

# CASE PROCESSING: CONSUMER PROTECTION IN AN ATTORNEY GENERAL'S OFFICE

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This paper examines complaint processing in an attorney general's office of consumer protection. It describes how, in the implementation and routinization of a new statute, considerations external to the law or the individual case arise, transform, and begin to characterize law enforcement. The paper describes how the staff attempts to confine the office's work by creating statistical records of work done. These records are creations because the activities of the agency—investigation and resolution of consumer complaints—do not generate unambiguous criteria of completion. The office operates within practical criteria for determining when a case is finished. As the statistical records help to routinize the task of consumer protection, they become a source of bias, direction, and legitimation for law enforcement.

## I. INTRODUCTION

This paper describes complaint processing in the office of consumer protection of the Massachusetts Attorney General. The research demonstrates how routinization of case work governs consumer protection policy and its implementation. The state Consumer Protection Division (CPD) has relied upon a strategy of individual negotiation to enforce consumer protection laws. Given the legislation, the CPD could have done many things. Its choice was dictated not by law or politics, but by the way the agents thought they could handle what the law asked them to do. No matter how the Attorney General decided to implement the law's provisions, he would have to find out first what consumer complaints were about. In the process of learning about consumers' grievances, the Attorney General's agents sought to remedy individual complaints. But consumer protection stopped there. Coping with this first stage of consumer protection required so much

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work that the agency routinized it, and this routinization prevented the development of alternative procedures that would have allowed the office to decline to investigate some cases and allocate extra resources to others. In effect, the routines took over the decision about what the job of consumer protection was to be.

Previous research on the ordinary practices of law enforcement describes how precedent evolves from day-to-day decisions. First, discretion is unavoidable and necessary to meet statutory goals (Davis, 1969; Kadish and Kadish, 1973). Although statutes set theoretical limits to official action, they cannot determine how things are done within those limits. By choosing among courses of action and inaction (Davis, 1972: 91), individual law enforcement officers become the agents of clarification and elaboration of their own authorizing mandates (Jowell, 1975: 14). Bureaucrats become lawmakers, "freely" creating what Ross (1970) refers to as a third aspect of law beyond written rules or courtroom practices. This "law in action" arises in the course of applying the formal rules of law in private settings and public bureaucracies. It is the working out of authorizing norms through organizational settings (Mohr, 1976).

Second, in the process of working out mandates, organizations modify the goals they were designed to serve. Members of organizations temper internal and environmental pressures to ensure the survival of the organization and, implicitly, the survival of the organization's goals (Jowell, 1975: 188; cf. Banfield, 1961; cf. Thompson, 1967: 127).

Third, public service bureaucracies implement policy within special constraints, and often fail to provide mandated services. Agents in "street-level bureaucracies" are expected to interact with clients regularly, but their work environments are pressured and stressful.<sup>1</sup> Resources are limited. Mandates are too frequently ambiguous or conflicting. The clients are the lifeblood of the organization, but they are not the primary reference group for decision making. As a result, it is difficult to assess and reward job performance (Lipsky, 1976: 197; 1980; cf. Prottas, 1978). Agents cope with these stresses by developing routines and simplifications that economize on resources. They invent definitions of effectiveness which their

<sup>1</sup> Lipsky coined the term "street-level bureaucracy" for public offices serving clients; salient features of the settings and characteristic coping mechanisms of public bureaucracies apply to certain private agencies as well (cf. Ross, 1970).

procedures are able to meet (President's Commission, 1967b: 15; Goldstein, 1963; LaFave, 1965: 102ff; March and Simon, 1958: 142; Thompson, 1961: 14-15; Shapiro, 1968; Wildavsky, 1964; Anton, 1966; Sharkansky, 1970). In so doing, they may alter the concept of their job, redefine their clientele, and effectively displace the organization's stated mandate (Merton, 1940).

This paper reports data corroborating this conventional picture of law enforcement.<sup>2</sup> It also points to an additional variable of possible analytic consequence, which I call "endlessness." Coping with a never-ending flow of cases and demands for service, while meeting expectations of effectiveness, is a critical part of law enforcement generally, and consumer protection in particular.

## II. THE PROBLEM: A PRACTICAL DEFINITION OF CONSUMER PROTECTION

The CPD was authorized to investigate and prosecute cases of deception and misrepresentation in the marketplace. Similar agencies exist in the offices of most state attorneys general, although specific mandates and resources vary. The Massachusetts statute is a strong mandate for consumer protection incorporating a broad definition of proscribed business practices.<sup>3</sup>

<sup>2</sup> The data upon which this paper is based were collected as part of an extensive study of the Massachusetts Attorney General's Office of Consumer Protection. Participant observation, interviewing, and record searches were employed to describe and document the operations of this agency. Observation was conducted on a daily basis for one year, followed by three years of monthly and then quarterly visits. All cases which came to the Attorney General's office between 1968 and 1974, and for which records existed, were reviewed along with the accompanying reports of investigators and attorneys. A minimum of four hours of private interviews were conducted with each member of the staff, whose numbers increased during this time from 15 to over 30 persons. Members of legislative committees, other divisions in the attorney general's office, and other consumer protection agencies in the Commonwealth were also interviewed. The research was undertaken to answer, within the context of a single case study, several questions about the availability and uses of legal resources, including the patterns and organization of law enforcement work.

<sup>3</sup> Chapter 93a of the M.G.L.A. provides civil remedies against all deceptive trade practices, as well as those that have the tendency or capacity to deceive. Heralded as a mini-FTC statute, the law does not define the prohibitions beyond saying that the language and case history of the FTC shall apply. The act empowers the Attorney General (1) to file suits to obtain injunctive relief, (2) to file law suits for the restitution of damages sustained by consumers due to deceptive trade practices including seeking of assignments of treble damages, (3) to file motions requesting imposition of fines of up to \$10,000 for violation of injunctions, (4) to initiate process leading to the subpoena of records and persons to uncover deceptive trade practices or to resolve consumer complaints, and to levy fines of up to \$5,000 for failure to comply with the investigative process, (5) to demand and to receive binding assurances of discontinuance for allegedly deceptive trade practices, (6) to initiate process leading to the imposition of penalties for violations of specific provisions of the Consumer Protection Act, such as the alteration of automobile

The legislation was enacted in a pro-consumer climate with support from both liberal and conservative factions. Because the state had passed a truth-in-lending act the year before, the business community was convinced that fair trade legislation was inevitable. The lines had been drawn and tested; industry had lost. Therefore, major corporations resolved, through the Associated Industries of Massachusetts, to support this legislation while working to limit its effect. Language was inserted that gave businessmen opportunities to challenge and delay enforcement.<sup>4</sup> Yet the statute seemed to open the way for aggressive action on behalf of consumers, and came to be regarded as an extremely creative piece of legislation. Observers understood, however, that the law's effectiveness would depend upon the nature of its enforcement (cf. National Association of Attorneys General, 1971: 411; Steele, 1975a).

Business interests had little reason to feel threatened. Faced with the demands of vocal consumer groups and the fears of powerful business interests, the CPD adopted a policy to accept and attempt some resolution of *all* consumer complaints.<sup>5</sup> The policy of case-by-case mediation eliminated the politically hazardous problem of choosing sides.

odometer readings, and (7) to initiate process leading to the abrogation of the right to engage in business in the Commonwealth for repeated violation of provisions of the statute or regulations promulgated under its authority.

The Massachusetts statute is considered by the FTC, and the Committee on Suggested State Legislation to be the most far-reaching consumer protection statute; this type of legislation has been adopted in five other states. Ten states have adopted similar legislation with slightly altered wording. Such legislation supplements other state statutes. The agency which Steele (1975a) studied operated under this more limited mandate. The Illinois bureau studied by Steele, however, was one of the best financed and staffed in the nation. The Massachusetts CPD, in contrast, operated with one-third the number of attorneys, one-third the clerical help, and two additional investigators. In relation to other consumer protection agencies, Massachusetts's staffing exceeded twenty-five states (NAAG, 1971: 399, 417).

<sup>4</sup> Legislators inserted a clause, at the insistence of business lobbyists, requiring that the Attorney General give ten days notice to any business against whom a complaint is filed and against whom an investigation is undertaken. Within two years, this clause was rewritten to give five days notice; two years later, it was deleted from the act altogether. The CPD had found that notice was not a hindrance to negotiation with legitimate businesses. Such businessmen had also learned that they could deal easily with the CPD. Nevertheless, the notice clause prevented the CPD from acting effectively against flagrant violators. It served notice upon them, as it was intended, that the AG was interested in speaking with them. Too often, they disappeared. Although this original protective language was removed, new clauses were added to the legislation giving business concerns the right to bring complaints against other businesses. The provisions of consumer protection law are now available for business use.

<sup>5</sup> Complaint handling agencies seem to screen complaints regularly (Nader, 1980a). Serber (1980) reports that the California Department of Insurance investigated only one-third of the complaints it received. However, government agencies specifically set up as consumer protection agencies do so less frequently (Steele, 1975a: 1118; 1975b; King and McEvoy, 1976; National Association of Attorneys General, 1971; Cranston, 1979).

The history of consumer protection had been marked by unenforceable criminal statutes, inaccessible private remedies at law, and ineffective regulatory schemes (Eovaldi and Gestrin, 1971; University of Pennsylvania, 1966). One of the major strengths of the new law was the creation of a publicly available civil remedy for deception. A public civil remedy could control consumer fraud without using unenforceable criminal sanctions. It could provide direct legal service for deceived consumers without unnecessary and cumbersome over-regulation of business.

Recourse to civil remedies was also a recognition that the line between truly fraudulent business practices and merely careless ones is very difficult to draw (Steele, 1975a: 1108-1109). Even acceptable business practices may be accidentally disadvantageous to the consumer. With a scheme of civil regulation, fair restitution can be offered to the consumer while at the same time not unfairly stigmatizing the business as a sly and predatory schemer intent on defrauding unwary consumers. Rather, consumer grievances are seen as the result of market dynamics beyond the control of any one individual. Civil remedies and case-by-case mediation, therefore, reflect alternative moral images of the parties and the nature of consumer problems (Steele, 1975a: 1107).

There are, of course, a small number of fraudulent businessmen. Society has an interest in controlling their conduct through the criminal law. Yet there is a profound reluctance in our society to treat predatory business crime as harshly as we treat street crime (Becker, 1963; Kadish, 1963: 432, 435; Ball and Friedman, 1965; see Geis and Meier, 1977). Consumers as a class have an obvious interest in ending such illegal practices, but individual consumers who bring complaints are more interested in what can be done for them. Effective consumer protection must meet these individual consumer interests before it can effectively deal with generalized patterns of abuse (Steele, 1975a: 1109; Nader, 1980a). The CPD thus decided on an essentially reactive strategy. Consumers would have the burden of bringing individual problems to the attention of the agency. The agency could then attempt to secure relief for these consumers, correct troublesome but not necessarily illegal trade practices which had been identified through consumer complaints, and selectively prosecute the perpetrators of more serious violations.

The CPD decided to become the place in government where the consumer could be assured of representation. "We are the only place where the little guy gets a chance to be heard. If we can't try to help him, no one else around here [the state house] is going to." Since the beginning of the 20th century, licensing bureaus, small claims courts, and better business associations had existed to provide recourse for unsatisfactory consumer transactions, apparently without much success. The CPD could not assume the entire burden of these agencies, but it would function, within an array of complementary and competing agencies, as an ombudsman for the consumer. It would focus upon dispute resolution rather than law enforcement.

The CPD's policy for consumer protection also took account of its limited staff and organizational resources. "The heavy investment of resources required to use formal institutions to resolve disputes created pressure to resolve them by more informal means," such as case-by-case negotiation (Steele, 1975a: 1116; Serber, 1980; Cranston, 1979). Indeed, it was characterized by a lack of coordination and leadership. The case-by-case mediation policy initially served to rationalize the division's anarchic structure and lack of preparation.<sup>6</sup> But once the Attorney General began to accept

<sup>6</sup> The literature suggests that public agencies often define their roles in terms of what they are able to do (cf. Wilcox, 1955; Edelman, 1967; Bernstein, 1955; Hamilton, 1957; Cox *et al.*, 1969). For a general discussion of how organizations define goals in terms of the means available, see Lindblom, 1959, 1965) and March and Simon (1958). Studies of federal regulation of trade, for example, also suggest that the individual case-by-case approach is widely used as a dominant mode of enforcement (Palamountain, 1965; Cox *et al.*, 1969). But, as this paper suggests, it is questionable whether this particular deployment of resources, rather than some alternative strategy, did not create yet a greater demand on whatever resources were available, thus preventing development of collateral or alternative tactical approaches which may have had more extensive impact. Nader (1978: 91) writes that the "evidence is overwhelming in support of the generalization that complaint experience in this country is not cumulative in impact" and that resolution of individual disputes does not provide solutions to general and cumulative injuries and grievances.

The staff of the CPD believes it unlikely that government could ever supply sufficient resources to attack consumer problems generally (cf. Schrag, 1972: 185). Although the staff adamantly claimed that litigation was its principal mission (cf. Steele, 1975a: 1181), both attorneys and investigators offered extensive explanations as to why litigation was not the most appropriate or effective approach. The staff was doing the best that could be done. Publicity provided an image of aggressive "pro-active" consumer policies (cf. Mattice, 1980), and mounting records of consumer complaints closed satisfactorily forestalled major criticism of the agency's approach.

At the next election, however, the policies of the office became a principal issue in the campaign of candidates for Attorney General. The newly elected Attorney General made immediate efforts to fulfill promises of more aggressive enforcement; some programmatic investigations were begun, but routine case processing continued to constitute the agency's principal tactic. Sporadic investigations which went beyond an individual case were again used to promote the political fortunes of individuals in the agency.

consumer complaints, the volume became overwhelming, as shown in Table 1.

Table 1. Case Load and Dollar Savings Reported by the Consumer Protection Division

Fiscal Year	Cases Investigated	Cases Referred Out	Total Cases Received	Savings Achieved	Inquiries Per Week Telephone/Walk-In
1970-1971(a)	13,000	(b)	(b)	\$900,000	300/wk.
1971-1972(c)	11,364	1,671	13,035	430,359	(c)
1972-1973(a)	20,328	(b)	(b)	876,606	500-600/wk.
1973-1974	20,833	(b)	(b)	916,179	750-900/wk.

(a) Attorney General's Report

(b) Information unavailable

(c) In-house records

The more successful the office was at resolving complaints, the more complaints arrived. The office was inundated. Merely processing the complaints efficiently became the determinative factor in the office's operations.<sup>7</sup> Alternative policies, such as programmatic prosecutions, an industry-by-industry focus on consumer fraud, or an emphasis on proactive consumer education, were difficult if not impossible to undertake.

Consumer protection at the CPD came to be a desperate struggle to stay afloat in a sea of complaints. This could be accomplished by giving each complaint some passably minimum attention. Even though this policy departed from the legislative mandate of aggressive consumer protection, it was accepted because the CPD claimed that it secured a satisfactory resolution in approximately half its cases, and obtained consumer refunds of several million dollars each year.

<sup>7</sup> Every member of the consumer protection staff stated in response to four different questions asked at four different times, that the number of complaints was the most important problem for the office. The questions were: "What do you consider the most important task facing you each day? What is the most important problem the office has to deal with? What factors influence the organization and practices in the office? If you were director of the division what would be the first problem or issue you would have to deal with?" The words varied, but the meaning was absolutely clear: "make a dent in the pile of cases; keep ahead of the incoming complaints; close more cases." Of course, law enforcement officials have always claimed that they cannot keep up with their work load (e.g., Warner and Cabot, 1936).

### III. CONSUMER COMPLAINTS: SOME EXAMPLES

From 1971 through 1974, the CPD received over 65,000 complaints. The annual volume increased by more than 60 percent in the four-year period. The eight cases which follow are examples of the kinds of market practices that create problems for consumers and consequently become matters of interest for the CPD.

*Case A, The Hearing Aid:* A consumer lodged a complaint against a hearing aid manufacturer. He claimed that a hearing aid was not working well and that the manufacturer was unwilling to honor its thirty-day money-back guarantee. The investigator tried several times to get the company to repair the hearing aid. After two-and-one-half months, the investigator closed the case unsatisfactorily. It was marked "no basis for complaint." According to the investigator's notes, the thirty-day guarantee had run out a week before the customer complained; the company was no longer liable, and the CPD could do nothing for the customer. Apparently, the consumer had refused to allow the hearing aid company to make adjustments during the thirty-day warranty period. He was so dissatisfied with the poor service he had received that he distrusted the company and doubted its ability or willingness to adequately repair what he considered a basically faulty device.

*Case B, The Kitchen Floor:* The CPD received a complaint that kitchen flooring which had been installed five months earlier was lifting off the floor and beginning to crack. The flooring was a nationally known brand bought at a local retailer. The retailer had looked at and measured the old floor before the new one was ordered. Now the retailer claimed that there were aberrant conditions in the house which were causing the new floor to lift up. The interaction of the new cork flooring, which was a natural substance, with the old vinyl floor, which formed the base for the new floor, was inconsistent under the varying seasonal humidity conditions in the house. The retailer knew that the cork was to be laid on top of vinyl and there were no instructions from the manufacturer to indicate that vinyl was an unsuitable foundation for cork. Neither the manufacturer nor the retailer would accept responsibility for the damaged floor.

The investigator held the case in his open files for several months. Periodically, the consumer would call the

CPD with information from either the manufacturer or the retailer, with whom the consumer was corresponding. After four months, in response to an inquiry from the consumer, the investigator informed the consumer that there was nothing the Attorney General could do. There was, according to the investigator, a disagreement on the facts of the situation, and in such cases the Attorney General could not take action. The case was marked "administrative disposition."

*Case C, The Leaking Roofs:* A homeowner contracted with a roofer to repair damage to the roof of his house. During the first subsequent rainfall, water seeped through the very spot that had been repaired. After many phone calls, the roofer made additional repairs and assured the consumer that there would be no more leaks. Nevertheless, after the next rain, water came in again through the roof and the walls. Several similar complaints against the same roofing concern were received by the CPD. One consumer complained that the roofer had left the roof with only a plastic covering and a rain storm during the night ruined the interior of the house. The consumer sought to be released from the contract with this company and to have another roofer repair the damages at the first roofer's cost. Another complainant charged that after a new roof had replaced an old nonleaking roof, water began to leak through during the rain. The roofer repeatedly assured this homeowner that the necessary repairs would be made. Yet the leaks continued. By the time the complaint was filed with the Attorney General, the electricity and heat had been turned off because the water had damaged the circuits in the house. The CPD called the roofer about each complaint, with little result. One case was closed and marked "no jurisdiction"; a second case was marked "findings, referred to small claims court"; and a third case was closed and marked "administrative disposition, company bankrupt."

The CPD regarded the roofing company as a "bunch of crooks," the kind of firm with which the office had the least success. Within a year of closing these cases, the same individuals who constituted the roofing company which had gone bankrupt formed another roofing company against whom the CPD was collecting complaints.

*Case D, The Mortgage Repayment:* A consumer attempted to pay off a \$75,000 mortgage after two years.

The bank charged a \$666 penalty for prepayment of the loan. The mortgage contract contained a clause stipulating the conditions and costs for prepayment. Although \$666 was the appropriate charge within the terms of the mortgage, the consumer did not want to pay it and complained to the Attorney General. Through the offices of the investigator who took the call, and the implicit pressure of a call from the Attorney General's office to the bank, the investigator was able to have half the penalty refunded to the complainant. The investigator had "somehow felt sorry for the caller" and wanted to help. He indicated that this was an example of how the CPD can indeed help consumers, although the consumer is not always right. The case was marked "refund \$333."

*Case E, The Career School I:* A young woman had applied to and been accepted for a course of study in public relations at one of the residential business schools in the city. The student arrived at the school in September. After paying the fees, she discovered that the school was without a public relations instructor. The student was given many explanations by the directors of the school. She was assured that there would be a qualified teacher soon. In the meantime, the student was advised to occupy herself with other courses. This situation continued until February when the student decided to leave the school. From September through February, she had taken the school's merchandizing courses, apparently the school's specialty, although she desired and had enrolled in the school's advertised public relations course. The student applied to the Consumer Protection Division for a refund of the money which had been paid to the school and a cancellation of the remainder of the contract. The CPD had received several other complaints against the school, each alleging a different form of misrepresentation.

The office began an unusually extensive investigation of the school which included several recorded interviews, subpoenas of the school's records, and depositions from complainants. The investigation revealed that it was an inadequately capitalized institution which relied upon current tuition to operate. If enrollments did not support a specific course or curriculum, the school could not afford to offer that subject, although some students had chosen and paid for such instruction. There were additional irregularities in the school's personnel structure, the

qualifications of the teachers, and the housing arrangements that seemed to violate various statutes and regulations. After a year of periodic interviews and negotiations, the investigator closed the case. He obtained a release from the contract for the remainder of that year's tuition, and a refund of \$100 against the more than \$1,000 that had been paid to the school for the first half-year's tuition. The case was marked both "savings" and "refund," with appropriate dollar amounts inserted.

*Case F, Career School II:* A complaint was received from a young person who had enrolled in an automobile repair course offered by a large local chain of proprietary career schools. The prospective student had been told when enrolling that withdrawal was possible at any time if the program were not satisfactory. The student was now disappointed and wished to cancel the contract. It appears that the school's admissions officer had made several representations which turned out not to be true. They included references to the certification and licensing of the teaching staff and to the condition, quality, and availability of equipment to be used in the program. The complaining student had attended several classes and paid \$900 on a contract of \$1790. The school offered a refund of \$200, claiming that the remaining \$700 was to cover the costs of registration and the seven classes which had been attended. The CPD closed the case, marked it "refund \$200," and referred the consumer to the local legal aid bureau.

*Case G, The Swimming Pools:* The Attorney General's office received several complaints against a swimming pool company, each stating that a consumer had purchased a pool at a cost of many thousands of dollars only to find after six months that the pool was unusable. In one case, water would continually leak out of the pool. In another, the liner of the pool cracked and the sides caved in. The office's files included the following descriptions of these cases: "It appears from the review of this case that the swimming pool contracted for was installed but apparently the workmanship was inferior. . . . From the information available, the swimming pool contracted for was installed but unusable because of poor workmanship."

The cases remained open for several years during which time nearly one hundred complaints were received. Complaints in one case alleged that the consumer had paid

the pool company several thousand dollars down payment on the construction of a pool which was never built. The company began work on the pool, digging an enormous ravine in the consumer's yard, but then failed to complete construction. The consumer was left with a gaping hole in the property which was causing damage to surrounding areas. The Attorney General's office could get no satisfaction from the pool company except on the first few cases which claimed that no pool was ever built. Litigation had been threatened continually but never pursued. The file stated that litigation would force the company into bankruptcy making any restitution for consumers impossible.

*Case H, The Clothes Dryer:* A new homeowner called the CPD and reported the following facts. The previous owner removed a gas clothes dryer when he vacated the property. He also plugged with rags the hole in the basement wall through which the dryer had vented. The consumer bought a new dryer when he took possession of the house and had it installed by a local plumber. When the machine did not work properly, the consumer called the manufacturer's service. The manufacturer's serviceman inspected the machine and discovered rags in the vent. The manufacturer would not honor the warranty on the dryer because the fault was not that of the machine but of the rags.

The complainant wanted the Attorney General to force the plumber to pay for the service charge by the manufacturer. The consumer asked the investigator whether it was not right that the plumber should pay for the service charge since the plumber was responsible for its being incurred. The investigator replied, "This seems reasonable. But it is really a matter of the quality of the plumber's work and the Attorney General's office can't handle that." The investigator suggested that the consumer go to small claims court. "If the plumbing company was reputable, it should do something for you." The complainant suggested that if a nurse or a doctor left some utensil, a sponge or a scalpel, in a patient, they would be responsible. The investigator replied, "Nurses and doctors have malpractice insurance, and the plumbing company does not." The investigator wanted to soothe the disappointed complainant. As a gesture of goodwill, he suggested that everyone was vulnerable to consumer

problems. He told the following story: a plumber came to the investigator's house to make some minor repair and charged forty dollars. The investigator told the plumber that the charges were higher than a doctor's. The plumber replied, "I know, I used to be a doctor." Everyone laughed, and the call was completed. The complaint was never entered on the office's records.

Understanding the details of consumer complaints involves more than describing picayune and petty grievances. These cases suggest, although they do not completely delineate, the practical boundaries of consumer protection. The remainder of this paper will examine the forms and consequences of the CPD's policies and practices.

#### IV. THE PROCESSING OF COMPLAINTS

##### *The Investigation of Consumer Complaints*

The consumer protection strategy of the Massachusetts Attorney General is passive. All cases begin with a complaint brought by an aggrieved consumer. Although the CPD maintains an active public program of consumer education and protection, its machinery is, with few exceptions, set into motion by complaints. Few investigations are initiated by the division. Complaints arrive either by phone, via the mail, or in person. Over 400 complaints arrive each week.

When an investigator receives a complaint, he immediately contacts the respondent business to report that a consumer has lodged a complaint and that an investigation has begun.<sup>8</sup> The investigator routinely does little more than ask the parties what happened. After speaking to both the consumer and the business, the agent makes a decision about what the complaint actually involves.

<sup>8</sup> Investigation of consumer complaints in the Attorney General's office was, from 1968 through 1975, the responsibility of both attorneys and "investigators," staff members who were usually not members of the bar. There was no formal division of labor, such as would have reserved investigation of complaints for those members of the staff who were designated "investigators." Attorneys had, in addition to their responsibility for the office's formal legal work—e.g., the preparation of subpoenas, bills of complaint, briefs on a variety of subjects—obligations to investigate and mediate consumer complaints. Because formal action by the division was limited during this period, investigation of complaints was a primary responsibility of attorneys and "investigators." All reported directly to the chief of the division, the Assistant Attorney General for consumer protection. In this paper, the term investigator will be used to refer to either an attorney or an "investigator" when they are in the process of investigating and mediating consumer complaints.

At this point the investigator's discretion is broad. Future questions about how to handle this complaint, possible routes of negotiation, the prospects of litigation, the probable and likely dispositions, depend upon this initial evaluation. Assessment of whether a complaint contains grounds for negotiation or resolution is entirely the investigator's; in practice it is never reviewed.

When the CPD began, the investigators did not have total discretion. The staff was small, and the volume of complaints was not quite as heavy as it would become. The chief of the division could oversee the work of the entire staff. Some chiefs had a penchant for tight control and frequent review; they could wield effective leadership within the office by a clear mastery of the situation (cf. Karikas, 1980; Wilson and Brydolf, 1980; Serber, 1980: 338). Alternative resources for control, such as sanctions, rewards, and incentives, were lacking because the agents were either civil servants or political appointees (Tolchin and Tolchin, 1971).

The division grew to meet the increasing number of consumer complaints, and staff organization became more formal. Channels of communication and lines of responsibility were drawn up. The staff was reorganized into groups of investigators working under individual attorneys. Responsibility for investigation belonged to the agents, and responsibility for the legal work belonged to the attorneys within each group. Nevertheless, the necessary authority and communication to make this organization function effectively was not developed, in part because the staff was responsible only to the Attorney General. Because the Attorney General is removed from the daily affairs of the division, he cannot review individual performance;<sup>9</sup> investigators operate as autonomous law enforcement units.<sup>10</sup>

<sup>9</sup> Of course, the Attorney General has direct access to members of the consumer protection staff. Indeed, most members are hired by the Attorney General, often without consultation with or notice to the division chief. Some staff members are especially recognized to be "the Attorney General's people."

<sup>10</sup> There is no periodic or continual review of the staff's work. And although the investigators are supposed to be responsible to an attorney who is in turn responsible to the chief, etc., this has meant only that when they think they have a serious case, investigators take it to an attorney rather than directly to the chief. Neither the overseeing attorney nor the chief has the authority or power to reward or penalize the investigators for their work. They are therefore unable to act on whatever judgments and assessments they may be able to make in order to affect the quality, quantity, or procedures of work.

Only so long as the chief was able to read each complaint as it came to the office, follow and guide its progress through its investigation, was substantive review possible. With the increasing volume of complaints, this ceased. The personal moral authority and political resources of individual chiefs could be used to control staff performance. This would, however, be a delicate

An investigator's unreviewed initial evaluation of the complaint shapes all future investigation. It assesses the veracity and integrity of the parties. It determines the truth lying within the stories of the respective parties. Ordinarily, an investigator will not pursue a case if the parties do not substantially agree on the facts.<sup>11</sup> The Attorney General's office does not consider itself a fact-finding body and will not mediate cases where there is a factual dispute. In many cases documents and evidence do support a common version of the facts. But in others, there are significant differences. Business people obviously do not realize that disagreements over facts may confer immunity.<sup>12</sup> Moreover, a disagreement over the facts does not invariably mean that the case will not be investigated. Disagreement does mean that, if the parties cannot achieve a satisfactory solution, the investigator can explain the unsatisfactory closing.

The investigator must also assess the legal issues in the case. The agreement of the parties does not establish whether a legal issue is present. The Attorney General's office is empowered to prosecute "unfair," "deceptive," or "misrepresentative" practices as well as practices which have a "tendency to deceive." The office is also obliged to enforce the law and regulations proscribing other specifically defined business practices. Standards like "unfair," "deceptive," and "misrepresentative" have not been conclusively defined. The investigator thus has wide discretion in determining whether a consumer complaint has legal merit, and if so, whether it ought to be handled by the CPD.

Most cases which come to the CPD do not involve easily identifiable illegal practices or unquestionable assertions of

negotiation. Many of the investigators come with their own political resources. The change in office practices and effectiveness may not warrant the cost of trying to control subordinates.

In routine cases—that is, 95 percent of complaints received by the office—the attorneys and the chief are unaware of the investigator's activities. This situation contrasts with other studies. The work of the insurance adjusters in Ross's (1970) study was reviewed during internal negotiation of proposed settlements, and Mayhew's (1969) field representatives regularly reported to their commissioners.

<sup>11</sup> Several studies report similar observations. "If a car dealer believes that a car in question works and that the consumer is simply being unreasonable, neither an internal procedure nor the Better Business Bureau is likely to make him change his mind" (NICJ, 1973: 1). See also Cranston (1979: 97); Steele (1975a: 1158); Nader and Shugart (1980). This is not surprising. Even police detective work is notorious for its inability to solve cases through investigation (Skolnick, 1966; Bittner, 1974).

<sup>12</sup> It has been observed that familiarity with the legal process, when it does not in and of itself confer immunity, creates advantages and benefits for those who are subject to it or use it (Galanter, 1974; Newman, 1956).



rights. Most fall in a twilight zone of as yet unspecified deceptions, probable deceptions, feints toward deception, or disagreements which have not been sufficiently generalized to be categorized as deceptions. They await identification through litigation or regulation. In fact, common consumer complaints are often the product of business practices for which the law provides no clear remedy (Ross and Littlefield, 1978; Caplovitz, 1963; Andreasen, 1975; Best and Andreasen, 1976). Moreover, the specific strengths of the consumer protection act and the motivation behind its enforcement strategy reflected a widely shared belief that a certain number of consumer-business disagreements are inevitable (cf. Greenberg, 1980; Ryan, 1976).

Rules and new legislation proscribing specific practices are continually promulgated. In transactions involving a clearly proscribed practice, investigators normally have less discretion in assessing the legal merits of a case. But this is not always so. Even if a complaint alleges a clear violation, the investigator has to determine whether to proceed and which legal tools to employ (Wilcox, 1972; Black, 1974: 38; Davis, 1972: 88; cf. Bittner, 1974; Lobenthal, 1970; Macaulay, 1979). Legal merit alone cannot objectively determine whether and how a complaint will be processed.

Thus far, the investigator has evaluated the parties, the facts, and the legal issues. In the process the investigator invariably forms an attitude about the "justice" of a complaint (cf. Homans, 1961; Bartos, 1978; Ross, 1970: 45). Investigators' concepts of justice derive from their mandate and from their assessment of the importance of the complaint to the parties (cf. Nader, 1978: 88). They perceive justice as helping those who have suffered a loss, regardless of who is responsible for the loss. Helping consumers without necessarily injuring business is a governing concern. But resolving the case successfully is probably the overriding goal. The investigator's assessment of the elements of the case is primarily a calculation of the likelihood that a satisfactory solution can be attained. All other considerations turn on this judgment.<sup>13</sup>

The investigator's best efforts are naturally reserved for "good cases," those which have the best chance of satisfactory disposition (cf. Lang, 1981). There is some variation in the

<sup>13</sup> Steele (1975a) distinguishes three broad criteria of evaluation for consumer protection complaints: jurisdiction, complaint strength, and dispute solvability. The investigator's assessment of jurisdiction and complaint strength—determined by the veracity of the parties, the facts, evidence available, legal issues—are modifiable in light of the third criteria, dispute solvability.

meaning of a "satisfactory" disposition, but success means at least that the consumer has been materially helped.<sup>14</sup> The degree of protection for consumers is measured in terms of the ratio of monies returned or saved to monies lost. The staff perceives this to be its primary obligation and reports "saving" or "refund," with the appropriate dollar figure. Dollar figures are used as a measure of success because they 1) show that the consumer has been helped materially, 2) serve as the universal measure of productivity (Bell, 1968), and 3) are amenable to what is judged to be objective analysis of the office's effectiveness.

The desire to obtain real dollar savings or refunds for the consumer structures the investigation process and has, in the past, limited the CPD's recourse to litigation. The staff emphasizes its ability to secure savings for consumers without litigation. Litigation may yield less for the consumer. It may force tottering businesses, from whom the agency has been able to wring compromise settlements, into bankruptcy. It may cost more to prepare a case for court than to convince offending businesses to settle. Litigation costs would automatically reduce agency resources for mediating other consumer complaints, thus reducing the aggregate savings to the state's consumers.

The criteria for a "good case" include: the possibility of obtaining a large refund or savings quickly and with little staff effort, the chance to eliminate a business practice that generates recurring complaints, and the opportunity to create good public relations for the AG or the CPD.

The "good case" does not always have the strongest legal claim. Other considerations are often as important in determining whether an investigator follows through on any individual complaint. These may include the political associations of the persons complaining, the type of complaint, the size and type of business complained against, the attitudes and expectations of the parties, and the business's familiarity with the CPD. These considerations are as relevant as legal merit in assessing the possibilities of a successful disposition (cf. Silbey, 1978; Serber, 1980). Because the investigator's priority is to achieve consumer satisfaction measured in dollars, rather than to stop the challenged business practice, the legal merit of any complaint is instrumental only to the extent that it provides bargaining leverage.

<sup>14</sup> Mattice (1980: 514) describes the less stringent definitions of success employed by consumer action lines in the media.

After a preliminary inquiry an investigator has two options. First, he may decide to drop the case. Perhaps the complaint is totally without "justice." Second, the investigator may choose to continue seeking a satisfactory disposition. If he decides to continue the case, he begins to negotiate with the parties. Investigation gives way to mediation. Infrequently, the case is turned over to an attorney for legal action. Negotiation and litigation may supplement each other. A number of consumer complaints may be consolidated into a class action suit. The attorney may seek injunctive relief, or a voluntary assurance of discontinuance of the challenged practice. Refunds, repairs, or deliveries may be secured, contracts canceled.

Negotiation and bargaining are the predominant mechanisms of consumer protection, because dollar savings are the principal objective of the agency (Aubert, 1963). The CPD closes 99 percent of all complaints through informal negotiation between the parties.<sup>15</sup> The negotiations may be simple and the complaint resolved with one or two phone calls during which the merchant agrees to refund the consumer's money, or a workman agrees to redo some job. But more often than not, cases remain open for months. The investigator has made a number of phone calls to the company and to the complainant, written letters to the parties, and collected documentary materials. The case has reached what the investigators call a state of limbo. It is open; nothing is happening; and the parties seem unable to reach any resolution. Most cases are neither open nor closed; they are indeterminate.

### *The Endlessness of Case Processing*

Complaint processing seems endless. It is a series of tasks with no identifiable beginning or end. Endlessness has two

<sup>15</sup> Each member of the staff was asked, "how many cases do you receive, or what proportion of those you receive, do you think represent part of a patterned deception?" The range of answers was from one to five percent, for all but two members who claimed "perhaps ten percent but certainly not more." This assessment, however, must be regarded as somewhat self-protective and self-fulfilling, since less than one percent of cases resulted in formal litigation. During the period between March, 1968 and December, 1974, the CPD received, investigated, and disposed of anywhere between 200 and 300 complaints per week; it attained some sort of satisfactory resolution in approximately half of them. These resolutions created about four million dollars of restitutions and savings to consumers. But the records of formal legal proceedings entered into by the CPD is infinitesimally small in relation to the number of cases handled. There were altogether 30 petitions for orders of discontinuance and no more than four suits seeking injunctions. Steele (1975a) states that approximately 4.5 percent of the cases received in the Illinois Attorney General's office was litigated. While the difference in the two states is significant, in neither state did litigation represent a sizable portion of the office's work.

dimensions. First, the mandate sets no time limits, and consumer complaints seemingly flow forever. There is no statute of limitations. The universe of consumer complaints is always expanding; complaints can arise about all past transactions and any future transactions. Moreover, the statute sets no deadline for achieving the overall goal of consumer protection; it is a continuing mission in which production is never finished.

Second, consumer protection is endless because individual complaints have no clear boundaries. The mandate does not specify when to close cases. In open-ended production, which characterizes much professional work and public service, both process and product are unbounded. The general task cannot determine the daily structure of work. The relationship of the daily work to the organization's task is not always apparent. Patterns may appear arbitrary because they derive from the nature of work and not from the nature of the specific task (cf. Blauner, 1964: 135; Crozier, 1971: 86; Halle, 1978; Thompson, 1967: 15, 117).

Picture the bureaucrat who sits at a desk across which passes a stream of consumer complaints, each alleging some loss from an unsatisfactory market transaction. His task is consumer protection, defined by state law to include: investigation of consumer complaints of misrepresentative trade practices; litigation on behalf of aggrieved consumers; and promulgation of new rules and regulations prohibiting deceptive practices. When an agency is empowered and obliged to restructure the marketplace of consumer transactions, how does it know when its job is done?

Public officials make sense of their work by segmenting general tasks into units which represent a reasonable day's work. This enables them to meet human needs for order and structure, while satisfying organizational demands for effectiveness and productivity. Daily work develops into routines which become essential parts of a job, even though they may be only peripherally related to the agency's goals. Routines often become so integral to the job that they undercut or displace the agency's goals.

Although routines describe and may transform the tasks of law enforcement, they also enable the office to pursue its mandate. Subordinate tasks need to be done in order to pursue general goals. Yet, the subordinate tasks come to characterize and shape the general task. Some aspects of law enforcement are extraneous to the formal provisions of law, and yet cannot

easily be subsumed under the rubric of institutional maintenance or bureaucratic self interest. No particular agent's or agency's interests guide the daily practice. Rather, goal-oriented activity, whether more or less disciplined, always entails routines and consequences that arise, not from any goals or aims or anyone's competing goals or aims but, from the necessity of performing the activity itself.

It is not that bureaucratic routines fail to serve the interests of consumers. There is recourse from deceptive trade practices. *How* consumers are protected, however, derives not only from the legal mandate, but also from the agency's self-maintenance needs, political demands, and the routines of work. Every organization produces its own infrastructure of work patterns that enable it to function, and the CPD is no exception (cf. Selznick, 1949; 1966: 249; Merton, 1936; Bittner, 1965; Marx, 1980b).

### *Recordkeeping*

Recordkeeping imposes order upon this endless process. Recording complaints and dispositions creates boundaries and definitions. It is common practice for bureaucracies to create "paper" to have evidence that work is going on (Weber, 1947: 329; 1958: 197).<sup>16</sup> Cases "become" the paper that records them. Case handlers focus on closing cases and clearing dockets to appear effective and to make space for new cases (President's Commission, 1967b: 18, 30; Skolnick, 1966: 164; Mayhew, 1968: 144; Ross, 1970: 60). Again, the CPD follows this well-documented course.

Recordkeeping meets several demands. It meets the omnipresent demand to "get things done." This means to produce work, whether it is work the office is supposed to do, or merely indices of work. Every employee must appear to be working at something. Workers, in turn, expect someone in authority to judge their work and allocate appropriate sanctions and rewards. Although CPD agents function without effective review, they do not acknowledge their own autonomy. Supervision is assumed, even though it is spasmodic at best. Investigators protect themselves from criticism by pretending

<sup>16</sup> Paperwork is not simply an accounting device. Kaufman (1977) suggests that it is also a response to the diversity of values to which people in our society subscribe, to the demands on government to which these values give rise, and to the responsiveness of government to these demands. In this sense, red tape and paperwork are not solely of the bureaucrat's making, but partly of the public's own doing.

that they are nonautonomous subordinates whose decisions are rational and reviewable, and thus not arbitrary.<sup>17</sup>

Paperwork also responds to a market which organizes the social forces of production. Consumer protection is a form of professional legal service. Unlike craft or industrial labor, "professions produce intangible goods" (Larson, 1977: 14). Like other forms of service and professional labor, legal service is a fictitious commodity; it cannot "be detached from the rest of life, be stored or mobilized" (Polanyi, 1944; 1957: 72). The product of professional labor "is only formally alienable, and is inextricably bound to the person and the personality of the producer" (Larson, 1977: 14). There are no objective criteria of production.

Consumer protection has not yet reached the level of identification, segregation, and coordination of a recognized profession which has successfully monopolized and, to some degree, standardized the formal training and licensing of its service. The agents have instead standardized evaluation by creating quantifiable results through recordkeeping. Just as money and exchange values obscure the process that produces commodities within capitalism, so bureaucratic accounting obscures the relations of production within government and service organizations (Patry, 1978; Braverman, 1974).

The CPD records its work descriptively and statistically; but the statistical record receives greater attention. The description of complaints and investigations is haphazard; it provides little usable information for future reference.<sup>18</sup> This is important for consumer protection because the legislation is

<sup>17</sup> The agents arm themselves against consumer, against business, and against each other with assertions of impotence. "I'm just following orders. I don't make the laws." Even if work measures were imposed rather than self-generated, the interpretation and application of them to the concrete activities would remain with the subordinate. Complex relationships between hierarchy, communications and sanctions intervene so that no clear and unambiguous criteria of productivity readily appear. See for example Crozier (1964, 1971).

<sup>18</sup> From 1970 through 1975, the consumer protection division logged in 65,525 consumer complaints. The files of complaints were of very uneven content with no discernible pattern explaining their variation. Moreover, the statistical records of the office, which will be discussed below, were equally uneven; the numbers offered as the office's workload are derived from in-house estimates, my own counting, and the officially published reports of the Attorney General. These figures are the result of a complete search of the Attorney General's records. However, no file could be found which recorded the formal litigation of the office, the assurances of discontinuance, bills of complaint, judgments, injunctions obtained, subpoenas served, etc. Indeed no separate record was kept. There were no records of formal litigation whatsoever, except those that were serendipitously found within the records of consumer complaints. A search of the records in the Superior Court produced 26 assurances of discontinuance from 1968 through 1971. Further inquiry revealed that considerably fewer assurances were obtained during the next three years, and the memories of staff members could support evidence of only three additional actions. Further inquiry produced no additional results. The last correspondence (July, 1977) from the Chief of the Consumer Protection

directed against patterns of deception and contains increasingly serious penalties for "repeating," "continual," and "habitual" offenders. A complete record of the results of investigation, the determinations of violation, and the resolution of complaints is crucial for implementing the provisions of the law. Nevertheless, most attention and publicity is accorded the statistical records which list only the number of cases processed and monies saved. The written record of case investigations which describes allegations of deception and CPD determinations is ignored. The statistical record is used instead as the office's chart of progress. It demonstrates that the office is doing its job.

How can the records of consumer complaints provide evidence of effective consumer protection? Should the number of complaints investigated, cases litigated, and rules promulgated be used to apportion the work hours available and to determine whether the office has made efficient use of its resources? Does an increase in the number of complaints received and processed constitute an index of success? Would an increase in the number of complaints indicate that more consumer protection is needed? Would a diminishing number of complaints indicate improvement in the marketplace or signal that less consumer protection is being provided? Should the CPD's resources be used to construct an index of consumer victimization (cf. Best and Andreasen, 1976)?

The CPD emphasizes satisfaction to consumers through individual case resolution. By its intervention, it may slowly change market conditions and practices. In making restitution the principal product of its activity, and in emphasizing informal persuasion over formal coercive procedures, the agency provides consumer protection by achieving compromises between business and individual consumer demands. Having to make restitution once, or often, may induce purveyors of goods and services to avoid the practices that give rise to complaints (Ross and Littlefield, 1978).

Division stated "The statistical material you inquired about, bills of complaint, assurances, etc. were never kept."

The office's accounts are helpful, nonetheless, in providing a picture of the marketplace of consumer transactions and grievances. Thirty percent of all complaints involved the automobile industry, 10 percent involved home improvements, and the remaining 60 percent were distributed over 20 other industries, with none receiving more than 3 percent of the complaints. The distribution of complaints by industry is suggestive in terms of areas of particular concern to consumers; it may not, however, depict actual occurrences of deception, as much as the importance of particular transactions in terms of cost, perception of misrepresentation, and availability of remedy, as well as effect upon lifestyle, etc. (cf. Best and Andreasen, 1976; 1977).

It is at least equally likely that the institutionalized presence of the CPD, routinely interceding on behalf of a certain fraction of bilked consumers—the fraction that complains—may simply come to be regarded as a calculable part of the overall cost of doing business (cf. Kagan, 1980). Establishments that frequently deal with regulatory and law enforcement agencies may discover the level of those agencies' actual capacity and will to carry out their mandates. Businesses may thus adjust their voluntary compliance to that level, thereby reducing the costs of prompt and uncritical responsiveness, and also avoiding the costs of achieving higher standards than the enforcement agency is likely to require. What individual case resolution succeeds in doing best is composing the ruffled feathers of consumers who know how and to whom to complain (cf. Nader, 1978; 1980a: 37; Freedman, 1980).

How do individual consumer complaints become part of the cumulative record of consumer protection? Most cases are unsettled and adrift in a continuous flow of unresolved complaints. The investigator must decide when to close a case and how to enter it in the statistical records. To do this, the CPD employs a taxonomy of case dispositions developed by the Federal Trade Commission (see Table 2). These codes are intended to provide normative standards for the investigators' work, but in practice the standards are not as explicit as the programmed codes imply.

Table 2. Disposition Codes

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K	= Satisfaction
R	= Refund
G	= Agreement
S	= Savings
F	= Findings
J	= No jurisdiction (before investigation)
B	= No basis for complaint (no jurisdiction after investigation)
A	= Administrative
Tx	= Referred to another agency
M	= Merged with another file
O	= Cease and desist order
C	= Conviction
I	= Injunction
Q	= Acquittal
D	= Dismissal
N	= Consent Order
V	= Assurance of voluntary compliance or discontinuance

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What is the difference between satisfaction of the parties and agreement of the parties? The distinction is subtle, and the

staff does not recognize it. The category "agreement" is never used. The distinction between administrative closing and findings is equally uncertain. This is true for most of the commonly used dispositions.<sup>19</sup> Furthermore, the dispositions are not consistently related to the written descriptions of investigations. Table 3 illustrates some of the variation in the use and implied understandings of the disposition codes. It lists the disposition and the investigator's reason for closing a series of cases. Moreover, when circumstances permit, evaluation is made to the benefit of the office's image of productivity, further distorting the record.<sup>20</sup> An investigator will often inflate the savings in a case or describe a savings as a refund. An unsatisfactory investigation (F) may be explained as no basis for complaint (B) (cf. Blau, 1955: 42).

Table 3. Variation in Applying Code Designations

Disposition Code Appearing on Case	Investigators' Reasons for Closing a Case
B	"disagree on facts" (auto repair) "merchandise not received" (greeting cards) "small claims court" (wrong size dress) "guarantee expired" (hearing aid) "refused to give money back" "claims sent merchandise to wrong address" "no agreement, no accomodation sought"
F	"small claims court - merchandise not received" (photos) "disagree on facts" (auto repair) "referred to Buick Opel" "quality of workmanship" "inconsequential complaint by hysterical complainer" (motel) "no merchandise received" "no explanation" (auto repair) "referred to small claims court" (roof)
A	"not heard from consumer" "can't do anything" (warranty problems) "bankrupt" (home repairs) "quality of workmanship, concrete cracked" "failed terms of contract, didn't follow plans"
J	"referred to private attorney" "quality of workmanship - incomplete foundation" "quoting different price on different day" (truck rental)
K	"private attorney"

<sup>19</sup> Mayhew describes very similar confusion in the dispositions of cases before the MCAD. Respondents often thought that they were "officially found innocent, where according to the Commission's reckoning, probable cause was found and the case closed after successful conciliation" (Mayhew, 1968: 222).

<sup>20</sup> Incidentally, unofficial norms against high production which have often been reported in the literature as a means of curbing intra-organizational competition and relieving official tension caused by production quotas (Blau,

The written explanations of unsatisfactory dispositions describe situations that easily justify unsuccessful outcomes. Nevertheless, the set of circumstances that justifies an unsatisfactory disposition does not disqualify a case from investigation. The facts of a case, which explain particular outcomes, do not determine or describe the course of negotiation of consumer complaints. Rather, the facts are available as post hoc rationalizations of the process. Moreover, no set of facts or law that justify closing the case unsatisfactorily precludes giving some other explanation for closing a case.

For example, consider the case of the kitchen floor (Case B). A disagreement about the facts and responsibilities was sufficient ground for an unsatisfactory disposition. Yet, the investigator knew this early in the investigation. He nevertheless pursued the case and did not inform the consumer either that there were no grounds for a complaint or that there was little likelihood of a successful resolution. When the investigator could not immediately get the manufacturer or the merchant to repair the floor, the case stayed open. When the consumer called to inquire about the case, the investigator closed it. At that point, the disagreement between the parties was a defensible explanation. In the case of the hearing aid (Case A), the investigator learned in the first phone call that the consumer had failed to exercise his rights under the product warranty. But in the beginning, the warranty was irrelevant, because despite it, the agent tried to get satisfaction for the consumer. When he failed to resolve the case satisfactorily, the warranty provisions supplied a rationale for the lack of results of the investigation.

It is difficult to determine when a case is finished. The investigator must decide how much more effort to put into obtaining some satisfaction for the consumer or getting a greater refund. Toward the end of any recordkeeping period there is a great flurry of activity to close inactive cases. Investigators accept offers they previously rejected. When resolution is not forthcoming they uncover factual inconsistencies and jurisdictional problems not previously discerned. Just about anything will do as an opportunity to close a case and rid the agent's file of it, so long as the disposition seems likely to pass muster at some future time.

1955: 144), were not pronounced in this Attorney General's Office. It is certain that "success" figures were exaggerated. Steele also noted (19 percent) errors in records with regard to the claims of successful resolutions in the Illinois Attorney General's office (1975a: 1177).

The coded dispositions initially seem to provide standards for law enforcement. They become the basis for organizing an endless task, and appear to create objective criteria of work. Yet they do not contain clear definitions and standards for closure. The official dispositions neither provide unambiguous criteria for knowing when to close cases, nor describe how investigators should decide to close cases.

The disposition codes provide the illusion of objectivity, but little more. The resolution of consumer complaints is not determined, or even understandable, by these codes. The codes provide legitimate and officially sanctioned justification for what are practically generated conclusions. Any set of coded dispositions may reflect the same result (Kitsuse and Cicourel, 1963; Cicourel, 1968; Garfinkel, 1956; Garfinkel and Bittner, 1967; Wheeler, 1976; Black, 1970; Newman, 1962; Blau, 1955: 33).

My observations of complaint processing in the CPD echo Skolnick's (1966) discussion of police clearance rates. Skolnick suggests that the uncertain institutional character of police gives rise to unclear understanding of goals and ambiguous standards of evaluation (1966: 164). The mission of the Attorney General in consumer protection, like that of the police, is not simply analogous to that of a firm manufacturing light bulbs. The relationship between law enforcement practices and peacekeeping activities to organizational and social goals is amorphous. This inherent ambiguity creates community and inter-institutional difficulties, and it also exacerbates intra-organizational control problems. The clearance rate provides for the police that public measure of accomplishment which the record of cases closed satisfactorily and dollars saved provides for the CPD. The record speaks to an external audience, but simultaneously provides a standard which internally organizes the agency's work. Developing measurable standards of performance leads to situations where the measure of performance becomes an end in itself. The worker tries to "perform according to his most concrete and specific understanding of the control system" [emphasis in original]. He reshapes, reinterprets, ignores formal rules "in order to make the best possible appearance in terms of the most current and pressing demands" (Skolnick, 1966: 180; Homans, 1950: 48-80; Bensman and Gerver, 1963: 588-598; cf. Sykes, 1956). Skolnick concludes that the employment of quantitative criteria leads to practices that "attenuate the validity of the criteria themselves as measures of quality

control. . . . [E]mphasis on these criteria has consequences for the administration of justice that may interfere with the legality and the stated aims of law enforcement" (1966: 168).

#### V. PRACTICAL CONSIDERATIONS AND CONSEQUENCES OF GETTING THINGS DONE: THE "LAW" OF CONSUMER PROTECTION

Consumer protection in Massachusetts is governed more by practical understanding of adequate work (cf. Blau, 1955: 145) than by normative standards embodied either in law or in bureaucratic accounting devices. Consumer protection "law" has thus evolved out of the alignment of daily work requirements with prevailing normative standards.<sup>21</sup>

The primary occupation of the CPD is the negotiation of complaints. Success at negotiation depends on the perseverance of the staff and its understanding of what is needed to close a case, and when a case must be closed. At some point investigators decide that it is no longer worth the effort to obtain a more satisfactory resolution of a particular case. If closure is negotiable, to say "it is done" acknowledges a hierarchy of more and less compelling obligations.

The investigator's recognition of the "circumstances which demand" that a case be closed is a technique for managing an endless task. Getting things done is a skill, learned and developed within the confines of a particular setting. Some of the considerations which demand that a case be closed include the following:

- 1) Time has passed. The case has been in the open files for some months, and the investigator has not been able to negotiate a satisfactory settlement. Cross (1969: 12) suggests that this is the most important characteristic of negotiation. "The bargaining process is . . . fundamentally time dependent. . . . The passage of time has cost in terms of both dollars and the sacrifice of utility which stems from the postponement of consumption, and . . . it is precisely this cost which motivates the whole process. If it did not matter when the parties agreed, it would not matter whether or not they agreed at all" (cf. Rubin and Brown, 1975; Strauss, 1978). After a time, determined by the investigator, the case does not demand resolution.

<sup>21</sup> Thompson (1967: 111) states that "by permitting individuals to exercise discretion, jobs at contingent boundaries enable individuals to reduce uncertainties for the organization" (cf. Skolnick, 1966; Garfinkel and Bittner, 1967; Mayhew, 1968: 223; Ross, 1960).

2) The pressure of work is an often-stated rationale for closing cases. There are always newer cases. Some of the newer cases may be more serious or easier to settle successfully. Pressure is such a powerful demand that the same complaints that are discouraged on some days would be accepted on other days. The backlog of pending cases regulates the perception of need in newer cases. Pressure also means that cases are routinely discouraged because of the general desirability of limiting the work volume.

3) The case is just not worth the effort. There is an implicit economy of work. This case is just not worth much effort because of the inoffensiveness of the complaint, the offensiveness of the complainant, the lack of substantial funds involved, etc. To assess worth, workers apply professional criteria of what is important or unimportant. These are not always the same as the consumer's criteria of importance.

4) Patience wears thin. The investigator has put a lot of effort into the negotiations. He has had enough of it—of the persons involved and everything concerned with a case. The agent closes the case without satisfaction when he cannot summon any more interest in it, regardless of its merits.

5) Political motivations may spur investigators to proceed with a case. To get it done in this sense means to meet political demands. Though varied, political demands always include showing that some effort was made, no matter how ineffectual it may have been.

6) Cases are closed when the interest and attention generated by outside sources, such as newspapers or consumers, has waned. Laura Nader (1980: 75) chides third-party complaint handlers for being themselves deceptive and unfair when they derive their consumer satisfaction rate from the silence of consumers. "No one controls the practice of some intermediaries who consider a complaint settled if nothing more is heard from a consumer once a business says it will perform." What, then, of the case where nothing more is heard from the consumer, and the business has not yet agreed to perform?

7) Cases are closed or kept open in order to avoid trouble. The notion of avoiding trouble is an aspect of the last two considerations. The overall management of cases is guided by a general injunction to "keep the lid on," and promote the smooth running of the organization. Trouble is understood primarily in terms of review and notice—notice of what the office is doing. This does not mean that there is anything to

hide or that would be difficult to account for. Trouble means, simply, the possibility of review that the office is accustomed to being without. In the process the investigator obeys implicit rules. Do not go after causes; do not generate issues; and do not step on any toes. That means *any* toes—businesses, consumers, or other officials who could come back and start trouble.

These are not analytically distinct categories, but merely the kinds of considerations that help to describe how things get done in a public agency. In order to deal with the endlessness of case processing, CPD staff establish limits of consumer protection. This is what is known as the law in action.<sup>22</sup>

There are several important consequences of these practices of the CPD. Its day-to-day activities are reactive rather than the result of deliberately chosen enforcement policies designed to carry out the goals of the enabling statute. Consumer protection activities follow the victimized consumer's perception of where protection is needed. This does not mean, of course, that consumer protection policy is totally reactive. It also does not mean that the office has no enforcement policy to determine whether complaints about the home improvement industry or about trade schools are to receive more thorough and exhaustive attention. It does mean that consumer protection policy is limited to ordering priorities in incoming business.

The reactive stance of the agency goes even further. At any time, the investigation of a particular case can be continued to a later time or dropped because of the press of newer cases. The office's activities are not governed simply by external demands, but by the most immediate demands. The mandate to "do something" for the complaining citizen is interpreted in such a way that no matter how important the

<sup>22</sup> Since the resolution of consumer complaints is not understandable by analyzing either the law and regulations or the disposition codes and written records of the consumer protection division, the rules of law must be discovered by careful observation. Mayhew suggests, however, that caution be taken when inferring rules of law from observation of practical behavior. The procedure is only peripherally analogous to the "process of legal reasoning that jurists use in inferring the ratio decidendi of a case from a judge's decision in combination with his recital of the facts of the case" (1968: 223). The Attorney General's agents are not intent upon establishing a set of rules, nor are they explicitly aware that they are creating rules of law. Like Mayhew's commissioners, "their treatment of cases is relatively informal and casual." They do not report the details of their investigations or necessarily list all the considerations or facts of a case. They do not review each others' work for patterns of decision making or patterns of consumer fraud. They are not constrained by each others' actions. Therefore the practical considerations which guide decision making are relatively broad principles rather than prescriptive rules.



case at hand may be, it is always possible for another complaint to arrive and replace it as the focus of the agent's attention. The ironic consequence of this serial responsiveness on the part of the agency is to make it even more passive with regard to consumer fraud.

Despite the reactive stance of the agency, case disposition is not determined by the interested party's threshold of action, as in many types of law enforcement characterized by third-party mediation. Disputes normally "terminate when both parties' grievances are reduced below the threshold level at which they will take action" (Steele, 1975a: 1117). At the CPD, however, the agent's tolerance and threshold of satisfaction are the critical factors. Cases can be closed and "resolved" whether or not grievances fall below the threshold level of the disputing parties' interests.

Recourse to alternative dispute-settlement mechanisms is costly. When a complaint is officially closed, the consumer, having exhausted the most accessible and appropriate route, may calculate anew the strategic options available (Hirschman, 1970; Felstiner, 1974; Galanter, 1974, 1976; Merry, 1979). The burden of cost may militate against pursuing the complaint further even though the grievance has not been resolved. The agent, in effect, becomes a party to the dispute, at least for a time. It is the agent's interests which affect and ultimately determine the level at which the parties must be satisfied. Moreover, the agent's level of satisfaction does not necessarily depend on legal rules of liability, judgments about the cause of the dispute and the merits of each party's claims, or on broader policy considerations such as assessment of the extent of consumer fraud. Rather, as we have seen, the agent's view of consumer complaints may reflect a host of considerations rooted in the circumstances and organization of enforcement practices. This discrepancy between the agent's and the consumer's view accounts for some of the dissatisfaction with the results of the enforcement efforts of agencies such as the CPD (Steele, 1975a: 1179; Nader, 1978, 1980: 40; Cranston, 1979: 94).

Agents engage in conciliatory practices which reduce the consumer's active interest in the case. This reinforces the predominance of the agency's role in establishing the meaning of consumer protection. The agent may explain the burdens of proof, the necessary and inevitable time delays, and the costs involved in pursuing the case further. In the role of mediator rather than advocate, he may represent and explain the

business's point of view. Macaulay (1979: 124) describes very similar efforts by lawyers who are consulted about consumer complaints. "By body language and discussion, the lawyer can lead the client to redefine the situation so that he or she can accept it. What appeared to the client to be a clear case of fraud or bad faith can come on close examination to be seen as no more than a misunderstanding. . . ." Macaulay characterizes this role in terms of Justice Brandeis's concept of the lawyer as "counsel for the situation." The third party in consumer disputes becomes "advocate, mediator, entrepreneur, and judge all rolled into one. . . . This often means persuading or coercing both the other party and the client to reach what the lawyer sees as a proper solution. . . . The client may leave the lawyer without obtaining satisfaction, but the client leaves" (Macaulay, 1979: 128; cf. Nader, 1980: 38, 1978: 93-94).

The need to get things done and the desire to help the "little guy" recoup some of his losses work against full consideration of the technical merits of consumer grievances (cf. Cranston, 1979: 92). The offensiveness of a particularly flagrant violation seems blunted when the business appears ready to make amends. It is difficult to treat a case as culpable deceit when the accused is ready to talk about it. At the very least, investigators distinguish between swindlers who persist and swindlers who, without admitting culpability, offer to "see what they can do." Steele (1975a) emphasizes this distinction when he describes the moral censure which attaches to law enforcement strategies for handling consumer complaints, but is absent in dispute resolution mechanisms for handling those same grievances.

Attention is also drawn away from the technical merits of cases, because complainants whose losses appear wholly or partly due to their own incompetence or improvidence are, nevertheless, thought to deserve some help. Concern for clear and precise legal formulation is not, for example, very important to an agent whose job is to satisfy a consumer who has poor TV reception and who thinks he has already overpaid for repairs. The agent's governing concern is to get the defective television serviced again. The staff feels justified in disregarding matters of strictly legal responsibility, and in neglecting to measure cases against formulated statutory standards. They believe that the objectives of helping the ordinary citizen, and controlling deceptive trade practices, are better served by what they are doing for complaining consumers than they would be by strictly punitive law



enforcement. In the game of negotiation, "you never want to get to the merits of the case" (Macaulay, 1979: 126; cf. Aubert, 1963).

The agency's "humanistic," even-handed approach thus limits the programmatic thrust of consumer protection. In contrast, Mayhew found that the opposite approach, a legalistic interpretation of the mandate for public action (against discrimination), also produced limited results. Although the Massachusetts Commission Against Discrimination claimed to be oriented to human relations, its methods were legalistic; the organizational settings of human relations were obscured (1968: 234). Although the CPD is oriented to consumer satisfaction, its method of case-by-case mediation is passive and individualized. The organizational context of consumer grievances is obscured. Both approaches, "humanistic even-handedness" and "legalistic interpretation," treat a systemic problem in a particularistic fashion that protects ordinary market practice. Finally, the consequences of case processing in the CPD contributed to a sense of arbitrariness. The outcomes were inconsistent and did not conform to legal rules.<sup>23</sup>

## VI. SUMMARY AND CONCLUSION

Upon its creation in 1968, the CPD adopted a policy of case-by-case resolution of individual consumer complaints. This served several requirements: 1) the need to accumulate experience with consumer problems; 2) the constraints of a limited and inexperienced legal staff; 3) the desire not to alienate the business community, without whose cooperation the CPD believed it could not function; and 4) the desire to provide early tangible accomplishments for the consuming public it was created to serve. The resolution of individual consumer complaints became the exclusive occupation of the office.

Complaint processing in the CPD illustrates how the routinization of law enforcement shapes and transforms the impact of a legal mandate. The law instructed the Attorney

<sup>23</sup> Jowell (1975) argues that the main culprit in discretion is the arbitrary rule that is not related to organizational ends. A sense of arbitrariness may prevail, nevertheless, when organizational ends are elusive, internal, and unrecognized by those against whom the rules apply. Kagan (1980) suggests, however, that legalistic enforcement of rules which do not reflect realistic market and organizational demands of the client population, can easily be perceived as arbitrary and can undermine the desired impact of regulatory legislation.

General to provide consumers with recourse from deceptive and misrepresentative trade practices. The agency used the cases at hand to get this done by attempting to resolve all complaints it received. The voluminous flow of complaints which followed required organization; it also subverted the possibility of adequate review. Recordkeeping became a way of managing the flow and creating the precedents required for the law to be effective. But the records did not describe the circumstances of mediation, and practice was not governed by the official codes. Precedents and patterns of complaint and misrepresentation did not emerge from routinized case processing.

I have proposed that the routinization of an endless task is a source both of bias and legitimation. The considerations of doing the task are not necessarily the considerations recognized by the law; such practical dimensions of enforcement are also unlikely to be admitted by public officials. Yet it is inextricably a part of the life of the law. Rulemaking orders bureaucratic processes, but it is not the exclusive denominator of those processes. Getting things done in a public agency is governed by other considerations. When it is time to close a case, just about anything will count as a reason. This comes close to being a universal principle of work, whether that work is investigating and prosecuting consumer complaints, preparing a meal, allocating CETA jobs, accepting alcoholics for treatment, enforcing federal trade regulations, or writing a paper. The worker's need for order and structure imposes itself upon any task.

In conclusion, this paper illustrates the inherent ambiguity of law. Law is a social control system whose legitimacy rests on claims to generality, objectivity, consistency, and clarity. It is distinguished from personalized and subjective forms of decision making (Weber, 1954; Trubek, 1972). Yet, it also rests upon practicality and reasonableness (Fuller, 1969). By its very generality and objectivity, law is available and open, and must be defined by its uses which are circumstantial and organizationally rooted (Silbey and Bittner, 1981). This is a conception of law enforcement as a situationally defined process. It is particularly relevant in a society which increasingly relies upon legal remedies for social problems.

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