dealing" has also been labeled as "fraud." 37 Am. Jur. 2d, Fraud and Deceit §1, at 18.

⁵Black's Law Dictionary 788 (4th ed. 1951); Webster's New International Dictionary 1003 (2nd ed., unabridged, 1957).

⁶Id.

⁷Black's Law Dictionary, supra. See, also, 37 C.J.S., Fraud §1, at 204.

⁸Webster's New International Dictionary, supra, at 1003. This definition applies to equity law.

⁹Encyclopedia Britannica, Fraud, 814 (1965), citing Derry v. Peek, 14 A.C. 337 (1888), a landmark English case decision.

¹⁰37 C.J.S., supra. To similar effect is 37 Am. Jur. 2d, supra, at 19.

¹¹37 Am. Jur. 2d, supra, at 18.

¹²Id.

¹³Id.

¹⁴Id.

¹⁵4 Blackstone's Commentaries 165* (1st ed. 1803, reprinted 1969).

¹⁶P. Finn and A. Hoffman, Exemplary Projects--Prosecution of Economic Crime (March 1976), prepared for the National Institute of Law Enforcement and Criminal Justice, quoting NILECJ, The Nature, Impact and Prosecution of White Collar Crime (U.S. Government Printing Office, 1970).

APPENDIX E

AGENCY DESCRIPTIONS

American Association of Retired Persons
National Consumer Assistance Center
1909 K Street, N.W.
Washington, D.C.
(202)872-4700

Lawrence J. Kresky
Director: NCAC

Background. The American Association of Retired Persons (AARP) expanded its Consumer Program in 1973 to include a National Consumer Assistance Center (NCAC). This is the first nationwide program designed exclusively to assist retired persons in the marketplace; it contains an extensive data bank on the attitudes and problems of older consumers. The major purpose of the center is an attempt to seek redress for retired citizens who encounter consumer problems which they personally are unable to solve.

The Center is headed by Lawrence J. Kresky, a former NCAC volunteer who is now a full-time staff member. He previously directed the Organized Crime Division of USPS. He is assisted in the current efforts by four part-time volunteers, all retired citizens, who work one or two days a week to try to resolve the consumer complaints. The director estimates that the Center handles approximately 60-75 consumer complaints per week.

Procedures. When a written complaint reaches NCAC, the following steps are taken to try to reach a satisfactory outcome:

- Upon arrival at NCAC, the complaint is entered into a log and assigned a number;
- If the complaint cannot be handled immediately, an acknowledgment letter is mailed to the consumer;
- Most complaints are handled by the volunteers; difficult problems are handled personally by the Director;
- The complaints are reviewed; if all the appropriate documentation is not submitted with the complaint, a request for the necessary materials is mailed to the consumer.
- A typical first contact is made with the merchant by writing a letter stating the grievance, along with a request for additional information or action on the complaint;

- If NCAC has dealt previously with the merchant their experience determines whether or not to bypass contact with the merchant or to pursue another course.
- The most common course of action at NCAC, if the matter cannot be resolved, is to contact the regulatory agencies such as the FTC. Many of the complaints are referred to the USPS because the situations frequently involve use of the mails. Older citizens rely on mails and often respond to advertisements that necessitate submitting mail orders.
- If NCAC notices a trend of complaints against a specific merchant, it will assume the responsibility for notifying the proper authorities to alert them about the findings. For example, a firm selling used mobile homes in Florida included questionable provisions in the contract. Several complaints were registered about this firm so NCAC notified the Department of Motor Vehicles (who had jurisdiction over such sales) about the business practices of this merchant.

The director estimates that since its organization, NCAC has processed "thousands" of complaints, perhaps a "couple thousand." The files suggest that more often than not, the Center is unsuccessful at reaching a satisfactory conclusion to a complaint. The type of complaints handled by the Center seem to reflect victimization of interstate large-scale schemes. Elderly consumers are susceptible to "get-rich-quick" schemes, opportunities to "earn money at home," land sales, or "free" vacations. Often the involvement in the scheme is in response to an advertisement or the result of an unsolicited item such as "you have won. . ." By the time the complaint arrives at the Center, action to curtail fraudulent business practices is underway because an agency such as USPS already initiated an investigation. Often the FTC will hold a complaint received from NCAC and use it to build a case against a specific merchant (they do not service individuals). NCAC has no jurisdiction or enforcement to use as a lever. The agency receives complaints nationwide, but could probably be more successful on a one to one basis in a local area. Their chief role seems to be one of referral to another agency. Redress is seldom achieved for an individual complaint.

Call for Action
1785 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202)387-0500

Sandra Brown
Executive Director

Bernice Jay
Director/Intercity Network
New York City

Call for Action (CFA) was founded in 1963 as a non-profit, referral and action service affiliated with and supported by 49 broadcast organizations. It is staffed by 2,500 trained volunteers who, in 1976, responded to requests for assistance from 360,000 people. The broadcast stations provide CFA as a free public service. Each sponsoring broadcaster signs a Subscription Agreement with the National Call for Action which insures that CFA will be used only for non-commercial and non-political purposes. It also guarantees the broadcast organization exclusivity in the market. The volunteers use space and equipment provided by the broadcast station.

In 1969, CFA became a national organization. A 20-member Board of Directors advises the national office, whose major functions are to: serve as a clearinghouse for local CFAs by alerting them to special problem areas and supplying direction and impetus to unique programs; develop new CFA programs in additional cities; maintain a resource library with special reports and CFA news stories which are shared within the CFA network; and plan and produce an annual national educational conference for the volunteer leadership of all local CFAs.

The CFA service may differ slightly among the cities--by number of volunteers, type of help rendered, areas of specialization, number of requests acted upon, hours of service, etc. Typically, CFA lines are open from two or three hours per day, five days a week.¹ When an individual calls with a problem, a volunteer records all pertinent information and summarizes the complaint on an index card. The consumer is not required to submit a written complaint. The caller is referred to a place where

¹ Some stations now open CFA lines for a few hours one evening a week.

she/he can receive help. An enormous reference volume containing the names of all public and private agencies is used to properly channel a consumer toward constructive assistance in solving a problem. One of the most unique features of Call for Action is the "call back" contact made within two weeks after the CFA receives the initial call. Whenever a specific referral is made to a consumer during the first call, the CFA keeps the case in an active file. Monitoring the effects of the referral is accomplished by calling the consumer to check on the outcome of the consumer's efforts. If the client is satisfied, the case is closed. If not, CFA will intercede on behalf of the consumer and attempt to achieve redress when the consumer has been unsuccessful. Most investigations are handled by mail or phone; the consumer may be asked to provide evidence to support the allegation against a merchant. If a CFA volunteer contacts an agency, the clout associated with CFA often allows direct contact with top management and results in satisfactory redress. Volunteers are responsible for tasks other than answering the phones. When the CFA lines are closed, extra hours are devoted to maintaining records, updating the referral manual, pursuing efforts necessary for resolving consumer complaints, making client "call backs." Some cases may be referred to local law enforcement agencies.

When a CFA station receives a complaint whose source is located in another CFA city, the complaint is forwarded to the city where the merchant is headquartered. Cases that deal with issues outside the radius of the local station (50 miles) are referred to the Intercity Network in New York City.

The Intercity Network is a subsidiary of the national office which handles complaints outside the jurisdiction of any CFA city; the largest number of cases involve mail order grievances from many companies in the New York metropolitan area. The Network staffed by two full-time and three part-time people, handled 1534 cases in 1976. Of those, 76 were withdrawn by the consumer, 16 were declared invalid because there was no substantive complaint to pursue, and 49 are still open. Of the remaining 1403, 1244 received satisfactory redress -- either in refunds or merchandise. Law

enforcement authorities such as the District Attorney or the Attorney General received 177 of these cases. Most of the complaint resolution in the Network is handled by the Director who deals with the merchants on a one-to-one basis. She believes that the personal communication has been instrumental in closing the cases. Her assumption is that the merchant wants to project favorable public relations and keep the customers happy. Reputable companies respond quickly and positively; the "bad" companies do not. The persuasive technique she uses to encourage merchant cooperation is the "consumer beware spot." Circumstances of specific complaint are broadcast on the air in a 10-60 second spot in which details of the merchant's unsatisfactory response to the complaint are described.

Broadcast power appears to be the "muscle" behind CFA. It may make the difference between success and failure in solving an individual's problems and in creating public awareness of situations which call for community action. Data collected by CFA is frequently used by the station to call attention to specific abuses and community needs, asking for immediate response. CFA views itself as a local and national Early Warning System to disclose societal ills by bringing citizens' complaints, agency inefficiency, program inadequacy and new problems into the open.

District Attorney
Sacramento County
Fraud Division
Sacramento, California
(916) 446-0268

Mr. Gordon F. Bowley
Chief, Fraud Division

The Fraud Division was created within the Office of the District Attorney in 1969. It has grown from an original staff of three people to a current staff of thirteen that includes a Director, two attorneys, a senior criminal investigator, three criminal investigators, two inspectors and four clerical members. Support for the Division comes from the District Attorney's office and the Economic Crime Project, although funding from the Economic Crime Project has been relatively small compared to the County support. The maximum financial support by the Economic Crime Project was 16 percent in 1974-75; funding from that source during 1976-1977 amounted to five percent.¹

The objectives of the Division related to consumer fraud are to:²

1. Respond to consumer fraud complaints;
2. Act in an administrative capacity by conferring with companies who are suspected of violating California consumer protection laws;
3. Enforce the consumer protection laws of California by filing a civil action for an injunction and for civil penalties;
4. Follow and support or oppose, both at the State and County level, legislation which affects the consumer; and
5. Contact and speak to various groups, and the public in general, concerning consumer protection.

Emphasis in the Division is placed upon: civil versus criminal cases; chosen areas of economic crime (such as auto repair) rather than specific violations in numerous areas; and investigations initiated by the Division compared to investigations emerging from responses to consumer complaints.

¹Keith M. Miles. Site visit to the fraud division of the Sacramento district attorney's office. October 28-29, 1976. Arthur D. Little, Inc., Washington, D.C., p. 3. Despite the dollar amounts, the ECP is perceived as providing the opportunity to implement plans and procedures that resulted in substantive contributions to the Division's activities.

²Ibid., p. 8.

The activities are reflected in the summaries shown below:¹

I Complaint Handling Activity

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Inquiries or citizen contacts	2,970	4,064	2,475
Complaint forms distributed	828	1,133	1,311
Written complaints received	774	828	923
Complaints transferred	108	87	129
Complaints closed: No Action	45	36	125
Inquiries to companies	342	317	413
Inquiries closed	338	347	477
Restitution	\$357,000	\$48,884	\$51,602

II Investigation and Prosecution Activity

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Investigations opened	64	69	111
Investigations closed	34	63	86
Cases filed: Criminal	6	11	5
Cases filed: Civil	16	19	28
Dispositions: Criminal	2	5	8
Dispositions: Civil	3	18	21
Restitution awarded by judgment	-	-	\$227,050
Civil penalties awarded by judgment	\$34,750	\$156,431	\$175,619
Money received on prior fiscal years' judgment	\$63,047	\$ 19,291	\$ 425
Money received on current fiscal years' judgments	\$34,750	\$149,117	\$169,099
Money received from other sources	-	\$ 15,000	\$ 15,000
Total money received	\$97,798	\$184,027	\$184,524

¹Miles, Site visit, pp. 8-9.

California consumers are protected by two main statutes:¹ sections 17500 to 17538.7 of the Business and Professions Code attempt to protect the consumer from false advertising or misrepresentations made in connection with the sale of goods, services or real property. Businessmen are protected from unfair competition resulting from the fraudulent business practices of a competitor through Civil Code sections 3369 - 3370.1. These statutes permit the Division to use injunctive relief to prevent an offender from engaging in fraudulent business activities. Reducing the profit from the fraudulent offense is achieved through the imposition of civil penalties of up to \$2,500 for each misrepresentation. Civil penalties are designed in part to reduce the incentive for continued misconduct by taking away all or part the profit made during the transaction(s).

Routine complaint handling and referral are managed by one individual in this Division. Having received a written description of the complaint, the office contacts the alleged offender to hear the other version of the complaint. In this sense, the Division serves to mediate the dispute between the two parties. Documented patterns of fraudulent activity are investigated by the Division and may subsequently lead to consumer fraud prosecution. The Fraud Division has developed a growing expertise in anticipating frauds and, as a result, undertakes affirmative investigations rather than establishing cases based on responses to routine complaints, which are dealt with effectively by the person mentioned above. The staff is committed to the philosophy that reduction of fraudulent activity is more effectively accomplished through expertise in one "area" of activity, because it enables the investigators to concentrate on cleaning up one type of economic crime rather than treating numerous areas. This commitment is reflected in the number of cases initiated by the Division (45-50%) compared to the number of cases initiated through citizen complaints (10%). The remainder of the cases (40-45%) are open through the referrals from other regulatory agencies with whom the Division closely works.

¹Gordon F. Bowley.

²Law enforcement's role in consumer protection. Santa Clara Lawyer, 14, 1974, 555-567.

Prosecuting an offender has a twofold purpose--to most effectively prevent the fraudulent behavior from recurring and to provide the best remedy for the current situation. Achieving such an outcome often necessitates a choice between civil and criminal action. This Division has made a conscious decision to emphasize civil remedies because the rules of discovery, evidence, and proof are less severe and require less staff time to construct a case and the outcomes are more successful within the context of discontinuing fraudulent operations immediately and permanently (through injunctions), punishing offenders financially (through civil penalties and fines), and deterring and punishing corporate fraud where jail is not a serious deterrent. The Division believes that selecting civil prosecution is simply more efficient and effective than criminal prosecution.

The Division employs some procedural underpinnings to which they attribute a substantial portion of their success. Regulatory agencies and consumer groups are viewed as partners in combatting fraudulent activity so there is extensive and apparently very friendly cooperation between the Fraud Division and state/county agencies such as Weights and Measures, Food and Drug, etc. Another strategy practiced by the Division is a "team" approach between an investigator and an attorney assigned to a case. Investigators are advised by the attorney in an effort to avoid wasted time and investigator energy; cases are prepared jointly by the two individuals. A third procedure relied on by the Division is the use of publicity to reduce economic crime; all cases brought against economic criminals are either broadcast or published by the local media. Public awareness is also achieved through the regular appearance of two senior officials of the Division who address school and community groups, offer seminars for the business community and give lectures and slide shows. They are currently working with the Better Business Bureau's Ad Guidelines Committee to create operating principles on fair advertising.

The chief believes that the Division has achieved some notable results in its brief history. They have proven that whole areas of economic crime

such as odometer rollbacks have been cleaned up and that the development of staff expertise can combat crime. Data from his records indicate that some obvious frauds are no longer being committed because perpetrators are no longer confident in their ability to successfully execute fraudulent activities.

Economic Crime Project
National District Attorneys Association
1900 L Street, N.W.
Washington, D.C. 20036
(202)872-9500

Robert E. Leonard
Chairman
Economic Crime Committee

The Economic Crime Project is in its third year of operation. Funded by LEAA, this project is under the direction of the Economic Crime Committee of the National District Attorneys Association. The Committee is composed of elected district attorneys from the original fifteen offices who received the initial LEAA support to combat economic crime. The Economic Crime Project Center, located in Washington D. C., provides national coordination services for the entire project. The current staff reflects the expansion that has become necessary to serve the 41 participating field offices; the legal staff consists of four attorneys plus one full-time writer/researcher. The major activities administered by the Project Center include: providing technical assistance to the field offices, arranging quarterly conferences for field unit chiefs, coordinating investigations, publishing written materials, supplying input to the design of public awareness programs and assisting in the establishment of additional economic crime units.

The primary mission of an economic crime unit within a district attorney's office is to reduce, prevent and control economic crime offenses. Attorneys skilled in accounting, economics, statistics and marketing work closely with police investigators and paralegals who contribute other strengths to the development and prosecution of individual cases. The units are dedicated to the development of expertise to specifically pursue the investigations and prosecution of economic crime.

Data collected from among the 41 field offices during the second year of the Economic Crime Project demonstrate the breakdown of the project operations.¹

¹Second year report. Economic Crime Project. National District Attorneys Association. Washington, D.C. 1976. p. 6. Not all offices keep statistics.

More precise explanations of the terms used in Table I follow in the subsequent paragraphs:

Table I

<u>Category</u>	<u>Project Total</u>	<u>Number of offices reporting</u>	
		<u>(Full year)</u>	<u>(1/2 year or less)</u>
Inquiries	157,246	18	7
Complaints	43,610	23	6
Special Investigations	3,929	24	6
Restitution	8,623,881	24	5
Fines and Civil Penalties	1,452,475	24	5

Citizens who contact an office by telephone, mail, or in person with either a request for information or with a complaint about a situation in which they suspect fraudulent activity are initially recorded as "inquiries." When these inquiries are received by the Economic Crime Unit, they are analyzed prior to a request for action. Several options for action exist -- referral to a non-criminal agency, a law enforcement agency or entry in the unit's log because the event warrants further investigation. Complaints typically represent reports that an economic crime has occurred or is suspected of occurring; they also refer to mediation of citizen-initiated grievances. Special investigation implies an intent to prosecute by uncovering violations through collection of evidence that could be substantiated in a court of law. The numbers displayed in Table I reflect the totals supplied by the reporting units. Separation of the terms "complaints" and "special investigations" was not always clear. Restitution refers to monies returned to victims of fraudulent transactions--amounts which have been agreed upon with formal legal action. Local authorities receive civil penalties from defendants as a result of a criminal sentence or under a civil penalty statute.

Outcomes of cases pursued by the Project are shown below.²

Table II

<u>Category</u>	<u>Project Total</u>	<u>Number of offices reporting</u> <u>(Full year) (1/2 year or less)</u>	
FELONIES			
Filed	925	26	7
Guilty by Trial	226	26	7
Guilty by Plea	385	25	7
Acquittals	29	26	7
Dismissals	2	26	7
Pending	596	25	7
Other	3	26	7
MISDEMEANORS			
Filed	565	23	6
Guilty by Trial	71	23	6
Guilty by Plea	268	23	6
Acquittals	22	23	6
Dismissals	2	23	6
Pending	259	23	6
Other	1	23	6
CIVIL ACTIONS			
Filed	201	18	4
Judgment for Government	116	18	4
Judgment for Defendant	0	18	4
Settled	16	18	4
Pending	91	18	4

Several economic crimes have multi-jurisdictional effect; for example, business opportunities are often managed by national operations, and the investment required to prosecute such operations may overburden a local unit's resources. In addition to being hampered by limited resources for investigating the itinerant offender, geographical jurisdictions may also present some parameters. One technique employed by the Economic Crime Project to overcome such handicaps has been the establishment of a communication network among the offices in order to obtain records, locate witnesses and coordinate investigations. Warnings are also sent to other

²Op. cit. p. 8

offices when a particular scheme appears in a local jurisdiction. Personnel on the project feel that such a network has been enhanced by the periodic meetings of the unit chiefs which provide an opportunity not only to learn about the activities of other offices but to develop personal contacts with the individuals who manage them. Another strategy intended to bridge the multi-jurisdictional problem is the "coordinated investigation." Several jurisdictions coordinated their investigative efforts with the common goal of simultaneous prosecutions on a multi-jurisdictional basis.

The Economic Crime Project places some priority on educating the citizenry to recognize when they have been defrauded so that the losses will be minimized and the recurrence of the violation will be severely deterred. Because development of such public awareness is an integral element in combatting economic crime, the local prosecutor's offices are encouraged to take advantage of their proximity to their communities by gaining exposure for the activities of the unit and reporting the outcomes to the public through the mass media. Written materials, appearances on broadcast shows, lectures in educational institutions are all strategies employed by participating offices.

Federal Trade Commission
Pennsylvania Ave. at Sixth Street, N.W.
Washington, D.C. 20580
(202) 523-3625

Ed Colbert
Freedom of Information
Act Branch
(202) 523-3582

The Federal Trade Commission (FTC), an independent federal law enforcement agency given a sweeping congressional mandate to implement consumer protection and antitrust laws, possesses the broadest authority over business practices conferred upon any federal agency. The primary powers of the FTC derive from the Federal Trade Commission Act, which generically prohibits unfair and deceptive acts and practices affecting consumers. In addition, the FTC enforces a number of special statutes, which proscribe deceptive labeling, packaging, and advertising of many consumer commodities and forbid consumer deception in regard to written warranties, extension of credit, and billing practices.

The "Commission" is composed of five commissioners, who are appointed for seven-year staggered terms by the President. The full Commission must pass upon such matters as the agency's law enforcement policy, budget, and the activities of its bureaus.

Agency operations are conducted largely by three bureaus: 1) the Bureau of Consumer Protection, which investigates and litigates cases involving unfair and deceptive acts and practices, and develops and enforces the trade regulation rules and industry guides described below; 2) the Bureau of Competition, which administers various antitrust acts dealing with unfair methods of competition; and 3) the Bureau of Economics, which publishes studies of the economy, assists the other two bureaus in their enforcement functions, and conducts cost/benefit analyses of consumer protection rulemaking and enforcement proposals. Eleven regional offices, each supervised by a regional director, also carry out a substantial portion of the Commission's consumer protection law enforcement functions.

Investigations are often commenced by the FTC on its own initiative such as monitoring radio, television, and printed matter for deceptive advertisements. They are also undertaken in response to complaints alleging illegal practices from consumers, businesses, trade associations, other federal agencies, state and local agencies, consumer protection offices, and so forth. Each complaint is reviewed to determine whether it involves:

1) subject matter in or affecting interstate commerce; 2) an alleged violation of a law enforced by the FTC; and 3) a "significant" public interest. In instances where complaints are judged to preliminarily satisfy all three prerequisites an investigation is begun. Empowered to act in the public interest only, the FTC may not seek refunds or adjustments for individual complainants (distinguished from consumer redress, which is obtainable in a civil court action, as described below).

In the course of an investigation, the FTC may issue orders and subpoenas requiring persons to testify or produce documents or information. If necessary, the FTC may sue in U.S. district court to enforce its subpoenas. It may also hold investigational hearings. From the information gathered in the course of the investigation, the FTC again determines whether a violation has occurred and, if so, whether the public interest is sufficiently affected. A decision is made to: 1) close the matter; 2) informally settle the case by accepting a "promise" that the subject practice will be discontinued; or 3) issue a formal complaint with a proposed cease and desist order against the alleged offender.

The enforcement activities of the FTC may be generally characterized as either actions to foster voluntary compliance or formal litigation seeking mandatory orders against offending parties. The former, designed to prevent unfair or deceptive practices, include the issuance of trade regulation rules, industry guides, advisory opinions by the Commission concerning proposed courses of conduct, and informal advice at the staff level.

Substantive trade regulation rules promulgated by the Commission have the same force of law as the FTC Act itself; violations of either may ultimately result in the imposition of civil penalties and consumer redress. With its authority to issue such rules recently reaffirmed by Congress, the FTC regards trade regulation rules as the "basic building block" of its consumer protection program and is attempting to incorporate the unfair and deceptive acts and practices defined in litigation, advisory opinions, industry guides, and the like, into such regulations.

Industry guides interpret and clarify legal approaches to single-industry concerns or illegal processes such as bait advertising or deceptive pricing. These guides are intended primarily to guide industry into legal

conformity and educate and protect consumers. Not subject to enforcement as such, failure to comply with them may nonetheless result in corrective action under applicable statutory provisions.

As an alternative to formal litigation, complaints are often settled by an agreement containing a consent order, in which the business assures that the challenged practices will be corrected or discontinued, without actually admitting a violation of the law. The public is afforded the opportunity to comment on such proposed agreements, after which the Commission may issue an order in accordance with the terms of the agreement, withdraw its acceptance and set the matter for formal proceedings, or take other actions it deems appropriate. As consent orders have the same force and effect as adjudicative orders, violations of their terms may result in identical civil penalties.

Cases not settled by consent orders usually become the subject of formal administrative hearings, similar to court proceedings, held before FTC administrative law judges. Such decisions are appealable by either side to the five commissioners, who hear arguments and either issue a cease and desist order or dismiss some or all of the charges in question. Where the administrative law judge's decision is not appealed, it may be adopted, with or without modification, by the Commission. Final decisions of the Commission may be appealed to a U.S. Court of Appeals, which can affirm, modify, or set the order aside, and ultimately to the U.S. Supreme Court.

Violation of any FTC rule or final cease and desist order may result in the filing of a civil action in a U.S. District Court by the FTC for civil penalties of up to \$10,000 a day for each violation, plus redress for consumers harmed by the acts or practices in questions, including cancellation or reformation of contracts, refund of money or return of property, and payment of damages.

The FTC is also authorized by law to seek preliminary injunctions against violation of any law it enforces in a U.S. District Court. Such injunctions remain in effect until a final cease and desist order is issued or the complaint is dismissed (by the Commission) or set aside (by a reviewing court).

Compliance with cease and desist orders is assured through systematic and continuous review by the FTC staff. Parties subject to adjudicative or

consent orders are required to submit reports describing in detail the manner and form of compliance utilized, as often as the FTC requires. Failure to so report may result in the institution of civil penalty proceedings.

Fraud and Forgery Detail
Miami Police Department
Miami, Florida
(305) 579-6560

Sgt. Fred Postel

The Fraud and Forgery Detail is part of the Criminal Investigation Section (i.e., detective bureau) of the Miami Police Department. The unit is headed by Sgt. Fred Postel and is staffed by four investigators plus a secretary. None of the present investigators has more than three months experience in this unit; all previously were uniformed officers. One investigator has been ill and off duty for two months.

Records available from 1976 provide the following summary of cases handled during the year by this unit:

<u>Type of offense</u>	<u>Cases assigned</u>	<u>Cases cleared</u>
check forgery	766	224
credit card use	134	48
pigeon drop/flim-flam	164	11
bogus bills (counterfeit)	65	4
pickpocket	142	2
travelers checks and money orders	30	7
miscellaneous (including consumer fraud)	<u>51</u>	<u>7</u>
	1,352	303

Pickpocket offenses are included in this unit's responsibilities because the major consequence is unauthorized credit card use. Two of the four investigators are assigned exclusively to check cases and the other two handle most of the rest. The sergeant takes some cases. The dollar value of check cases in 1976 was approximately \$120,000 and of all other cases approximately \$240,000.

A case originates with a telephone call to the police department (or, occasionally a personal visit to a station). A uniformed officer is dispatched to interview the complainant and complete a "field report"--briefly describing the incident, giving the identity of the victim, and describing the offender if possible. These reports are collected at the station and forwarded daily to police headquarters where, as appropriate, they are assigned to the proper criminal investigation detail.

CONTINUED

2 OF 3

Fraud and Forgery are assigned an average of roughly one and a half cases per working day. After reviewing the field report, the investigator contacts the victim, by telephone if possible or by a personal visit. During this contact, the investigator attempts to verify the information contained in the complaint and add to it, to get the victim to agree to come to police headquarters to look at pictures of possible suspects, and to consent to testify in court if prosecution results. Many cases are dropped at this point--occasionally because a victim cannot be located (not unusual in flim-flam cases), sometimes because the victim is unwilling to review pictures, and often because the victim is not willing to testify in court (because they are not residents in the area or they are unwilling to appear).

For check and other forgery cases, the investigator must obtain the physical evidence from the victim or bank, and obtain evidence that the check was paid and to whom. For fraud cases, there usually is no physical evidence and the victim's testimony is essential to a conviction. Without it, the case cannot be prosecuted.

Elderly persons, most commonly the victims of consumer-type frauds in the Miami area, typically are reluctant to agree to appear in court. The Fraud and Forgery detail does not urge their appearance as a matter of policy. Its investigators feel elderly victims are very easily rattled as witnesses and that even a less competent defense attorney can undo their testimony.

Many cases also are dropped (or held in suspension) because the offender cannot be identified. It is believed, however, that most fraud offenders tend to be repeaters. It sometimes is possible to assemble information from several offenses over a period of time and determine the identity of the suspect this way. Unless there is a satisfactory identification, a case is suspended after a week or ten days.

According to members of the detail, the only way the police can be more effective in dealing with consumer fraud is through public awareness. "Without a victim there is no crime--get rid of the victims, get rid of the crime." Most frauds seem to start with golden opportunities, so it is best to take time in considering a "good deal." Enforcement is difficult because of embarrassment, especially among the elderly (often it is a relative or neighbor who actually calls the police). And convictions are difficult because it is necessary to prove intent, and about the only way to do this is through course of conduct.

Miami also has a Consumer Protection Division serving Dade County under the County Manager's Office. The agency has no field investigators. It focuses on groups of complaints, and not single offenses as the police do. The agency, if it finds a criminal case, goes directly to the State Attorney General's office, and the police are not involved. The police sometimes refer cases to the agency when they feel no police action is called for. The police do not handle mail or advertising fraud.

The Fraud and Forgery Detail often seeks restitution for the victim, especially in cases where criminal intent is difficult to prove, as when there are excessive charges for a few hours work. The court will accept these cases if intimidation was involved, but often it is easier to accept restitution.

The "Williamson Clan" is a special problem in the Miami area. This group of 300 to 350 related individuals, decendents of a Scotsman who came here in the 1890's, operates in much of the country, with teams moving around frequently. They emphasize elderly, retired victims in Florida, Arizona and similar states. Their activities stress door-to-door sales (of "irish" linen, "angora" sweaters, etc.), home improvement schemes, and money switches. Once successful, they will pass the word, and others in the clan will visit the same victim with further schemes.

The clan is very successful, taking an estimated \$6 or \$7 million a year. They emphasize elderly victims who are easy to intimidate, confused about identifications, and reluctant to go to court; many refuse to complain for fear their relatives will have their funds taken out of their control. On home repair schemes they work in pairs, with one doing the "work" and the other receiving payment so that each can say they knew nothing of what the other one did.

No member of the clan has ever been convicted in Miami. They nevertheless fear arrest because that entails a photograph which would permit future identification, and ruin their careers. Often when word is out that the police are seeking some clan members, an attorney will call and offer restitution. The police generally advise the victim to accept because they feel that is the best they can do for these poor, elderly victims. Except for the Williamson Clan, consumer fraud is not an organized crime.

Georgia Governor's Office of Consumer Affairs
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Dr. Tim Ryles
Administrator

The Georgia Governor's Office of Consumer Affairs (OCA) was established by the state's Fair Business Practices Act of 1975, which became effective 10 April of that year. OCA replaced a prior Consumer Services Agency that had been part of the Department of Human Resources. OCA is counseled by a 15-member public Consumer Advisory Board.

The purpose of OCA is to protect the consumer against deceptive practices through mediation, information, investigation, and--when necessary-- legal action. It has the authority to issue subpoenas, conduct hearings, and provide for injunctions. Violations of the FBPA are considered civil and not criminal. Eleven specific practices are specified as unlawful: 1) passing off goods as another's, 2) causing confusion as to source or certification, 3) causing confusion as to affiliation, 4) deception as to geographic origin, 5) representing goods as having characteristics they do not have, 6) representing goods as new when not, 7) representing that goods meet some standard when they do not, 8) falsely disparaging another's goods or services, 9) advertising without quantities to meet demand unless indicated, and 11) misleading statements as to cause or amount of price reductions.

The two main activities of OCA are the Intake and Referral Service (I&R) and the Investigation and Enforcement Unit (I&E). I&R operates the "Tie-line," a statewide WATS service that receives toll-free incoming calls from consumers. These calls are answered by trained counselors, who record complaints and assist consumers in locating assistance or information. Many inquiries can be resolved by providing the caller with the address or number of the appropriate local community agency for that problem, since about half of all complaints concern government services or other problems not classifiable as relating to fair business practices. Many other complaints can be resolved by the counselor telephoning the merchant to clarify the problem; the system permits third parties to be connected to the line.

Consumer complaints falling under the FBPA which cannot be resolved readily by the counselors are turned over to the I&E unit. Here, additional attempts at informal resolution are made. If these are not satisfactory, the case can be turned over to the Attorney General's Office for court action. The I&E unit also initiates investigations, including posing as buyers, when a situation warrants this action.

During the current year, it is expected that about 50,000 complaints will be recorded by I&R. Of these, some 43-45,000 will be received by telephone, 5-7,000 by mail. It also is estimated on the basis of a study that only one call in three gets through to a counselor because of the present number of lines; it is assumed, however, that some of these callers do get through at another time or decide to write instead. Twelve counselors are available to respond to the 250-300 calls received at I&R each day.

Approximately ninety percent of all problems are resolved by the counselor or referred to a more appropriate state or community agency. The remaining complaints, approximately 5,000 per year, are turned over to the I&E unit, typically when resolution is not possible within 24 hours. At the present time, I&E has a director plus an authorization for five investigators (one slot is presently vacant). In addition, short-term interns are sometimes available to supplement the staff. Again, not all cases sent to I&E fall strictly under the FBPA. Most consist of product, service, or credit disputes, but fraud is suspected in perhaps ten to twenty percent of I&E's cases.

When an investigator receives a case, both the consumer and the business are contacted either by telephone or in writing. At this stage, the investigator is primarily interested in collecting all pertinent information from each party. Restitution or some other settlement may be recommended, and some agreement usually is reached in about 70% of all I&E cases during this step. In another 20% of the disputes, the consumer is advised the complaint is unfounded, is urged to seek a solution through traditional legal channels, or is informed that no redress is possible (e.g., because of inability to locate offender, bankruptcy, etc.). Mediation is preferred to prosecution.

The remaining cases are reviewed for further investigation and/or referral to the AG office for prosecution. This decision usually entails determining whether a pattern of practice is involved, whether the principals of the business have a history of offenses, and whether the offense is likely to be repeated. At a minimum, an effort is made to obtain an informal "Assurance of Compliance" statement that an unfair or deceptive practice will not be repeated. Cases referred to the AG may be prosecuted under the FBPA, where the penalty is up to \$2,000 in punitive charges plus an injunction, or under other state statutes.

The OCA estimates that each complaint handled by the I&R service costs about \$10, and that the average case investigated by I&E costs an additional \$50. Funds have been requested to increase the capacity of both units to meet the current demand.

(NOTE: Quarterly reports provided certain various cross-tabulations and summaries of cases by type of product/service, value of business, type of complaint, and outcome.)

Montgomery County Office of Consumer Affairs
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Barbara B. Gregg
Executive Director

Mandate. The Montgomery County Council authorized the establishment of an Office of Consumer Affairs in September 1971. The Office was charged with "prohibiting unfair, deceptive, or unconscionable trade practices upon consumers within Montgomery County, to assist consumers in obtaining relief from such practices, to prevent such practices from occurring within Montgomery County, to educate consumers in trade practices involving merchandise, services and credit." The Office is empowered to investigate complaints of deceptive or unfair trade practices against consumers. It may hold hearings, issue summonses for appropriate witnesses and documents, and issue cease and desist orders with respect to consumer practices in an attempt to achieve compliance with the statute.

An Executive Director, appointed by the County Council, heads the office staff of 24 paid employees. Among them are eight investigators and six consumer aides who handle the complaints, prepare educational materials and provide other consumer services to Montgomery County residents. Some staff members received specialized training in areas such as law and auto mechanics (highest number of complaints). In fiscal 1976, the full time and part-time volunteers contributed 6.6 person-years of time. This was an increase of about 1500 hours compared to 1975.

Volume. Approximately 12,800 cases were opened in fiscal 1976. The percentage of total complaints handled by category was: automotive (31.8); home construction (12.7); real estate (6.7); electronics such as radio, television (5.4); electronic appliances (3.0); home furnishings (41.1); credit and related industries (6.0). The trend during the past few years shows a rise in automotive and home improvement complaints and a slight decline in electronics and home furnishings. Most consumers complain about unsatisfactory repairs; the second most frequent complaints focus on alleged deceptive and misleading advertisements.

Procedures. One of the direct services the agency provides to consumers is the handling of consumer complaints. When an individual

(Montgomery County resident) files a complaint, the investigator normally first contacts the merchant against whom an allegation is made. A written summary of the complaint is mailed to the merchant, who is invited to respond either in person or in writing. Several contacts with the merchant are often required before a satisfactory resolution is reached. If the complaint cannot be conciliated, the Office has alternative means of dispute settlement. One approach is binding arbitration, used only with the consent of both parties. This joint effort is administered by the Metropolitan Washington Area Better Business Bureau and the Office of Consumer Affairs. Arbitrators are selected by the disputants from a trained volunteer panel of arbitrators. If the parties fail to agree to arbitrate, the consumer receives a brochure explaining how to file suit in the Small Claims Court.

The Office has enforcement powers. If a law violation requires action beyond the settlement of an individual consumer complaint or an informal agreement by the merchant to alter business practices, the office may issue a cease and desist agreement. This document not only requires a promise from a merchant to terminate a specific business practice, but it may also contain some restitution for consumers and/or settlement costs.

If a case cannot be resolved, it may be referred by the Office to the County Attorney who can initiate legal action. If the County files suit in the Circuit Court, the outcomes sought often resemble the components of a cease and desist agreement -- restitution, penalties, and injunction.

Most situations handled by the Office focus on satisfaction for the individual consumer; many settlements benefit other consumers as well. In a case involving pieces of metal included in packaged noodles, for example, the outcome was an agreement by the manufacturer to purchase and install a \$35,000 metal detector on the assembly line.

Prevention. The Office is responsible for several educational approaches, designed to reduce the incidence of abuse. A unique technique recently offered to Montgomery County residents was a mini-course in auto repair (C. A.R.S). The purpose of the course was to offer some simple maintenance suggestions that help prevent future problems. Four two-hour class meetings were held; the final session was conducted in a service department of a local automobile dealer. One hundred ten residents joined the class and an additional 300 are on a waiting list for the next course. Another

educational device is the preparation of numerous brochures of the Office services plus guides to items of consumer interest. Such information is unusually well received. The compilation of a shoppers guide to banking services resulted in an overwhelming demand. The guide was composed of two tables: one table compared interest rates on savings accounts paid by 40 local banks; a second table showed "free" checking account plans, services and policies at 28 banks in the metropolitan area. A telephone rate schedule which itemizes the cost of optional items such as touch-tone or special styling and describes alternatives in the basic services was unavailable to consumers because the telephone company refused to release it. The Office of Consumer Affairs successfully obtained and released this schedule. Another OCA service is the preparation and circulation of consumer literature in the county public schools; items such as reference materials and curriculum guides are available upon request to teachers. The OCA newsletter, the Bulletin Board, is also distributed to the teachers. Public speaking engagements are fulfilled by staff members; they appeared before approximately 130 citizen groups in addition to continuing the bi-weekly 30 minute radio show.

Neighborhood Legal Services/Legal Aid Programs

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| 1) Legal Aid & Defender Society
of Greater Kansas City (Missouri) | Richard F. Halliburton
Attorney - Litigation Unit |
| 2) Pine Tree Legal Assistance
(Maine) | Thomas B. Benjamin
Director, Law Reform Unit |
| 3) Neighborhood Legal Services Program
(District of Columbia) | Roger K. Davis
Attorney, Law Reform Unit |

Neighborhood legal services and legal aid programs are nonprofit organizations whose primary purpose is to provide free legal assistance to those financially unable to retain private counsel, in order to help foster equal justice under the law for all persons regardless of income. Most programs were formed in the middle to late 1960s as part of the federal Office of Economic Opportunity Legal Services Program. It has recently been replaced by the Legal Services Corporation which provides the major portion of funding for such programs. Additional funds are sometimes obtained by individual offices from other independent sources, such as local government or charitable contributions; these monies may be conditioned upon use which will benefit a designated target group such as the elderly.

Legal services and legal aid programs are generally governed by a board of directors or trustees, which ordinarily includes lawyers, representatives of the poor community and others. Such boards establish policy concerning the standards of indigency to be employed in accepting cases and the scope of the legal services to be rendered. An executive director runs the program in its daily operations, within the parameters established by the board.

When a person requests legal assistance, an initial determination is made as to whether his or her family income falls within the financial guidelines entitling him or her to free representation. In some instances, an otherwise eligible person may have a case which appears likely to result

in the recovery of a sufficient amount of money to pay a private attorney on a contingency fee basis. In either of these situations, most programs will attempt to refer such persons to a lawyer referral or other appropriate office. Some programs may handle such cases if they are subsequently rejected by the private bar. Other appropriate referrals may also be made, e.g., criminal cases may be referred to the public defender. Legal services are provided to eligible individuals and classes of persons as well as nonprofit community groups composed primarily of low-income persons.

In order to service the largest possible number of individuals, programs usually operate several outreach law offices in the communities they serve, to facilitate access by such persons. Legal assistance provided by staff attorneys, with the support of investigators, paralegals, secretaries, and law students, may entail advice, preparation of documents, negotiation, or representation at the administrative, trial, or appellate level. In appropriate cases, affirmative relief may be sought, such as money damages or an injunction.

Cases accepted, which are usually limited to the civil area of the law, cover a wide variety of legal problems, including consumer, housing, domestic relations, administrative (such as welfare, Social Security, unemployment compensation, and the like) and other matters. Common consumer complaints involve products like automobiles, furniture and appliances or such services as repairs of those products, home improvements, income and employment opportunities, vocational training and self-improvement (such as those offered by health clubs and dance studios). Most products and services are acquired by poor consumers through the extension of credit, usually at finance charges which considerably exceed those available to more affluent borrowers. It therefore comes as no surprise that many complaints involve sales credit or loans, repossessions, and creditor harassment. Warranty-related complaints, including misrepresentation of terms and refusal to provide repairs, as well as complaints alleging delivery of defective or inferior merchandise, overcharging or performance of phony or unnecessary repairs are also commonly encountered by legal services lawyers.

Overall, legal services and legal aid programs are unable to satisfactorily meet the legal needs of all eligible persons in the geographical areas they serve because of limited funding and resources, resulting in inadequate staffing and high caseloads. The nature of the clientele also presents some unique problems. The poor often lack adequate education and sophistication to understand the marketplace in which their problems arise or the legal mechanisms available to resolve them. They are therefore easily intimidated by the legal system and are often reluctant to seek legal assistance, appear in court, or even to follow up on pending cases. At best, a client who is given a "band aid" for the "injury" complained of will likely be back seeking more "band aids" for similar subsequent "injuries."

Office of the Attorney General
State of Arizona
Economic Protection Division
Consumer Fraud Section
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Anthony B. Ching
Chief Counsel

The Economic Protection Division (EPD) is one of five divisions within the Attorney General's office; it has general jurisdiction to enforce the Arizona Consumer Fraud and Antitrust statutes. The Consumer Fraud Section was formally established following the recent election of a new Attorney General. Consumerism was a campaign issue in Arizona and the creation of a section within the Attorney General's office to process consumer complaints is the fulfillment of a campaign promise. Two paralegals initially receive consumer complaints and process them until they gain: 1) restitution for the consumer or 2) the case requires action by a staff attorney. If the latter occurs, the paralegal's role in the investigation is a minor one, as the attorney assumes the lead in handling the case. In situations where the attorney becomes involved, other cases/complaints against a specific merchant have been filed. Or, several complaints against an industry have been received, such as health spas. An attempt is then made to halt the violations of the industry, using the complaints as partial evidence for legal action. In some instances, restitution for the individual complainants is sought, but not always.

The major administrative achievement during 1975-1976 was the elimination of a backlog of complaints, achieved primarily through the addition of the paralegal complaint handlers. As the complaints are received, the complainant records a description of the situation. All backup documents which can be used as evidence to support the complaint should be included with the complaint when it is filed. This procedure eliminates duplication of effort during the investigation and expedites the time required to reach an outcome for each case. Having filed a complaint, two courses of action may be pursued. The first is for the complaint handler to contact the merchant regarding the complaint in an attempt to resolve the conflict between the merchant and the consumer. The second is to add the complaint to an ongoing investigation of a particular industry, e.g., the dance studios. During the course of the investigation, the grievances which have been filed are aggregated and used to persuade the merchant to comply with the consumer fraud statute, as described above. If a

case is never referred to an attorney, the paralegal normally has brought about some closure to the situation. This closure may be restitution for the complainant; the handler has served primarily as an intermediary in a dispute settlement. Complaints are now processed in an average time of about sixty days. An attempt to establish visibility for the operations of the fraud section is being demonstrated through the sponsoring and preparation of numerous media announcements concerning matters of importance to consumers.

As a result of complaints received, the consumer fraud section conducted a number of industry-wide investigations. These investigations resulted in voluntary compliances in the accurate advertising of time prices and the provision of a cooling-off period and cancellation rights in the health spa industry. An in-depth investigation is currently being conducted of the dance studios in areas bordering Phoenix and Tucson. Eleven dance studios have received "demands for information," which is an exhaustive questionnaire concerning every aspect of the business operation and detailed information on the employees and their conditions of service for the organization.

Many consumer complaints are resolved without legal action by voluntary compliance on the part of the businesses. Voluntary compliance means that a merchant agreed to sign an Assurance of Discontinuance of any act or practice deemed, by the EPD, in violation of the provisions of the consumer fraud act. Such an assurance may include a stipulation for the payment by the merchant of reasonable expenses incurred by the attorney general, restitution to aggrieved persons, a civil penalty of not more than \$5,000 per violation or some combination of all three. The criteria for setting a dollar value amount to a judgment regarding the merchant's ability to pay and how egregious the practice is considered to be. The written assurances are filed with and subject to the approval of the Superior Court of the county in which the alleged violator resides. A violation of such assurance within six years of the filing is interpreted as prima facie proof of a violation of the provisions of the statute. Signing an Assurance of Discontinuance is not viewed as an admission of a violation for any purpose. Voluntary compliances during 1975-1976 were obtained in the retail merchandising industry, such as department stores, automobile sales, appliance sales, and auto parts stores; in the service industry such as a bank automotive service station and home equipment rental as well as numerous other areas.

Land fraud complaints constitute a large proportion of the cases handled.¹ A number of complaints, because of the large number of purchasers involved and their complexities, have resulted in litigation. The consumer fraud section achieved, short of litigation, one large settlement with a national land company consisting of a secured agreement to provide \$200,000 in refunds to purchasers with claims of misrepresentation. Additionally, the section was able to settle two major lawsuits involving land and subdivision developers. These settlements resulted in 150 homeowners receiving not only what was initially promised by the developer (principally recreational facilities and landscaping of common areas), but compensation in the form of cash contributions to homeowners associations and additional recreational and landscaping facilities. One developer even did extensive repair work on individual units, caused by construction defects.

The following table shows the breakdown of complaints handled in the Economic Protection Division during 1974 and 1975:

Table I		
	1974	1975
Number of Complaints Received	4,606	5,748
Cases Opened	2,258	4,980
Cases Closed	3,318	2,935
Cases in Superior Court	30	32
Amount of Money Recovered/Saved	\$146,175.50	\$251,177.58
Investigative Costs/Expenses Recovered	\$ 18,900.14	\$ 32,100.00

In 1976 (January - June), the consumer fraud section in Phoenix handled 1,624 cases. Of the 42 categories of cases, approximately 50 percent of the cases fall into the five categories of real estate (14%), mail fraud (12%), miscellaneous (10% - referred out of the Phoenix office), motor vehicle repair and body work (8%), and appliance (6%).

¹From January - June 1976, 14% of the Phoenix cases involved developed and undeveloped real estate.

U.S. Postal Service
Chief Inspector
Office of the Fraud Division
and Prohibited Mailing
(202)245-5305

Mr. Frank Nemic
General Manager

The Postal Inspection Service performs security, investigative, law enforcement and audit functions in each of the fifty states and Puerto Rico. The security force aims to protect the mails, the postal employees, the facilities and equipment of the USPS. This Unit may assist in the enforcement of regulations when violations occur on USPS property. The purpose of an audit branch is to increase productivity and improve customer service by evaluating postal activities at the major functional levels. Management systems and procedures, financial data, mail processing and customer service are areas addressed in the USPS audit.¹

The Postal Inspection Service is empowered to investigate more than 85 postal related statutes which can be organized into two categories:

1) criminal acts against the mails, postal facilities or postal personnel; and 2) criminal use of the postal system. It is regarded primarily as a law enforcement agency because more than three-fourths of its human resource utilization and expenditures are invested in protecting the mail, postal customers and postal employees. Approximately 1,700 Postal Inspectors receive a basic training course which includes orientation in the use of firearms, defensive tactics, legal matters, search and seizure techniques, court procedures, postal operations, and an in-depth study of the federal laws in which the Inspection Service possesses jurisdiction.²

Postal crimes comprise a wide assortment of violations. Cases involving theft by burglary rings, burglaries of post offices, illegal trafficking in drugs or narcotics, sending obscene materials through the mail, incidents

¹Postal Inspection Service Annual Report. FY 1974. pp. 18, 21

²The Postal Inspection Service. Publication 198. May 1973

or threats involving bombs or firearms all fall within the jurisdiction of the Postal Inspection Service. Criminal use of the postal system is covered by the Mail Fraud Statute which provides for imposition of criminal sanctions upon a fraudulent operation. Postal inspectors have no statutory authority to supply mediation services in settling consumer complaints of unsatisfactory transactions conducted by mail. The outcomes, however, of some of their investigations include discontinuing questionable or blatantly fraudulent schemes. Administrative mail-stop orders may be issued to prevent continuing public loss while evidence is being collected for criminal prosecution by the U. S. Attorney; examples of such orders are forwarding mail to the dead letter office, returning mail to sender and prevention of payment of postal money orders.

During fiscal 1976, the USPS processed 135,717 consumer reports of suspected mail fraud for situations such as fake medical and diet treatments, phony sex and beauty aids, falsely advertised products, investment plans. The USPS estimated mail fraud losses amounted to more than \$500 million annually last fiscal year. Investigations by the Postal Inspection Service numbered 5,793; 1,458 convictions resulted in fines of \$1.6 million. Consumers victimized through mail fraud schemes received \$8.5 million in restitution.³

Some typical schemes investigated by the inspection service include coupon redemption, credit card frauds, banking and inheritance frauds, land swindles, advance fee sales techniques, franchise schemes, work-at-home and correspondent school gimmicks, charity schemes, welfare, Medicaid and Medicare cheats.

In 1974 the USPS established a Consumer Protection Program which attempts to resolve complaints concerning unsatisfactory mail order transactions

³Washington Post. 14 February 1977. Section C.

in situations where no criminal intent is suggested. Most of these complaints concern failure to furnish merchandise or services ordered by mail. Postal customers are encouraged to file complaints of suspected mail fraud and unsatisfactory mail order transactions. All complaints received are then reviewed to determine if an investigation should be initiated. If an investigation is not warranted, an attempt to resolve the problem is made by notifying the mail order house of the complaint and suggesting satisfactory resolution of legitimate complaints.

APPENDIX F

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