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ABSTRACT

The five chapters of this book are intended to prepare high school debaters and their coaches for the efficient investigation of the 1980-81 High School Debate Problem Area and Resolutions. The first chapter contains an overview of the problem area--consumer interests--describing the basic concepts of regulation and risk, the definitions of the major terms (consumers, consumer interests), the various consumer protection strategies and agencies, and the sample solutions that are available. The next three chapters examine the debate resolutions: safety guarantees on consumer goods, the regulation of commercial advertising, and standards of testing/marketing for potentially carcinogenic substances. A final chapter reviews general procedures for researching the debate issues, suggesting references and indexes that provide or update information on the debate topics. A selected bibliography of books, government documents, and periodical information is included. (RL)

ERIC First Analysis: Consumer Interests

1980-81 National High School Debate Resolutions

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Foreword

The ERIC *First Analysis* of the 1979–80 National High School Debate Resolutions is published by the Speech Communication Association in cooperation with the Educational Resources Information Center Clearinghouse on Reading and Communication Skills (ERIC/RCS). The ERIC/RCS Clearinghouse is supported by the National Institute of Education which has as one of its missions the dissemination of knowledge to improve classroom practices. This ERIC information analysis paper is unique in that it is intended for direct use by high school students as well as by their teachers.

ERIC *First Analysis*, published annually since 1973, provides debaters with guidelines for research on the debate resolutions selected by the National University Extension Association's Committee on Discussion and Debate. Periodic surveys of teachers of debate have indicated that *First Analysis* has proved to be an excellent resource for students in their study of issues and arguments. It incorporates an instructional approach designed to avoid "pat" cases and "canned" evidence.

This year the resolutions center on consumer interests. Through the study of David Wagner's analysis, students will become aware of the breadth and depth of the issues involved in the debate resolutions. Teachers will also find the resource useful in planning debate workshops and in teaching students about the processes of research in argumentation. Individuals studying the problems of consumer interests in classes or in other contexts not related to debate will find *First Analysis* to be a valuable guide to issues and resources.

To be a "first" analysis, the manuscript must be prepared in a period of six weeks after the February 1 announcement of the national debate topic. The author's thorough analysis of issues and sources in so short a time and his adaptation of the analysis to the needs of high school debaters are tributes to his experience and excellence as a forensics educator.

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1980–81 High School Debate Problem Area and Resolutions

How can the interests
of United States consumers
best be served?

Debate Resolutions

Resolved: That the federal government should initiate and enforce safety guarantees on consumer goods.

Resolved: That the federal government should establish uniform standards for the regulation of commercial advertising.

Resolved: That the federal government should establish uniform standards for testing and marketing all products with potentially carcinogenic effects on humans.

Preface

The purpose of this publication is to provide a brief overview of the 1980–81 high school debate resolutions. The decision-making process for selecting the problem area and resolutions is vastly different from the system used for determining the college debate topic. Last December, the National University Extension Association (NUEA) Committee on Discussion and Debate met in Kansas City, Missouri and offered three problem areas and nine resolutions for consideration. After a month of balloting by the various state and national forensic leagues, the consumer interest problem won the referendum. The final resolution will not be determined until December 1980, although an early preference has been shown for the consumer goods and, to a lesser degree, the commercial advertising resolutions. This latter topic is considerably narrower than the former.

Whichever resolution is finally selected, the debater will have a tremendous amount of research material to assimilate. The five chapters of this book are intended to prepare debaters for their own efficient investigation of the problem area. The five chapters are: (1) problem area overview, including basic concepts of regulation and risk, definitions of consumer, protection strategies and agencies, and sample solutions; (2) the first resolution, consumer goods; (3) the commercial advertising resolution; (4) the carcinogenic substances resolution; and (5) getting started, research and evidence. At the end of the final chapter are footnotes for each chapter and selected bibliographies on the general consumer interest area.

Since this text has been written extremely early in the new debate year, it can hardly encompass all possible cases which could be developed under any of the resolutions. This publication should be used to establish early research priorities on the most likely affirmative and negative arguments. The opinions expressed in this work do not represent the official position of either the NUEA or of the Speech Communication Association. In most instances the consensus view of debate theory is presented, which may not represent the personal view of the author. As a general

rule, this text emphasizes the practical rather than the exotic.

All the writing and research assignments for this publication were done by the author. However, Carl Douma, a senior debater at California State University, Sacramento, was invaluable in securing documents and offering suggestions on potential case arguments. Most of the manuscript typing was done by Karin Stodder. Final editing and proofreading assistance was gratefully accepted from Christine Wagner.

The task of compiling the material and finishing the manuscript under rigorous time constraints has been made easier by the patience and understanding of both my family and the staff and faculty of the Department of Communication Studies. It is hoped that the material provided in this publication will benefit debaters and coaches, and serve to introduce an exciting topic to audiences and judges.

David L. Wagner

1 The Problem Area: Consumer Interests

How Can the Interests of United States Consumers Best Be Served?

Basic Questions

The answers to the basic questions posed by this year's debate topic are of great concern to everyone in society. Perhaps the most basic issue to be addressed in consideration of all three resolutions is who will decide what level of risk is acceptable for the public to bear. There is risk involved in every facet of life—driving an automobile, walking, smoking, drinking a diet soda, or mowing the lawn. As a matter of fact, Consumer Product Safety Commission (CPSC) statistics indicate that even staying in bed is unsafe. The real question then "is not whether we will have risk at all, but how much risk and from what source. Perhaps even more important, the question is who shall decide."[1]

Level of Risks?

Why do we become alarmed at the prospects of nuclear power yet tolerate over 50,000 automobile deaths a year? We applaud bizarre attempts to get listed in the *Guinness Book of World Records* or "we find ourselves serenely contemplating a person's plan to climb a dangerous Himalayan peak at the same time that we propose making it illegal for her to buy a can of Tab."[2]

Not only are researchers uncovering new risks, but also, we are told, "old activities, once thought safe, in fact pose substantial risks."[3] Unfortunately, there is no way to avoid a proliferation of problems:

> New risks are the inevitable price of the benefits of progress in an advanced industrial society. In order to have the energy necessary to run our homes and our factories, we incur the risks of energy production, whether they be the risks of coal mining, nuclear reactor accidents, or the chance that a tree will fall on

> a man felling firewood. In order to have mobility, we risk automobile accidents and illness from air pollution. In order to have variety and convenience in our food supply, we risk cancer or other toxic reactions from additives.[4]

Of course not all risks are susceptible to the same set of solutions. For example, situations like air pollution, waste hazards, and toxic pesticide contamination of food really do not allow the individual to take independent action to control risks effectively. These external hazards are different from a "user-risk situation, where the user is generally the only person exposed to danger and where he can choose whether to take the risk."[5] The former risk situation calls for a governmental response, whereas the latter may require a program of consumer education and information dissemination to allow the individual to make an informed choice. An additional complication arises when we consider that even a user-risk situation involves society at large. An injured individual may require hospitalization or ambulance services and may need public welfare or unemployment payments to compensate for lost wages. All of these involve expenditure of public funds; therefore, there may not be a clear category of user unrelated to broader social concerns.

A second consideration is that "there are great variations in the risk/benefit circumstances of individuals."[6] For instance, air pollution poses a greater health hazard for cigarette smokers, the aged, and individuals who suffer pre-existing lung ailments. A similar situation exists with use of saccharin:

> We can, for instance, identify groups that may have elevated risks from saccharin: pregnant women, since their unborn children might be unusually sensitive (as the two-generation rat tests suggest), and children, who not only might be more sensitive but who also have such a long life expectancy before them that an induced cancer would have ample time to develop. We can as readily identify groups that are likely to have zero risk. All persons fifty-five years of age or older, for example, can probably use saccharin with impunity since the latent period for cancer induction would be longer than their remaining life expectancy.[7]

The existence of these identifiable groups suggests that consumer-protection standards must be complex; no simple general solution seems plausible.

Who Decides?

Once a definite risk has been discovered, the next step is to determine the individual or group responsible for protecting citi-

zens from it. For centuries the philosophy was one of *caveat emptor* or "let the buyer beware." "The conventional wisdom formerly placed the blame for product-related accidents on the consumer. Either the consumer ignored the warning or, if he did read the warning, he misused or abused the product."[8] Or if the consumer purchased a product which did not live up to the claims made about it, there was no recourse available except complaining to the seller.

The modern economic order is characterized by a series of arm-length transactions. "Our economic interactions are numerous and complex, and market mechanisms alone set few restraints on such social crimes as pollution, industrial safety hazards, and consumer fraud."[9] The result, according to Joan Claybrook of the National Highway Traffic Safety Administration (NHTSA), is that "safety regulation is normally imposed following gross abuses that the marketplace does not correct. Its purpose is to prevent the recurrence of certain harm, not to punish."[10] In order for the marketplace to function effectively, there must be "a condition of non-oligopolistic competition and a flow of essential information to discerning consumers."[11] Most economists would not characterize the American market as meeting either of these preconditions.

Direct Regulation

Today, the government is emerging as a direct regulator of business behavior. The Federal Trade Commission (FTC) and a few other involved agencies believe that this intervention does not supplant the consumer but rather enhances the consumer's market knowledge and power.[12] There are certain costs involved in this process. Money allocated to safety or pollution devices cannot be used for research, development, or job creation. Regulations and the resultant red tape often delay or destroy projects and create an uncertain investment climate. "The ability to innovate is linked directly to an ability to invest, both in R & D and in production facilities, and the willingness to innovate is linked directly to the likelihood of an adequate reward."[13]

Perhaps the best example of this stifling of innovation can be seen in the drug industry. The Food and Drug Administration (FDA) must approve drugs for use in the United States. Industry officials told a General Accounting Office (GAO) investigating group that "New Drug Approvals [NDA] are slow because FDA guidelines are imprecise and subject to different interpretations; FDA often changes reviewers during the course of an NDA, which slows things down; disagreements between industry and FDA are

not easy to resolve; and there are long periods of delay after a company submits an NDA before it is notified by FDA of deficiencies."[14] The results, according to Gregory Ahart, director of GAO's human resource division, are that "the U.S. drug approval system is generally slower than those of other developed countries, and lengthier scrutiny of U.S. drug applications doesn't guarantee that drugs sold in the U.S. are any safer than those sold in, say, West Germany."[15] Drugs that are not marketed due to regulatory delay cannot be used to treat the ill.[16] The solution is to streamline the new drug-approval process which would foster needed research and development, check rising costs, and speed the approval of needed drugs.[17] Certainly such allegations do not go unanswered. Donald Kennedy, the FDA commissioner, "argues that the drug lag is actually a worldwide problem stemming from an exhaustion of fruitful areas of drug research."[18]

At a more general level, government regulations are responsible for saving thousands of lives. Harvard law professor Lawrence Tribe concluded:

> Infant deaths from crib strangulation and household poisons have been cut in half by product safety standards requiring closely spaced crib slats and childproof containers for dangerous substances. An estimated 200,000 Americans would not be alive today but for the federal automobile and highway safety standards enacted since 1966. Carbon monoxide levels in eight representative cities declined 46 percent between 1972 and 1976—a decline which may be linked to the recent reduction in heart disease. And worker exposure to harmful doses of coal dust, asbestos, lead, and other toxic substances has been substantially cut.[19]

Direct regulations for health and safety also provide a financial return. A Nader-affiliated group, the Corporate Accountability Research Group, reported that such regulations provided Americans with $35 billion in benefits last year alone, and it is estimated that this amount will grow to $80.6 billion in 1985. On balance the benefits of federal regulation usually outweigh the costs.[20] A cost-benefit advantage is also claimed for the pollution control program. The federal government was receiving $8 billion in benefits from a program that cost only $6.7 billion. An Environmental Protection Agency (EPA) study estimates that if stationary source pollution could be reduced by 60 percent, the "government could increase labor productivity by $36 billion and realize an additional $4 billion gain from reduced mortality."[21]

Indirect Regulation

An alternative to direct regulation is a system which would utilize the market mechanism to bring about desired behavior. For example, one proposal for reducing pollution would charge industry an effluent fee for each incident of waste water discharge. Recently, Charles Schultz, of the president's Council of Economic Advisors, calling for a change in the program of the Occupational Safety and Health Administration (OSHA), "proposed that government-created incentives and disincentives would promote worker safety and health more effectively than thou-shall-not rules."[22] Professor Tribe further explains:

> Taxing employers for on-the-job injuries to their workers would provide an effective incentive to guard against workplace accidents in the most cost-effective way. This and other self-executing enforcement devices would better serve the purposes now entrusted to an intrinsically inadequate inspection system. Workers themselves would enforce OSHA's standards—by filing accident reports.[23]

Yet another application of the taxing mechanism might be a solution to the problem posed by use of saccharin. "One solution relying upon incentives is to put a tax on saccharin-sweetened products, thereby introducing an optionally large price difference between these and their sugared substitutes. This would discourage frivolous consumption of saccharin products, while still permitting persons with special needs for diet foods to obtain them."[24]

Information Dissemination

Yet another role for the government is that of disseminator of information to the public. For example, supplying information about risks and benefits of saccharin to consumers would allow them to reach their own decision about use of this possible carcinogen. Federal requirements for placing warnings on cigarettes have reduced the tar and nicotine inhaled by the average smoker. A Federal Trade Commission report estimates that "the average consumption of cigarette tar and nicotine would have been 80 percent higher in 1975 if publicity about cigarette hazards had not brought about the drop in both smoking and tar and nicotine levels of cigarettes."[25] This model shows how government intervention provides necessary data for consumers to educate themselves about the risks of using certain products.

Market Guarantor

In a final model of involvement, the government provides those goods or services which the private sector cannot or will not produce. The most recent example of this policy was the final development of the swine flu vaccine. Drug manufacturers, fearful of numerous liability lawsuits, refused to market the vaccine. To break this deadlock, the federal government "allowed those claiming injury from the vaccine to sue the government in the first instance, with the government empowered to institute a separate suit to recover for negligence against manufacturers and physicians."[26] Thus, the government provided the necessary incentive for the market mechanism to function. In a similar vein, loan guarantees to Lockheed and Chrysler helped keep these corporations active in the market. There are even some ventures, such as space travel and satellite communication, which are too risky for private investment without initial government involvement. In these examples it is the government itself which actually guarantees the production of the consumer good.

We are now ready to explore the concepts involved in using the term *consumer*.

Defining the Beneficiary

The debate problem area—*How can the interests of United States consumers best be served?*—calls for providing some advantage or meeting some need of concern to American consumers. A first step is to define the consumer, the major beneficiary of such action.

There are several reasons why it is important to define major terms. Underlying all of them is the essential requirement to separate permissable areas for affirmative and negative inquiry. Zarefsky "conveniently divides the totality of possibilities with respect to a given question into two spheres: 'affirmativeland' represents the confines of the resolution, whereas 'negativeland' includes all other alternatives."[27] In a debate sense, there is a need to clarify which areas can legitimately be claimed by each team as their "turf." Pfau explains:

> "Affirmativeland" does not, however, expand into a vacuum. To the contrary, "affirmativeland" expands only at the expense of "negativeland." As negatives search for nonresolutional alternatives to an affirmative plan, they do so within a contracting field.[28]

What are the practical ramifications of such concepts as "affirmativeland" and "negativeland"? They focus the debater's attention on those areas which are important to research. They add substance to the various options available to the negative. For example, cases of consumer complaint that turn on the question of inherent defect or repairable part can be more clearly delineated through a definition of "inherency." Good opportunities for negative counterplanning or topicality argumentation often can result from analysis by definition. As noted in a recent textbook on reasoning, definitions, in addition to contributing to general clarity, also help uncover the major issues in dispute.[29] Thus, at the beginning of any debate season, a comprehensive knowledge of the various definitions pertinent to the problem area is essential for identifying potential affirmative cases, as well as for preparing effective negative cases.

Types of Definitions

There are various methods of defining essential terms. One way is to formally announce the meaning of each word in the resolution near the beginning of the first affirmative speech. Another approach, which is more commonly employed, is to define the resolution operationally as the affirmative plan. It is assumed that this concrete plan will embody the true meaning of the essential words of the debate topic. Of course, specific definitions and arguments which justify this particular affirmative interpretation should be kept in reserve to be used if the negative issues a topicality challenge.

The burden of supplying a reasonable definition of terms rests with the affirmative. Too often this obligation is misconstrued as being met by offering any definition. Actually, it is very important to establish a standard to measure how reasonable or rational the proffered definition really is. The care taken in developing this standard should ultimately determine the victor in a clash of differing approaches to the resolution.

One yardstick is to offer an intuitive idea of what a reasonable person of common sense would consider proper areas for consideration under the debate topic. Sometimes this position is advocated without evidence, and typically, references are made to what the man in the street would consider topical. This approach, if taken without using evidence, places the debater at the mercy of the other team or the judge; they do not need to supply much real refutation to seriously weaken the impact of this type of

definition. Nevertheless, a standard dictionary definition, which offers this type of general consensus meaning for words, can provide added authority for the position.

Another approach tries to discover the spirit of the resolution or the interest of the NUEA Committee on Discussion and Debate. Certainly the provision of a problem area and the publication of *The Forensic Quarterly* makes this an easier task than in college debate where a parameter statement is the only additional information conveyed by the authors of the resolution. However useful the available information may be early in the summer, most debaters will research the topic more extensively than the Discussion Committee. The pool of knowledge relied upon to formulate the resolution is quickly exhausted—and then exceeded by the industrious researcher. Thus, topicality should not be regarded as a static issue, forever occupying fixed, immutable boundaries. As additional and more thorough sources are explored, ideas of what fits within the topic should also change.

Yet a third approach requires examining the grammatical context of the words and phrases in each resolution. The position of adjectives, dependent or independent clauses, and prepositions may provide an indication of the meaning of important terms.

A final method for discovering meaning is to examine what experts in various fields consider to be relevant information on certain topics. For example, *consumer* is a very specific term to an economist or to a lawyer. Legal, economic, and business dictionaries each offer an exact definition of this term. Similarly, textbooks, laws, and congressional committees that deal with consumer interests also consider a variety of issues which are easily researched. Concepts are clarified by policymakers when they use them in conjunction with certain topics. This field approach also encourages the debater to consider different approaches to problems:

> Thus, a special value of disputation about a proposition's meaning or about any of its terms is that it forces debaters to carefully consider the differences in interpretation which appear across fields. One confronts the nature of fields, as it were, face to face when one grapples with differences in the interpretations of specific terms. No better way of illustrating the differences between communities of discourse immediately suggests itself.[30]

Consumer

Who is a consumer? What are those attributes which distinguish this role from many others played by citizens every day? Basically,

a consumer is an actor in the economic order, one "who buys goods and services for personal use rather than for manufacture, processing, or resale."[31] *Black's Law Dictionary* offers a slightly different view: "One who uses economic goods and so diminishes or destroys their utilities; opposed to producer."[32] The term thus applies to individuals acting for non-business purposes, using what is produced by others. Some manufacturers as they finish a product could also be consumers of primary material under the legal definition, although they are explicitly excluded by the economic concept. Legal meanings of related terms can be found in *Words and Phrases:* " 'Consume' means to use up, expend, waste, devour, with synonyms destroy, swallow up, engulf, absorb, waste, exhaust, spend, expend, squander, lavish, dissipate, burn up."[33]

Interests

The interests of United States consumers go far beyond those specified in the three resolutions which delimit the problem area. Synonymous terms include benefits, welfare, and concern.[34] Consumers are concerned with a wide range of problems and their solutions: inflation, unemployment, quality of education, crime, pollution, defense spending, reduction of government budgets. Of course, many of the solutions to these problems are incompatible with each other. For example, spending more on pollution control could increase unemployment; more funds for defense could fuel further inflation.

Limitations on what interests should be considered will become clearer in subsequent chapters. At this point, it is necessary to consider general background information on the consumer movement in the United States and the variety of remedies available to redress wrongs.

Consumerism

The rise of the consumer movement in the early 1960s was marked by the emergence of individuals such as Ralph Nader and Esther Peterson and the strengthening of such groups as the Consumer Federation of America and the Consumer's Union. At that time, activists were interested in securing the safety of products used by consumers. This concern blossomed into a variety of topics as the movement grew. "During the late 1960s, a breed called consumerists surfaced. Claiming to be the voice of the unrepresented, they championed environmental issues, racial and sex

equality, health and energy reforms, and demands for regulation that would enforce their objectives."[35]

As the decade of the 1980s begins, the concerns of those who seek to protect the public have broadened to new areas:

> Today's consumerist movement has broadened the scope and sophistication of its activities to include political and judicial reforms, economic and social abuses, nuclear power, corporate governance, energy and environmental questions, antitrust, product safety, and numerous other issues. And, in almost every case, the proposed solution calls for even more regulation by government.[36]

This expansive view of consumer interest has created powerful reactions from forces who characterize it as antibusiness, anti-growth, and pro-big government. Extensive counter-lobbying by business has led to a series of setbacks for legislation desired by consumer groups. The *Congressional Quarterly* reports on the reasons behind such reversals:

> The movement ran into serious trouble in the last Congress when its goals became linked in the public's eye with increased government spending and inflation.
>
> Business groups attacked consumerism as out of touch with the nation's needs, claiming that, for every problem, consumer advocates had only one solution: more government regulation. If there were less rather than more regulation, the business groups argued, government spending would go down and inflation could be contained.[37]

Many former supporters have abandoned their alliance with the consumer movement.

> As concern over inflation mounted last year, a significant number of legislators who traditionally had supported consumer goals in Congress—many of them moderate Democrats—began to vote against consumer bills. Despite support from the president and the Democratic leadership, much of the consumer movement's legislative agenda subsequently was defeated.[38]

The outlook for the immediate future is not extremely bright. Kathleen O'Reilly, the executive director of the Consumer Federation of America, predicts: "All the indications are that the 96th Congress is going to be ornery and hostile to consumer issues, even more difficult to work with than the 95th."[39]

In the face of such adversity, those who are spokespersons for major consumer groups are seeking a different focus. As Esther Peterson, special assistant to the President for consumer affairs, explains:

> We are moving [away] from that pure view of 'consumerism' as a group of isolated issues standing apart from other areas of concern. We're not abandoning this view. Instead, we're searching for the consumer component of other things, such as privacy, housing, energy and health. I want to see that the consumer viewpoint is included in these things.[40]

Yet another strategy is to ride the tide of the rhetoric of inflation control in an effort to redesign legislative goals as part of the war on inflation. A number of proposed measures such as deregulation of communications and trucking, no-fault automobile insurance, hospital cost containment, and auto repair cost controls are all changes which would help the consumer save money.[41]

Not all in Congress have given up the battle. James Scheuer, chair of the House Commerce Committee's Consumer Protection subcommittee, has outlined several major initiatives: (1) strengthened enforcement powers for the Consumer Product Safety Commission enabling it to issue certificates of safety before goods are marketed; (2) a model federal law requiring the states to enact product liability laws; (3) an auto warranty bill requiring auto manufacturers to replace unrepairable cars; and (4) consumer dispute resolution mechanisms for inexpensive settlement of consumer controversies.[42]

Consumer Protection Agency (CPA)

The fight over a proposed Consumer Protection Agency represents a good case study of current consumer legislation. From 1969 to 1978 numerous bills establishing a CPA were advanced in Congress. Years of delaying tactics by business finally culminated in a vote of 189 to 227 against the agency in the House, effectively killing chances for such an agency in the near future. This defeat has been interpreted as the beginning of the decline of consumer power.

> With the surprise Congressional defeat last year of the bill to create a federal consumer protection agency, it was widely believed that consumerism had crested, and that there was unlikely to be much legislation in the area for a long time.[43]

There were several variations of the CPA, but its basic provisions remained the same. First, the agency was to be independent with a director appointed by the president. Second, the basic function of the CPA was to represent consumer interests in hearings before federal agencies or in concert. Third, such an agency would be empowered to represent consumers in federal civil court actions

brought by other federal agencies. Fourth, this proposed agency could also initiate suits to review federal department decisions which had a deleterious impact on the public. Fifth, a Consumer Protection Agency would channel individual complaints to the appropriate business and government agency.[44] Such an agency was seen as a great benefit to consumers.

> The principal argument set forth in favor of a consumer protection agency was the need to monitor the regulatory agencies so that the consumer's case could be presented at the appropriate time. Consumer groups maintained that business had the resources and talent to promote their interest before these agencies, while consumers did not.[45]

This concept was supported by only a handful of businesses. One of those was Marcon, whose vice president, Patrick J. Head, noted why his corporation sought creation of such an agency:

> We supported the creation of the CPA and reaffirm that position today, because we believe that consumers who do not feel shut out and unrepresented in government proceedings which affect their pocketbooks, their well-being, and the quality of their lives will be better customers of ours and of other businesses which are, in fact, trying to serve them well.
>
> We believe that the creation of a new consumer protection agency under legislation that is fair and reasonable to all will contribute to that goal.[46]

However, this view was shared by very few other corporations or business associations. The three largest and most prestigious national organizations—the U.S. Chamber of Commerce, the National Association of Manufacturers (NAM), and the Business Roundtable were united in opposition. An informational pamphlet by NAM claimed:

> In a few weeks, the U.S. Senate will decide whether virtually all business relations with the government could be disrupted and second-guessed by a tax supported consumer advocate with the *legal* right to attack both business *and* government by interfering with regulatory activities of virtually *all* federal departments and agencies.
>
> In actuality, this [CPA] bill permanently federalizes and subsidizes the consumer movement as conceived by Ralph Nader.
>
> This bill assures built-in disruption of virtually all government agencies. The bill would give the new agency irresponsible power to second-guess and *override* decisions of cabinet officers and other government agencies.[47]

The major disadvantages of the Consumer Protection Agency as outlined by various business spokesmen during congressional

hearings were as follows: (1) the agency would be more powerful than any agency or even the president in consumer affairs; (2) such a proposal would further enlarge the unwieldy bureaucracy; (3) the interests of consumers are too diverse to be represented by one single agency; (4) intervention would add delay to federal agencies' decisions, increase cost to consumer goods, and decrease the likelihood of business cooperation with consumers or with government regulations; and (5) other federal agencies have extensive powers to protect consumer interests.[48]

After years of trying to get such a bill passed, consumerists lost in a surprisingly lopsided vote. This defeat was blamed on poor strategic decisions by consumer leaders, campaign donations from business, and the general anticonsumerist mood of the country. However, the organized consumer movement had not given up hope. As the National Consumer League's Pequet notes: "The feeling is that it's one of the most important priorities of the decade. Last year's defeat shows us the strength of big business and big money. But it's still a very important idea. You don't want to abandon it just because there's opposition to it."[49]

Consumer Self-Help

In the absence of a Consumer Protection Agency what can individuals do to protect their interests? The Consumer's Union suggests that:

> A victimized consumer's best hope of swift redress comes from a documented complaint to the seller or manufacturer. Once those avenues have failed, or if the issue is larger than one swindled consumer, it's time to get legal help. You have the right to obtain information and, perhaps, legal help from your Government.[50]

The Consumer Product Safety Commission has provided a detailed procedure for complaining, entitled "How to Complain . . . and Get Results":

> If you buy a product that breaks, poses a safety hazard, or doesn't work as well as you were led to believe, what do you do? Learning how to complain effectively—and to whom—can save a consumer time, money, and frustration.
>
> The first step, naturally, is to take the product, if it is easily portable, and your receipt back to the store from which you bought it. *It is important to keep all receipts for a length of time, perhaps at least a year.* If you no longer have the receipt, try to find some proof—a cancelled check or credit card bill—that shows you bought the product at that store and the date of purchase.

At a local business establishment, talk to the manager, department head, or customer relations person, not a salesperson.

If you bought the product from a nationwide chain of stores—especially if the product is labeled under its brand name—your levels of complaint are somewhat different. First, go to the department head or the consumer relations office, then go to the manager. The next step is the national headquarters of the chain, either the consumer affairs office or a vice-president for consumer affairs.

If you are not satisfied with the results, from either the local store or the national chain, contact the manufacturer of the product, if you bought other than the store's brand. Some manufacturers have local service representatives. Libraries usually carry books with names and addresses of national companies; one such book is the *Consumer Sourcebook*. Many large companies have consumer affairs offices or a customer services office at the headquarters. If there is no such office, or you don't receive satisfaction from one, consider calling the president or vice-president for consumer affairs. Going to a top executive often gets quicker results than other methods. If you write the company, present all your facts clearly, yet briefly. Keep a copy for your records.

If product safety is the source of the problem, the Consumer Product Safety Commission is the place to call. The hotline will take the relevant information—the product, manufacturer, identifying numbers, and the hazard—then conduct an investigation, if warranted.

Other government agencies can also help, depending on the nature of the complaint. The CPSC Fact Sheet No. 52: *Some Federal Consumer-Oriented Agencies* lists government offices and the consumer products or areas they handle.

If you don't receive satisfaction from the retailer or manufacturer, and if no government agency has jurisdiction over your problem area, you still have other resources.

1. Contact local radio and television stations, as well as newspapers, which have "action line" reporters.
2. Your local Better Business Bureau can look into your complaint and try to resolve problems between you and the retailer.
3. City or county consumer agencies can help with products purchased within your area. State consumer agencies, sometimes operated from the State Attorney General's office, are the next step. Names of these agencies can be found in the phone book or your library. One reference is *The National Directory of State Agencies*.
4. Write your congressman and describe your complaint.

Once your complaints go beyond the retail store where you purchased the product, it may be wise to put subsequent complaints in a letter so you'll have a record. If you need to enclose a receipt or warranty, keep a copy.

A good, complete reference is the *Consumer Complaint*

> *Guide* by Joseph Rosenbloom. Published by Macmillan, it lists names and addresses for many companies, as well as for different agencies that will look into your complaint.
>
> With the proliferation of local, State and Federal offices, as well as private concerns that investigate consumer problems, there is no reason why a consumer need take a "No" from a retailer as the last recourse for complaints. If you have a legitimate problem, there are many more avenues of assistance to explore. [From: *CPSC Memo*, August/September, 1979.]

Despite such encouragement, "Most people never complain," says Midge Shulow, director of consumer information for the U.S. Office of Consumer Affairs. "Only ten percent of all consumers go to third-party complaint handlers."[51] However, consumers are becoming more aware of quality, and this "awareness is not going to decrease. Rather, it is increasing rapidly."[52] Studies have shown that "consumers overwhelmingly prefer to handle their differences with sellers by direct negotiation. Furthermore, both the process and its outcome seem to afford them considerable satisfaction."[53] Nevertheless, at times the services of others may be needed to settle disputes.

Arbitration and Mediation

When consumers do not receive satisfaction from the seller the disagreement can be brought to arbitration or mediation. Arbitration, which can be binding on both buyer and seller, invokes the use of a third party to listen to the arguments of each party and then reach a decision. Mediation invokes efforts by a third party to have the buyer and seller reach agreement on solving their own problem. A mediator's recommendation is not binding on the parties.

Inexpensive arbitration is often available from the Better Business Bureau (BBB).

> Arbitration panels with a legal status have been established by most Better Business Bureaus as sort of quick courts of last resort for aggrieved consumers. Most panels are made up of volunteer arbitrators, usually lawyers, and their decisions are considered impartial. To make use of this service, both parties to the dispute must agree to abide by the arbitrator's decision. In most states, local courts will enforce the decision if one party tries to back out. Most bureaus offer the arbitration service free.[54]

Mediation services are not as widely known as the BBB but they do exist.

> Mediation services have been instituted by several industries under the rubric "Consumer Action Panel." Thus, we have seen FICAP, ICAP, MACAP, and AutoCAP for the furniture, insurance, major-appliance, and auto industries; the furniture and insurance panels were experiments that apparently failed in the eyes of the industries, because both programs have been disbanded.[55]

Sometimes even the best efforts of these dispute resolution mechanisms will not provide satisfaction to the consumer. Even though services are available, both parties must agree to use them. "Recent efforts have been made to apply the techniques of arbitration to new areas where complainants generally are unorganized individuals who lack the power or the expertise of the parties complained against. In such cases, however, the more powerful disputants usually lack the incentive to arbitrate."[56] An example of where merchants have refused to submit to binding arbitration is provided by anthropologist Laura Nader:

> More than half of all local Better Business Bureaus offer arbitration in cases where the Bureaus have been unable to resolve consumer complaints through informal means. Both parties to a dispute are asked to sign a submission form that binds them to abide by the arbitrator's decision. While 90 percent of consumers given the opportunity have agreed to such arbitration, only 65 percent of the merchants have done so.[57]

When this occurs, a final option of involving the courts is available.

Adjudication

Consumers who do not receive satisfaction can also file a lawsuit against the seller or the manufacturer. Issues such as product liability and major tort cases will be considered in Chapter Two. Here the concern is with resolution of disputes before they reach this advanced stage. Sarat and Grossman describe the limits of the adjudication approach in this way:

> Adjudicative institutions such as courts are particularistic in form and process, and most often concerned with individual level disputes. The impact of adjudicative decisions initially extends only to the parties in dispute, although it may also have much broader policy implications. Theoretically, adjudicative institutions are more concerned with enforcing existing norms than with creating new ones. Furthermore, they are almost totally "reactive."[58]

Our traditional judicial system is usually too expensive and time consuming for most citizens. "The rules governing liability are complex; lawsuits may take years to be settled and proof of in-

jury generally requires the production of expensive expert testimony."[59] To remedy this problem, small claims courts were developed in most urban areas to deal with minor monetary disputes between neighbors, individuals and merchants, tenants and landlords. But this promise of quick and accessible justice to all has never been realized:

> Something happened to the spirit of the small claims courts. Instead of forums for "ordinary people," by 1960 we discover that collection agencies were the predominant users of small claims courts. For example, a 1961 study of Dane County, Wisconsin, reported that 93 percent of the small claims plaintiffs were businesses. Another study in Alameda County, California, showed that business and governmental bodies initiated 60 percent of all actions.[60]

The reasons for such use patterns are not difficult to discover. "The intricacies of filing a complaint, the disparity in sophistication between the individuals and businesses generally involved in disputes, and the lack of knowledge of the courts' availability all have contributed to the lack of use of the courts by their intended beneficiaries."[61] Given this difficulty it is not surprising that other avenues for meeting the needs of aggrieved consumers have been contemplated.

Alternate Dispute Resolution Mechanisms

This inability of the system of justice to deal with everyday disputes has grave implications. Laura Nader explains this international phenomenon:

> The observation that our law is unresponsive to the grievances of everyday life is not a new one. In 1906 Roscoe Pound elaborated the dangers of ignoring "little injustices," [and] he has been echoed by a small but steady sprinkling of law review articles. Every major revolution of this century (Russia, China, and Cuba, among others) has been accompanied by a clamor for the creation of people's courts; courts that are cheap, effective, and responsive to everyday problems.[62]

This view was shared by S. Shepherd Tate, past president of the American Bar Association (ABA):

> There can be no doubt that we must find ways to improve the settlement of small personal or monetary disputes without the formalities or prohibitive costs of court action. Many aggrieved parties, regardless of socioeconomic status, do not now have effective access to any forum for the resolution of disputes because the loss involved is generally far less than the time, money, and

> trouble required to recover it. And, in some consumer and other disputes, the traditional adversary system may not be the best approach.[63]

His solution is to "invest resources in programs that will facilitate negotiated compromises in nonadversary settings."[64]

Congress has recently passed a minor dispute resolution bill with two major provisions. First, there will be established within the Department of Justice a dispute resolution resource center to act as a clearinghouse for information about innovative programs. Second, federal grant money is authorized to provide a state with funds to strengthen current programs and develop new dispute resolution systems.[65] In addition, legislation on consumer affairs can require different approaches to settling disagreements. "The recently enacted Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, which 'encourages' mechanisms for the settlement of consumer disputes to be incorporated into written warranties and provides for participation in such procedures by independent or governmental agencies, represents a step in this direction."[66]

It is too early to evaluate the effectiveness of these particular programs, but much more needs to be done at all levels of government. The ABA's report of the Pound Conference follow-up task force contains this passage: "Statutory rights become empty promises if adjudication is too long delayed to make them meaningful or the value of a claim is consumed by the expense of asserting it. Only if our courts are functioning smoothly can equal justice become a reality for all."[67]

Government Agencies

Various agencies exist to serve and protect the interests of consumers. An often overlooked area is the explosion of non-federal activities to aid the buyer of products. Over the past decade the role of the states and of local jurisdictions in the area of consumer protection has expanded greatly. The establishment of separate consumer affairs agencies or the inclusion of consumer protection functions in existing agencies, the development of mechanisms for handling consumer complaints (such as toll-free telephone "hot lines"—see below), and other innovative consumer-related actions have taken place at all major levels of government.[68]

As early as 1974 a study published by the U.S. Office of Consumer Affairs reported that some agency of government in each of the fifty states has been assigned responsibility for consumer pro-

tection. In forty-eight of the states the office of the attorney general performs a major function in this regard. Additionally, thirty-six of the states have other consumer-related agencies or activities. Altogether, there were 179 consumer affairs offices or branches in the fifty states, with an additional one each in the District of Columbia, Puerto Rico, and the Virgin Islands.[69] There are also numerous protection agencies established by counties and cities throughout the United States.

Currently, most of the significant consumer legislation is initiated at the federal level. Virtually every federal agency has an impact on the consumer, and many were established to protect specific interests. The Food and Drug Administration (FDA), the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), and the Consumer Product Safety Commission (CPSC) are only a few of those agencies. (They will be considered in greater detail in later chapters as the specific resolutions are examined.) In order to answer consumers' questions about which agency should provide help in specific situations, the U.S. General Services Administration has set up Federal Information Centers in thirty-eight cities. Residents in forty-three additional cities can call by toll-free tieline to the nearest center. A consumer may call or walk into any of these centers and find a person trained to be knowledgeable about the vast number of federal agencies and programs. For consumers, the Federal Information Center will search until it finds someone in the government who can give an answer or deal with the problem.[70]

A list of major federal consumer protection agencies and their functions follows:

Independent Agency

Consumer Product Safety Commission. Consumer product safety standards and information

Environmental Protection Agency. Air and water standards; toxic and waste hazards

Federal Communications Commission. Broadcast regulations for public interest

Federal Trade Commission. Moss-Magnuson Act; false or misleading ads

Executive Department

Agriculture. Food stamps and nutrition education programs; inspects agricultural products

Health and Human Resources. Toxicology program; guidelines for labs

Housing and Urban Development. Construction standards; Land Sales Act enforcement

Transportation. Motor vehicle safety standards; highway safety

Treasury. Regulates firearms and alcohol products

Part of Department of Health and Human Services

Office of Consumer Affairs. Policy advisor to the president; coordinates government programs

Food and Drug Administration. Safety standards for drugs, food, cosmetics; medical devices; pesticides, food additives

National Institute of Health. Regulation of DNA research

Congressional Office

Office of Technological Assessment. Analysis of new technology

Part of Labor Department

Occupational Safety and Health Administration. Health and safety standards for workers

2 Consumer Goods Resolution

Resolved: That the Federal Government Should Initiate and Enforce Safety Guarantees on Consumer Goods.

Basic Concepts

This resolution likely will be the national topic for 1980–81. It has received strong support in straw polls and will be the topic covered by many summer debate institutes. The wording is similar to that of the 1976–77 collegiate resolution on consumer product safety, and many of the affirmative cases researched that year will reappear during the next several months.

As will be done at the beginning of each chapter on the resolutions, the terms of the specific resolution will be examined to provide a framework for examining the policy implications of that debate topic. When *the federal government* is mentioned, it refers to the central government of the United States lodged in Washington, DC. If it meant any other federal structures, the article would be *a* and not *the*. The term *should* is also very important. It is commonly accepted in current debate practice that the debate will center on what policy ought to be adopted. There is no burden on the affirmative to demonstrate that this policy "will" be enacted into law, only that it is "desirable" to do so. (Here the concept of *fiat power* comes into play. A very good discussion of its relevance is contained in last year's *First Analysis.*)[1]

The term *initiate* means "an introductory step or action, a first move; beginning; start."[2] *Enforce* typically is construed to imply compelling observance of a law. *Safety* is a common term and refers to being safe or free from "danger, injury, or damage; security."[3] A *guarantee* is "an assurance of or promising the happening of."[4] But legally, the "promise does not have to be complete and absolute in order to be designated a 'guarantee'."[5]

This assurance of being safe attaches to *consumer goods*, which are "goods, such as food, clothing, etc., for satisfying people's needs rather than for producing other goods or services."[6] The

placement of *on* before *consumer goods* indicates that consumer goods are to be the object of actual or direct action of the safety guarantees. Thus, direct enforcement on the consumer seems to be ruled out.

Consumer Injury

The magnitude of the injury and death caused by consumer goods is unbelievably large. "In 1970 the National Commission on Product Safety issued its report on harmful products. The report indicated that consumer products were involved in most household accidents and that such product-related accidents kill 30,000 people annually, permanently disable 110,000, and hospitalize 580,000."[7] Tables 1, 2, and 3 provide further demonstration of the scope of this problem; they reveal the injury rate and the severity of injury for major products.

Care should be taken in the use of the available data. One problem with citing figures on consumer injuries is that many of the injuries are slight and could not have been prevented by any likely government regulation. There also is great difficulty in establishing the cause or causes of many accidents. For example, if you are standing on a chair to reach some dishes and the rug the chair is placed on slides out from under you, what was the primary cause of the accident? Was it using a chair and not a ladder, or was it not securing the rug? Further safety standards on either chairs or rugs probably would not prevent this type of accident from reoccurring. For purposes of this year's resolution, the real problem in the example is consumer ignorance.

Scope of the Problem

There is virtually an unlimited number of specific affirmative case areas which can be researched on the consumer goods topic. Many of the issues discussed in Chapters Three and Four will apply to this topic since it encompasses aspects of advertising and carcinogenic products. In addition, a wide range of consumer goods could be improved by additional safeguards. For example, handguns are involved in thousands of accidents, suicides, and crimes every year. A system of gun registration or an outright ban on certain weapons purchased by consumers would, according to gun control proponents, solve many of these problems. In another example, legalizing heroin would allow for greater government safety regulation. A system of dispensing this narcotic similar to that used in

Great Britain has been promoted as one method of reducing overdose deaths and of breaking the hold of organized crime on the distribution of heroin. Of course, additional safety requirements on distribution of prescription drugs such as sedatives and tranquilizers or over-the-counter drugs is viewed as one method of reducing an increasing abuse of these substances. Other drugs which are sometimes mentioned as needing additional standards or an outright ban are alcohol and cigarettes. Both contribute to the early and unnecessary deaths of thousands of Americans and, critics maintain, could be controlled by additional regulations.

Table 1

Injuries Associated With Consumer Products Treated in Hospital Emergency Departments

Major Category	Est. Cases Yearly Per 100,000 Pop.
General Household Appliances	30.5
Space Heating, Cooling and Ventilating Appliances	40.3
Housewares	141.0
Home Communication, Entertainment and Hobby Equipment	21.6
Home Furnishings and Fixtures	430.3
Home Workshop Apparatus, Tools, and Attachments	117.0
Home and Family Maintenance Products	54.2
Packaging and Containers for Household Products	94.6
Sports and Recreational Equipment	1277.3
Toys	76.2
Yard and Garden Equipment	98.3
Child Nursery Equipment and Supplies	16.3
Miscellaneous Products: Grocery or Shopping Carts	7.3
Home Structures and Construction Materials	825.6

Source: *National Electronic Injury Surveillance System*; U.S. Consumer Product Safety Commission/Hazard Identification and Analysis; National Injury Information Clearinghouse, 1980.

Table 2

Ten Highest Product Injury Rates

Product	Rate (injuries/100,000)
Stairs (inc. folding), steps, ramps, and landings	284.3
Bicycles and accessories	214.3
Football, activity and related equipment	191.0
Baseball, activity and related equipment	189.7
Basketball, activity and related equipment	176.4
Nails, carpet tacks, screws and thumb tacks	123.7
Floors and flooring materials	90.1
Glass doors, windows, and panels	86.1
Chairs, sofas, and sofa beds	85.2
Beds (except water beds)	71.7

Table 3

Consumer Product Injuries by Severity

Product	Est. Mean Severity
Liquid fuels	310
Batteries, all types	177
Miscellaneous household chemicals	146
Heating stoves and space heaters (except recreational)	115
Money, paper and coins, including toy money	108
Cooking ranges, ovens, and related equipment	103
Bleaches and dyes, cleaning agents, and caustic compounds	102
Hoists, lifts, jacks and jack stands	88
Roofs and roofing materials	78
Cookware, pots, and pans	75
Paints, solvents, and lubricants	75

Source: *National Electronic Injury Surveillance System*; U.S. Consumer Product Safety Commission/Hazard Identification and Analysis; National Injury Information Clearinghouse, 1980.

Each of these products has been the subject of ongoing consumer education campaigns and public service announcements in the media. While the unsafe use of these goods may be increasing at a decreasing rate, isolating the unique contribution of educational efforts is difficult. A good debator on this topic will develop the theme of consumer education as an alternative to government safety standards. In addition, arguments should be researched that will demonstrate the increased commitment of business to producing safer consumer goods. Whether from a realization of corporate responsibility or fear of product liability lawsuits, industry is becoming more aware of the safety issue.

There are numerous consumer goods which could be improved. Even a casual reading of the *Consumer Products Safety Commission Memo* will supply many examples of products likely to benefit from safety standards. But the improvement issue is not always simple. The CPSC was asked to ban the manufacture and use of skateboards because of the 140,000 skateboard-related injuries that require hospital treatment in a year. However, most injuries were found to be "user-related" rather than caused by a product defect. Therefore, the agency will increase its educational program aimed at encouraging proper use and increased utilization of skateboard parks.[8]

There were over 45 million power mowers in use in 1979, with 6 million new rotary mowers purchased annually. These products cause over 60,000 injuries to consumers each year, primarily from contact with the blades or from objects thrown by the spinning blades. A new standard has been issued to require a blade control system and a warning label to educate the consumer about the dangers of blade contact.[9]

The urea-formaldehyde foam insulation used in many homes has been found to be a health hazard. "Aside from possible respiratory problems, other effects ascribed to exposure of formaldehyde gas that may be released from urea-formaldehyde foam insulation include nausea, headaches, fatigue, blackouts, and coughed-up blood."[10] Several states, as well as the CPSC, are now considering a ban on the use of this product.

Fire safety is also a major problem in the United States:

> According to a National Household Fire Survey sponsored by the Commission in 1974, there are approximately 5.6 million fires annually in the US in which there are 326,000 injuries. About 21,000 of these injuries are caused by clothing that ignited. The cost of these fires has been estimated at 1.8 billion dollars annually.[11]

A new prevention program sponsored by the federal government presents "a total involvement program including the media, community leaders, teachers, school children, and their parents."[12] This approach seems to work in reducing burn injuries. On another front, the CPSC has approved a one-year trial for a program designed by the furniture industry to reduce cigarette ignition of upholstered furniture.[13] "Every year upholstered furniture fires caused by smoldering cigarettes kill at least 500 people and seriously injure an additional 1,700, according to CPSC estimates. However, CPSC does not have the authority to regulate cigarettes as an ignition source or in any other way."[14] Since the commission cannot regulate cigarettes, it has imposed flammability standards for consumer goods such as mattresses, rugs, clothing, and carpets in an attempt to reduce the injuries and deaths associated with home fires.

Home power tools constitute another class of consumer product that is often involved in lethal accidents. It has been estimated that 125 of the 151 lives lost due to electrocution by power tools could be saved by the installation of a special electrical device. The cost would range from $40 to $240 per home for these ground fault circuit interrupters. But before there can be widespread consumer use of this device, government and industry must work together to reduce costs and publicize the importance of installing it in the home.[15]

Food Products

One of the major weekly purchases for most consumers is food. The need for greater safety regulations on food occurs at all levels from production to processing to final consumption. An Office of Technological Assessment (OTA) study has examined the environmental contamination of the food supply:

> During the past decade the US has been assaulted by a number of major food contamination incidents—polybrominated biphenyls in animal feed in Michigan, Kepone in Virginia's James River, and, most recently, polychlorinated biphenyls in meat and bone meal in Montana. All these contamination problems were discovered only after actual human or animal poisonings had occurred, even though the technology exists to detect unexpected contaminants.[16]

There were 243 cases of environmental contamination of food between 1968 and 1978, costing hundreds of millions of dollars. Various levels of government have standards for animal, chemical,

and pesticide residue in food. However, there has been little effort to detect contaminants for which tolerance levels have not been established. OTA's John Gibbons, states:

> The major problem the study identifies is that the federal and state regulatory system is not geared to detect contaminants that it doesn't know are there. Regulatory efforts are focused on making sure that levels of known contaminants do not exceed allowable levels. There is also little coordination in most cases among the myriad federal and state agencies responsible for assuring food safety.[17]

Danger to human health occurs not only from unknown contaminants but also from the known use of drugs in livestock feed. Small amounts of antibiotics and DES (diethylstilbestrol) which are fed to cattle and hogs eventually end up in meat consumed by the public. Farmers and feed lot operators say that these drugs are needed to produce healthier, fatter, and meatier animals in an economically efficient manner. "On the one hand, public health scientists say drugs in meats are bad for people because, in the case of DES they may cause cancer. And in the case of antibiotics, they likely lower the resistance of humans to infection by making bacteria more resistant through chronic exposure."[18] An OTA report indicates that both sides are correct:

> These decisions involve value judgments that cannot be based simply on monetary considerations. And the lack of scientific certainty on the magnitude of both the probable health risks and the attributed increases in meat production makes the formulation of a balance sheet approach difficult.[19]

Once food reaches the table, the consumption pattern of the typical American leads to unnecessary deaths from cancer, stroke, and heart disease. Poor diet has been linked to cancer and "may be implicated in half of all female malignancies and a third of all male cancers," according to Dr. Paul Marks of the Columbia University Cancer Research Center. It is felt that the real culprits are the high-fat and low-fiber diets that most of us eat.[20] The data, however, are not universally accepted. As Dr. Kritchevsky, associate director of Philadelphia's Wistar Institute notes: "This is one instance where publicity has run way ahead of the facts. It is an overreaction to epidemiological data suggesting that some people on a so-called high-fiber diet do better than other people on a low-fiber diet."[21] Diet guidelines which incorporate most of these ideas have been set by both the National Cancer Institute and the U.S. Department of Agriculture (USDA). "A USDA official admits pri-

vately that the guidelines are 'almost trite,' representing rules of thumb that are hardly news to most nutritionists."[22] These guidelines encourage: (1) weight control and exercise; (2) avoidance of high intake of fat; (3) consumption of a generous amount of fiber; (4) intake of a balanced diet to achieve necessary minerals and vitamins; and (5) moderate use of alcohol.[23]

Other food products could also be targeted. For example, high intake of salt and sugar should be avoided. The USDA has recently promulgated a rule which "restricts the sale of soda pop, water ices, chewing gum and some candies from the beginning of the school day until after the last lunch period. . . . The rule affects schools that offer federally subsidized meal programs, about 98 percent of the nation's schools. It covers foods with minimal nutrition value, those that provide less than 5 percent of the minimum dietary allowance for the eight basic nutrients."[24] In response to increased consumer awareness of nutrition, baby food manufacturers have eliminated much of the salt and processed sugar in their products.

Motor Vehicle Safety

The second most costly consumer good purchased by Americans is the automobile, yet it is also among the most dangerous. After five years of relative stability, the death figure for traffic accidents climbed above 50,000. The Department of Transportation estimated that half of those killed were under the age of thirty and the total economic cost of these accidents exceeded $43 billion. Several factors led to this grim total: (1) decreased observance of the national 55 mph speed limit; (2) a 3 percent drop in the use of safety belts over a one year period; (3) repeal or weakening of motorcycle helmet laws; (4) increased involvement of trucks in accidents with passenger cars; (5) a rise in the use of light trucks and vans as family and recreational vehicles; (6) increased use of mopeds; and (7) deterioration of roads.[25]

What can be done to improve the safety of motor vehicles? Some recommendations are easy to make. For instance, laws requiring the wearing of approved helmets for motorcycles and moped riders would reduce head injuries. At one time most states had such laws although most now have been repealed. The National Highway Traffic Safety Administration has studied this problem and forecasts a rise in the number of mopeds in the United States by 1984 from the current 500,000 to 2.5 million. Between 1.5 and 4 percent of all mopeds are expected to be in-

volved in accidents in any given year. Of those accidents, 11 percent will result in serious injury to the moped rider, and 1.2 percent will be fatal, the report predicted.[26]

Yet another concern is for the safety of children who ride unrestrained in autos. Each year almost 670 children up to age five, and 1,160 between the ages of six and fifteen are killed; 160,000 are injured in motor accidents. Ms. Claybrook, director of NHTSA, reports that, according to safety experts, more than half of these deaths and injuries could be prevented by proper use of child restraints or seat belts. Regulations will be combined with a public education campaign to save these children:

> NHTSA soon will be issuing a new standard to upgrade the effectiveness of child restraints, including infant carriers, child harnesses and car beds. The Agency's "Kids 'n Cars" campaign will include meetings across the country, sponsored by local organizations, to explain the need for child restraint systems and to discuss their proper use with parents and car pool drivers. Pediatricians, public health specialists and teachers will be taking part in the effort.[27]

Finally, the safety of all who ride in motor vehicles can be enhanced. Various safety standards exist to make the auto more crashworthy. Requirements for energy-absorbing bumpers, collapsible steering wheels, and shatter-proof glass, to mention only a few, have been adopted since 1966 to improve the likelihood that motorists will survive a crash without serious injury. Two additional measures which would save a significant number of lives are passive restraint standards and mandatory seat belt use laws. The former are already mandated by law to be made available on some 1982 model-year autos and are estimated to eventually prevent 9,000 deaths and 100,000 injuries a year.[28] Despite attempts by Congress to repeal or modify this law, NHTSA feels confident that "nuisance amendments" will not present any real barrier to full implementation of the law.

No state currently has a mandatory seat belt use law. The major problem with seat belts is the reluctance of most drivers to "buckle up." Seat belt use last year dropped from 17 to 14 percent of all motorists.[29] Public education and advertising campaigns have been unsuccessful in raising the level of use. The Insurance Institute for Highway Safety sponsored and evaluated a nine month saturation television campaign:

> A community cable television system was the medium, and professionally produced, award-winning advertisements urging belt

> use were shown to 6,400 households. Programming without the safety belt messages was shown to control groups which were observed before, during, and after the campaign. It was found that the advertising program had absolutely no effect on safety belt use.[30]

Mandatory use laws have been successful in many countries as the most practical method of increasing belt use. This additional use has translated into saved lives:

> Two Australian researchers compared the experience of Victoria which passed the first Australian mandatory safety belt use law in 1970, to the rest of Australia before the other states had passed such laws. They found that the law resulted in a 21 percent decrease in vehicle occupant fatalities in metropolitan areas and a 10 percent decrease in nonmetropolitan areas. The corresponding decreases in injuries were 13 and 11 percent.[31]

There are of course many other potentially dangerous products which are used by consumers, but to consider each of them even in a brief manner would exceed the scope of this publication. Attention now turns to the remedies available to the consumer who suffers injury from a defective product.

Legal Remedies

As noted in Chapter One, the judicial system is not an adequate avenue for redressing most consumer complaints. However, if the purchaser suffers major injury, the time, delay, and uncertainty of recovery become worth the gamble. "Injured consumers and users are increasingly prone to bring legal action. Products liability lawsuits totaled 50,000 in 1960, climbed to 500,000 in 1970, and surpassed one million by the mid-1970s."[32] The injured party can recover actual losses, and often punitive damages also are assessed to deter industry from behaving irresponsibly. It is the latter type of damage claim which has business and insurance companies worried. At a recent insurance conference, "insurers were warned that they have not even begun to 'feel the sting or the problems or the costs to our policyholders' of punitive damage cases 'because they are going to spread across this country'."[33]

A major impact of the proliferation of lawsuits has been the increase in product liability insurance rates and, in some instances, withdrawal of insurance from certain companies. Without insurance at an affordable price, most businesses cannot operate. This liability crisis has evoked numerous proposals to solve the problem.

One plan is "to allow similar companies from different states to form risk-retention or self-insurance groups for both product liability and completed operation insurance."[34] Another solution would be to create uniform liability laws. As Victor Schwartz, chair of the Commerce Department's Task Force on Product Liability and Accident Compensation noted:

> As long as courts can retroactively create new and unprecedented product liability law, the specter of future product liability crises will continue. Statutory uniformity in product liability can stabilize product liability insurance ratemaking and serve as a bulwark against such crises.[35]

Paradoxically, not all consumers are able to utilize the courts effectively, and there are proposals to increase their access to tort action. A major consumer weapon in legal battles with corporations has been the class action suit. The class action would aggregate the claims of a group of individuals affected by a product to meet the statutory amount necessary to bring suit in federal court. However, the Supreme Court in the *Zahn* and *Eisen* cases made it much more difficult for individuals to combine claims, thus impairing the continued viability of this type of action. One proposed remedy would be for the states and federal government to adopt a Uniform Class Action Act which would restore to the injured consumer this option.[36]

Federal Regulation

There are numerous federal agencies involved in regulating the safety of consumer goods. This text already has mentioned many of them. The Food and Drug Administration deals with food additives, food contamination, and new drug applications. Motor vehicle standards are set by the National Highway Traffic Safety Administration, while drug abuse and alcohol are administered by the Department of Health and Human Resources. Nutrition programs, including food stamps, are part of the Department of Agriculture. The Environmental Protection Agency deals with pollution and pesticide use, while the Federal Aviation Administration establishes aircraft safety standards. Virtually every agency and commission has some role to play in enhancing product safety, but primary responsibility has been placed in the Consumer Product Safety Commission.

The CPSC is a recently created independent regulatory agency which has been given the primary responsibility for protecting the

consumer's interest in purchasing safe products. Its major responsibilities are listed below:

- Establishing mandatory safety standards governing the design, construction, contents, performance, and labeling of consumer products
- Developing rules and regulations to enforce standards
- Banning the sale of products that fail to meet safety standards
- Protecting consumers from unsafe products
- Establishing flammability standards for fabrics
- Prohibiting the introduction into interstate commerce of misbranded or banned substances and products
- Establishing packaging requirements for poisonous substances
- Requiring refrigerators to have doors that may be opened from the inside
- Enforcing standards through litigation and administrative actions
- Issuing advisory opinions
- Collecting data on hazardous consumer products and accidents involving consumer products
- Working with industry to develop voluntary product standards
- Requiring manufacturers, distributors, and retailers to recall, repair, or replace consumer products that do not comply with standards[37]

Some of these obligations were in the original authorizing legislation while others were transferred to it from other agencies.

The performance of the CPSC has been spotty. Frequently criticized as being slow, inefficient, and ineffective, the commission was reorganized in 1978. However, it still has problems establishing meaningful priorities. Its newest commissioner, Stuart Statler, charged that "CPSC procedures fail to distinguish between truly important petitions and petitions submitted for trivial or dilatory reasons." Pointing to a host of petitions for outright bans on such products as spike-tipped umbrellas, claw hammers, and fondue pots, Statler says CPSC "cannot afford to perpetuate a system that requires that we accord a frivolous petition the same intensive study and research we devote to a petition identifying a serious hazard."[38]

The CPSC does have adequate enforcement powers if they are used:

> Manufacturers are required to certify that the consumer products they produce meet all applicable safety standards. They must allow the CPSC to test products for compliance and inspect and investigate their factory facilities. Product labels must include

> the date and place of manufacture and certification of compliance with standards. If a manufacturer fails to follow these regulations, charges may be brought against the company by the Justice Department or the commission in a U.S. District court. If the commission decides not to go to court, it may initiate an administrative action.[39]

In recent years the commission has been willing to exercise these powers. "Product investigations and recalls under Section 15 of the Consumer Product Safety Act affected 53.4 million products involving 198 separate actions for the 1979 fiscal year. Since 1974, approximately 117 million products have been affected by recall efforts under Section 15."[40] It should be remembered that "enforcement activities with existing rules were extensive. During the fiscal year, area offices began monitoring over 300 recalls of products which violated regulations under the Consumer Product Safety Act (81% of the recalls), Federal Hazardous Substances Act (14%), Flammable Fabrics Act (2%), and Poison Prevention Packaging Act (3%)."[41]

This agency is still relatively new on the Washington scene. While it possesses wide-ranging authority, it often has lacked the desire to tackle major projects.

3 Commercial Advertising Resolution

Resolved: That the Federal Government Should Establish Uniform Standards for the Regulation of Commercial Advertising.

Basic Concepts

This resolution requires the federal government to enact a law or requirement which provides uniform standards "consistent in action, intention, or effect."[1] Currently, *Webster's Dictionary* defines *standard* as applying "to some measure, principle, model, etc. with which things of the same class are compared in order to determine their quantity, value, quality, etc."[2] A *regulation* "is not confined to the imposition of restrictions, but includes all directions by rule of the subject matter."[3] *Commercial advertising* is advertising "paid for by sponsors."[4] This is distinguished from free public service advertisements or announcements offered by radio and television stations.

Advertising is a rather broad category of printed or spoken material:

> According to FTC practice and legal custom, advertising is defined as any action, method, or device intended to draw the attention of the public to merchandise, to services, to persons, and to organizations . . . . Included in the definition in addition to the obvious products advertised are trading stamps, contests, freebies and premiums, and even labels on products.[5]

Thus, handbills, billboards, junk mail, magazines, newspapers, as well as radio and television can be covered by this resolution. Since standards can be uniform within but not necessarily between categories, some of these communication channels can be restricted while others remain free. For example, many states now have regulations about placement of billboards on highways, and counties have traditionally regulated the size of business signs. There are also local ordinances on commercial handbills which usually regulate the time, place, and manner of distribution.

Advertising Revenue

Advertising revenue is the lifeblood of American media.[6] In 1978 over $45 billion was spent in advertising. A partial breakdown of where this money went is as follows:[7]

Newspapers	$12.7 billion
Television	9.0
Direct Mail	6.0
Radio	3.0
Magazines	2.6
Business Publications	1.4
Outdoor	0.5

Robert Coen, director of media research at McCann-Erickson, Inc., reviewed the data for 1979, a year which saw $49 billion being spent. He notes the percent increase for that year:

> . . . network television; up 14%; spot TV up 12%; radio, up 11%; magazines, up 13%; a "big suprise"—the "exceptional" 17% jump in newspaper spending, and other media showing a 12% climb. Local newspapers and television were both up 14%.[8]

Currently, over $200 a year in advertising is spent for each person in the United States. Most of the ad business is conducted by 6,000 agencies clustered in major cities, which employ 135,000 people.[9]

What does the immediate future hold? For 1980, national broadcasting ads should increase by 13 percent; national print by 10 percent. The total for national advertising will probably increase by over 11 percent, while the local total will jump 10.4 percent. Coen estimated that United States advertising, which was at $20 billion in 1970, will hit $55 billion by 1980 and soar to $135 billion in 1990. Plotting high-growth categories of advertising, he said the two fastest growing are spending by media and government advertising.[10] Moreover, this growth will continue. Coen concludes: "The current expansion will not be a short-term phenomenon. A great deal of catch-up advertising is still needed. New products, fueled by the good profit performance of the past three years, are not going to be cut back."[11] Even the advent of Home Box Office, pay television, and video games will not destroy advertising revenues for the electronic media. Martin Ewenstein of CBS believes for the long term that "cable, pay formats and recorded video will all become viable industries. By 1990 [there will be] 40 million cable television homes . . . and 12 million video

players. Combined, they will steal a percentage point a year from network television, reducing network viewing from 86% to 78% by the end of the decade. That loss will be spread among the new technologies in roughly equal proportions."[12]

The Balance Sheet

Advertising is portrayed as an essential ingredient of the free market system or as an insidious corruption of consumer purchasing patterns. *Advertising Age* comments on the mixed character of promotion:

> The work of ad agencies is socially useful because by stimulating buying they will help keep people employed. They bring news of new products to people and help stimulate the competition that leads to better products and useful services. At the same time, they play on people's anxieties to sell products and help convince people to spend money on frivolities. Ad people, like every other occupational group, are partly heroes, partly villains, and partly victims.[13]

Revenues from advertisers support newspapers, magazines, trade and technical publications, many of which would fold without this money or become so expensive that few could afford to subscribe to them. In addition, ad executives claim:

> . . . advertising is irretrievably linked to technology and the technological process. Advertising expands. It educates. And it informs the public and specific segments of the public about new technology, new products and technological trends and problems. The world didn't perceive it needed a steam engine or a computer or a washing machine or a car. But it discovered that when those products were presented—they became useful tools that enriched man's life and increased his productivity, which is the source of all human wealth and leisure.[14]

Some believe that any attempt to regulate commercial advertising would infringe on First Amendment freedoms. As Richard Christian of Marsteller, Inc. argues: "Communications in a democratic society is an intricate network, a seamless web. And government cannot tamper with any part of that network without affecting the whole. That perhaps is a startling attitude, for it suggests that the copywriter working at his desk at an advertising agency on Michigan Ave. in Chicago or Madison Ave. in New York has as much right to the protections of the First Amendment as a newsman filing copy from Peking, Tel Aviv or Washington, D.C."[15]

This view is often expressed by members of the advertising,

business, and media industries. However, there is another perspective:

> Critics of advertising argue that while people probably would pay more for some products without the savings brought by mass production and advertising, they would pay less for many more products such as cosmetics and patent medicines half of whose purchase price pays for large advertising expenditures. Critics also argue (not without challenge) that people buy more than they really need because of advertising.[16]

Yet another frequent criticism of commercials is the stereotyped role models it supplies to the viewer and others. Several examples of additional weak points of advertising are noted in *Nation's Business*:

> Portraying women as housewives, mothers, shoppers, cleaners, and family cooks—minimizing their roles in business and community affairs
>
> Promoting products some people find unacceptable—condoms, liquor, feminine hygiene items
>
> Touting of meaningless product differences, which leads to proliferation of duplicate goods
>
> Glossing over of the dangers associated with such products as saccharin and cigarettes[17]

Advertising Effect

The American consumer is literally bombarded with commercial advertising. It has been estimated that we are each "exposed to over one hundred ten advertisements per day, and at least seventy-six of them register in our consciousness."[18] As if to emphasize the commitment of business to advertising, the 1973 *Staff Report to the Federal Trade Commission* states:

> . . . from the advertiser's perspective the purpose of marketing communications is ultimately to sell the product or the service. Thus to the extent that the provision [of information which educates rather than "sells" the consumer] conflicts with the ability of the advertiser to sell the product, it is unlikely that he will indulge voluntarily in such "informational" communication.[19]

Does advertising accomplish its primary purpose? The conclusions of over ten years of studies have yielded mixed results, but there are a few general assumptions which have received support.

1. Attitudes vary considerably among various groups in the population. In general, for instance, highly educated groups have been more critical of advertising than less educated ones.

2. Attitudes in individual dimensions may also vary considerably not only between identifiable groups, but also within such groups or even within an individual's personal evaluation. Some individuals might believe in advertising's economic functions but be highly critical of social dimensions.
3. Attitudes are growing less favorable over time in the population as a whole and in most individual groups within the population where attitudes have been monitored. This seems to be true both of overall attitude toward advertising and of individual dimensions.[20]

General Restrictions

Advertisers are subject to numerous general regulations which apply to any publisher. Don Pember of the University of Washington provides several examples:

> The first fact an advertiser must remember is that he must obey the laws which specifically regulate advertising messages *in addition* to all the other laws which regulate the mass media. In other words, an advertisement can be libelous and the advertiser can be sued for defamation. An advertisement can be obscene and can invade the privacy of a person. It can violate copyright law or violate the Federal Communications Act. It can violate a federal, state, or local advertising regulation.[21]

There are also several statutes which regulate specific aspects of the content of the advertiser's message. Help wanted ads can no longer be listed explicitly as exclusively for males or females, nor may ads for housing discriminate on the basis of sex, race, age, marital status, or national origin. Laws which allow housing or apartment developers to ban couples with children are being tested in the courts. Various truth in lending laws and product warranty statutes require the disclosure of certain information about financing or product use. Requirements are placed on advertising for alcohol and for professional services. Even political advertising is subject to a proliferating number of rules:

> There are numerous laws at both federal and state levels which prescribe certain rules for political advertising. The rates for political advertising are frequently limited. In many states newspapers and broadcasting stations must file the names of political advertisers with public disclosure commissions. In most states the name of the sponsor of a political advertisement must be included in the advertisement. Political party labels must also be conspicuous.[22]

In addition to these broad regulations, there are various laws intended to discourage false, misleading, and deceptive advertising.

State and Local Laws

Almost every state has a law on the books that makes it a misdemeanor to disseminate false or misleading advertising. There are several problems associated with this multijurisdictional approach to remedying the ills of deceptive publicity. First, states have limited resources to devote to enforcing various laws. Cases dealing with false advertising receive low priority in comparison with crimes of property or bodily harm. Second, the jurisdiction of state enforcement agencies extends only to the limits of its boundaries. In an era of interstate commerce and product messages, the short reach of any single state's police power is inadequate. Third, most actions involve small amounts of money. The judicial system is not geared for delivering justice in this type of dispute. Fourth, "Prosecuting false advertising is a rigorous, time-consuming chore. Big companies can afford good legal counsel to defend their advertising practices. The suits are complicated. In the time needed to begin a prosecution, the offensive advertising campaign has usually long since ended. Victory really brings little satisfaction."[23]

This is not to imply that all states and localities are ineffective. Some states like Washington and Wisconsin are particularly praiseworthy in their efforts. Also, as noted in Chapter One, "because of the consumer revolution of the last decade, cities, counties, and states have all strengthened their laws and their enforcement of false and deceptive advertising. In some areas prosecution is quite vigorous. In others, it is not. The laws vary from state to state, even from city to city."[24] There are laws in some states which restrict the right of certain professions to advertise their prices and services, even though a uniform standard which allowed the unhindered flow of this type of information to the consumer might allow for better individual decision making.

While state and local regulations provide one model for action, a preferred method is industry self-regulation.

Business Self-Regulation

Advertisers and businesses have various industry-wide or individual codes and boards which delineate acceptable commercial messages. At the local level, the Better Business Bureau is the forum for resolving complaints about unfair advertising practices. Nationally, the National Advertising Review Board (NARB) was created by the Association of National Advertisers, the American Association of Advertising Agencies, the Advertising Federation of America, and the BBB. This organization is composed of "thirty representatives of national advertisers, ten representatives of advertising

agencies, and ten representatives of the public or non-industry. When a complaint is received concerning the truth or accuracy of an advertisement in the national media, NARB acknowledges it and refers it to its staff for investigation."[25]

This investigation requires advertisers to substantiate their claims, and if they are unable to do so, the NARB requests a change in the ad copy. If the advertiser refuses to adhere to its request, the Board will conduct an inquiry and, if necessary, issue a public statement on the conflict. At this point, the matter is referred to the appropriate government agency for action. "In its first four years the NARB staff handled over 900 complaints with only twenty-six appeals by advertisers to the Board itself. No complaint was referred to a government agency."[26]

One of the major problems with this approach is the strong doubt that industry will effectively regulate itself. Some critics maintain that such rules will represent the lowest common level of agreement and will reflect the industry's view rather than that of the consumer. Pember cautions:

> Most economic theories are based on the presumption that if all things are equal such and such will result. Self-regulation is based on the assumption that all sellers and advertisers are honest and fair and look out for the good of the consumers who buy their products. However, all things are not equal; and all advertisers are not honest and scrupulous. Hence, self-regulation does not work very often.[27]

Media Regulation

Broadcasters, newspapers, and magazines have developed their own codes for the regulation of advertising copy. The National Association of Broadcasters (NAB) has formulated a Code of Ethics which establishes guidelines on programming and advertising for radio and television. The television code, which has 70 percent of stations as members, has a provision requiring substantiation of claims if challenged by the NAB. Besides assuming some responsibility for "truth" in advertising, the television industry has set time standards for advertising:

> The television code specifies that advertising must be limited to nine minutes and thirty seconds per prime hour on network affiliated stations. Independent stations, which are usually less profitable in operation, are allowed a full twelve minutes. Sixteen minutes is the limit for all other times except "Children's Weekend Programming," during which twelve minutes are allowed. The code also sets standards for the time of day during which certain products and services may be advertised.[28]

One problem with this type of industry-wide self-regulation is that it may run afoul of the antitrust laws. The Department of Justice has recently filed an action against the NAB alleging restraint of trade in violation of the Sherman Act. The American Enterprise Institute's Journal on Government and Society explains:

> It seems that the NAB's "overcommercialization rules" (which limit the number and format of television commercials) have caused the amount of broadcast time for advertising and public service announcements to be "artificially curtailed and restricted" and price competition has thus been "restrained and suppressed." According to the Justice Department, these limitations have boosted broadcasting profits by increasing advertising rates—while simultaneously inflating the retail prices of major products (to cover advertising costs) and inhibiting smaller producers from advertising.[29]

Another problem is the weak enforcement provision for violating the code. Zuckman and Gaynes concluded:

> The enforcement procedures for both broadcast codes are similar. Each has a Code Board and a Code Authority Director who monitor broadcast advertising, resolve advertising complaints and enforce the Code provisions against those who subscribe to them. The only direct sanctions for violation of the codes, however, are forbidding the display of the Code's "Seal of Good Practice" and removal of the station's call letters from the Code Roster.[30]

The print media also have developed self-regulation for ad copy. Traditionally, each paper or magazine has established its own rules and procedures for accepting and investigating commercial advertising. An example of such an approach is provided by the *New York Times*:

> The *Times* maintains a Department of Advertising Acceptability which examines all advertisements before they are published. If they contain unacceptable statements or illustrations the advertiser is notified. If the advertiser refuses to make changes the *Times* will not run the ad. Frequently, the Department will check ad claims on its own initiative, and reader complaints may also prompt investigations. If these investigations turn up false or misleading advertising the *Times* will decline any further advertising from the advertiser involved.[31]

The *Washington Post* has similar standards, and "uniquely, one member of the staff works as an 'advertising ombudsman' whose job it is to expedite and resolve complaints from both advertisers and readers."[32]

The newspaper codes can be very effective in regulating ads if there is follow-up investigation of complaints. If all papers or

magazines had strict standards, a potential advertiser would be forced to conform to these requirements or forfeit local print outlets for disseminating product information.

Federal Regulation

There are numerous federal regulations on advertising. Over thirty-two statutes, including currency and postal laws, exist to deal with various types of advertising practices. A few of the more noteworthy include "the Communication Act, Federal Drug and Cosmetic Act, Consumer Credit Protection Act, Copyright Acts, Consumer Products Safety Act, Federal Cigarette Labeling and Advertising Act, Wool Products Labeling Act of 1939, and Plant Variety Protection Act. In addition, regulations can be found in the Age Discrimination Employment Act, Federal Seed Act, National Stamping Act, Savings and Loan Act of 1952, Securities Act, and Aid to the Blind and Handicapped Act."[33]

More specifically, the Federal Communications Commission (FCC) has some authority for broadcast advertising. In an agreement reached with the Federal Trade Commission (FTC) it was determined that "the FCC has responsibility for assuring that commercials are neither objectionably loud nor excessive in number and that a separation is maintained between advertising and programming, especially during children's programs. Misleading or deceptive advertising on radio or television is to be controlled by the FTC."[34] It is the FTC, however, which is the major federal agency involved with commercial advertising.

Federal Trade Commission

Among the major responsibilities of the FTC is the duty to protect "the public from false and deceptive advertising, particularly for food, drugs, cosmetics, and therapeutic devices" and to regulate "the packaging and labeling of consumer products to prevent deception."[35] This agency is empowered to launch an investigation after a complaint is received about a deceptive ad. The procedure followed is outlined below:

> If as a result of the investigation, the commission feels a formal hearing is necessary to determine the issues, it will draw a detailed complaint specifying the alleged false or deceptive practices and will hold a hearing. At the hearing an administrative law judge will make an initial decision after both sides present their

> respective positions. The judge's decision is final unless it is reviewed by the commissioners. If the decision is unfavorable to the advertiser the Commission may issue a cease and desist order which, if violated, will subject the advertiser to an action in a federal district court, for civil fine. The advertiser may seek review of the cease and desist order in the United States Court of Appeals.[36]

Deception

Of course, before the FTC can act, it must be determined that there has been a "deception." There are four factors which must be considered before any such conclusion can be reached. First, the real meaning of the ad must be determined. Second, there must be elements of untruth about fulfilling the implicit promise contained in the ad. Third, the agency must determine if the falsity is substantial and material to the claim made. Fourth, evidence must be presented that the advertising message is misleading with respect to the ordinary perceptions of the targeted audience. Finally, it has been resolved that "an advertisement is deceptive if it has a tendency to deceive (see FTC v Raladam, 1942). The FTC does not have to show that any person has been deceived. In fact, the commission can rule that an advertisement is deceptive even if the advertiser presents as witnesses consumers who testify that the advertisement is not deceptive."[37]

Remedies

There are numerous remedies which the Federal Trade Commission can utilize to neutralize deceptive practices. A partial list would include: advisory opinions, voluntary compliance, industry guides, consent decrees, cease and desist orders, injunctions, trade regulation rules, requests for substantiation, corrective ads, and civil suits on behalf of consumers. Advisory opinions "are promulgated at the request of a business or an individual and apply specifically to a practice that the business or individual is considering. The opinions define the limits of the law as they relate to that particular business practice."[38] These apply to proposed advertising campaigns. If an ad campaign is already in progress, a company could voluntarily comply with an FTC request to terminate questionable practices without admitting guilt. Industry guides "traditionally have been used by the commission as a way to interpret provisions of statutes administered by the FTC or to give the commission's views on how a statute applied to a new business situation. Recently the industry guides have gained a reputation

for being too specific and 'nitpicking' and, as a result, the commission has repealed a large number of old guides and has almost entirely stopped issuing new ones."[39]

The next levels of enforcement are more rigorous and binding on an industry. Consent orders are written agreements between the commission and an alleged violator. "The commission is often able to stop an illegal or questionable practice without lengthy adjudicative proceedings by negotiating a consent order with the respondent. In the order, the respondent neither admits nor denies any wrongdoing, but agrees to discontinue the practice and to take some kind of affirmative action to rectify past actions."[40] A cease and desist order is issued by the FTC to stop an advertising practice deemed impermissable by the agency:

> Under this procedure the Commission drafts a proposed complaint together with a cease and desist order and attaches them to a notice of intent to commence formal proceeding. This package is sent to the alleged offender who must advise the Commission within ten days if it is willing to forego a formal hearing and have the issues resolved by consent decree. Once settlement is negotiated and accepted by the parties, it has the same effect as an order issued after a formal proceeding. These settlement methods are made palatable to the businesses involved because they do not have to admit any violations of law. As an indication of their popularity, between 150 and 200 decrees have been issued every year since 1961.[41]

Under either consent decree or the cease and desist order there is still no admission of wrongdoing on the part of the advertiser.

Injunction is a relatively new power that was granted to the FTC in a rider attached to the Trans-Alaska Pipeline Authorization Act in 1973. "Spokesmen for the FTC have said that the agency will use the power only in those instances in which the advertising can cause harm, in those cases where there is a clear law violation, and in those cases where there is no prospect that the advertising practice will end soon."[42] Trade regulation rules (TRRs) are also new in the arsenal of weapons used by the FTC. Granted under the Magnuson-Moss Warranty Act, these TRRs allow the agency to promulgate industry-wide trade regulations. Formerly, the FTC could only pursue deceptive advertising practices one ad at a time. Now common problems can be solved in a more sweeping manner. There are numerous advantages to these TRRs:

> They speed up and simplify the process of enforcement. Advertisers can still litigate the question, challenge the trade regulation

> rule, seek an appeal in court, and so forth. In most cases they probably will not go to that expense. Trade regulation rules should have a great deterrent effect as they comprehensively delimit what constitutes an illegal practice. In the past after the commission issued a cease and desist order, businesses frequently attempted to undertake practices which fell just outside the narrow boundaries of the order. The TRRs are much broader and will make it much harder for advertisers to skirt the limitations. Finally, via the TRRs the FTC will be able to deal with problems most evenhandedly. An entire industry will be treated similarly, and just one or two businesses will not be picked out for complaint.[43]

The Federal Trade Commission possesses several other powers. For example, it can require advertisers to substantiate claims made and can sue on behalf of consumers who have been defrauded by false ads in violation of a cease and desist order or a TRR. In rare instances, the FTC will require an industry to run corrective ads to counterbalance misleading information from a lengthy commercial campaign. Typically, between 15 and 25 percent of the advertising budget must be devoted to this remedy.[44]

Effectiveness

For many years the Federal Trade Commission was known as "the little gray lady of Pennsylvania Avenue" because of its general ineffectiveness in consumer matters. Recently, the commission has become quite active in protecting the public from misleading or harmful commercial advertising. This rejuvenation has engendered an outcry from business lobbyists, and a bill has won the support of both houses of Congress which would severely restrict FTC powers. For example, one house of the Congress could veto any regulatory action. In related action, a Senate Commerce Committee bill would severely curtail FTC powers over children's television advertising.

Even use of corrective ads is not a complete success, however. A study completed after the FTC required corrective action on STP ads demonstrated mixed results:

> The biggest changes uncovered in before-and-after surveys was a significant increase in awareness of problems with STP advertising and a significant decrease in purchase intentions for STP oil treatment. The ads had little impact, according to the research, on STP's corporate reputation, which continued to be "regarded quite highly."[45]

The major problem still remains timely action:

> The commission's greatest enemy in dealing with false advertising is time, the time needed to bring an action against the advertiser. Advertising campaigns are ephemeral—here today and gone tomorrow. The average campaign doesn't last more than six or eight months. It normally takes the commission much longer than that to catch up with the advertiser, to comply with all the due-process requirements involved in a hearing, and to ultimately decide whether there has been a violation of the law. By that time everybody has forgotten about the advertisement, and the advertiser is promising people a new pot of gold at rainbow's end.[46]

Case Studies

What are potential case areas of concern to policymakers? Several examples which demonstrate the breadth of this commercial advertising resolution will be discussed in this final section.

Advocacy Advertising

Access to the media for advertising is important if organizations or individuals are to disseminate their ideas to the public. This is especially true if the group is promoting controversial ideas and receiving inaccurate media coverage of their position. As Justice Brennan noted, newspapers should not be discouraged from carrying these "editorial advertisements." To do so, he claims:

> . . . might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. (Cf. *Lovell v. Griffin*, 303 U.S. 444, 452; *Schneider v. State*, 308 U.S. 147, 164). The effect would be to shackle the First Amendment in its attempt to secure "the widest possible dissemination of information from diverse and antagonistic sources." (*Associated Press v. United States*, 326 U.S. 1, 20)[47]

This type of advocacy advertising, once primarily practiced by citizen groups, is now frequently used by major corporations to promote their views on current social issues:

> Whether by accident or by design, such advertising lately has begun to balloon. To illustrate, since the turn of the year, the *Wall Street Journal* has carried advocacy ads not only from Aetna but also from American Electric Power, Bethlehem Steel, Continental Oil, Dresser Industries, Eastern Air Lines, W. R. Grace, Gulf Oil, Kaiser Aluminum, Pennwalt, SmithKline and Union Carbide, presenting the corporate point of view on such

> burning issues of the day as taxation, inflation and energy. None has necessarily been of Pulitzer Prize caliber, but all have made a worthwhile contribution to the ongoing debate.[49]

Senator Abourezk of South Dakota was upset at this flexing of corporate muscle and sought to investigate implications. "I want to try to find out [its] purpose and extent. Then we can get on the various agencies. If companies are wrongly taking tax deductions, we'll get on the IRS. If the advertising is deceptive, we'll get on the FTC. If the ads are controversial, we'll get on the FCC."[49]

With their large advertising funds, corporations can outspend other groups in attempts to influence the public on issues of importance to business. Other problems are created. For example, Aetna ran a series of ads on large jury awards in accident cases. Lawyers felt that the manner in which this information was presented would bias future juries. So far, however, attempts to stop this ad campaign have met with failure. As *Barron's* notes:

> After first seeking redress in vain from the Office of Consumer Affairs and the Federal Trade Commission, several trial lawyers brought suit. Aetna's ads, they charged, are misleading and might possibly influence a jury against their clients in negligence cases. Hence they sought to enjoin Aetna and the other underwriters from publication, a thrust which two federal judges (a third case is pending) have now rejected.[50]

One possible relief would be to extend the Fairness Doctrine to those ads. If the advertisements address an area of controversy, compensating time must be offered for the opposing view to be expressed. The FCC had been willing to do this in the past with cigarette and air bag television ads.[51] However, the commission has revised its policy in this area and no longer agrees with its past precedent.

Access

Unless individuals, groups, or organizations have access to the media, their opinions will not be heard by most of the public. Even if groups have sufficient money and comply with general media advertising regulations, they can be denied the right to buy commercial time or advertising space. As Zuckman and Gaynes note:

> Historically, it has been the press's prerogative to accept or reject proffered advertising as it sees fit. This same prerogative is also claimed by the newer broadcast media. But for many

> people newspapers and radio and television are the only effective outlets for the communication of ideas in modern American society.[52]

Such control was seen as violating First Amendment guarantees of free speech.

The Supreme Court in two separate decisions found no such constitutional right to access. In *CBS v. Democratic National Committee*, the Court refused to find either First Amendment or statutory provision for mandatory acceptance of paid editorial ads. In *Miami Herald Publishing Co. v. Tornillo*, the Court struck down a law which required newspapers to offer reply space to political candidates. "The *Tornillo* decision seems clearly applicable to claims of access for editorial advertisements as well. With these two decisions, the media-owner's control over the advertising to be presented to the public through his or her facilities has been greatly enhanced."[53] Critics of these decisions argue that the increasingly centralized and conglomerate-owned media now can deny commercial access to anyone they consider too controversial. This could seriously impair the ability of individuals or organizations to promote their ideas.

Children's Television Advertising

One of the major battles of the FTC for the last several years has involved restrictions on children's television ads. On the one hand are parent and consumer groups who urge that:

> . . . programming and advertising directed at children should be more closely scrutinized by parents and the government. Because, they claim, young children are often unable to distinguish between fact or fantasy or between programming and advertising, commercial messages directed toward them are inherently deceptive. The most serious danger, . . . is that the majority of these advertisements urge children to consume products, especially heavily sugared foods, that may be hazardous to their health.[54]

The other side of the issue is represented by industry advocates who argue that the persons who make the decisions on whether to buy certain products are not children but their parents. It is parents who have the ultimate responsibility to supervise their families' diets, they say, and parents have sufficient intelligence and information to balance the pros and cons of eating pre-sweetened products.[55]

The FTC's Bureau of Consumer Protection studied this issue and concluded: "It is both unfair and deceptive . . . to address tele-

vised advertising for any product to young children who are still too young to understand the selling purposes of, or otherwise comprehend or evaluate, the advertising." This report recommended that the Commission:

> (a) Ban all televised advertising for any product which is directed to, or seen by, audiences composed of a significant proportion of children (below the age of 8) who are too young to understand the selling purpose of, or otherwise comprehend or evaluate, the advertising;
>
> (b) Ban televised advertising directed to, or seen by, audiences composed of a significant number of older children (below the age of 12 old) for sugared products, the consumption of which presents the most serious dental health risks;
>
> (c) Require that televised advertising directed to, or seen by, audiences composed of a significant proportion of older children for sugared products not included in paragraph (b) be balanced by nutritional and/or health disclosures funded by advertisers.[56]

Television viewing by children has reached staggering proportions. The average American child between the ages of two and eleven watches four hours of television each day, more time than those of school age spend attending classes. In so doing, that average child watched 20,000 commercials. According to varying reports, the annual expenditure for advertising directed at children is $200 to $600 million. Much of that commercial time was spent promoting sugared products that are poor in nutrition and cause tooth decay.[57] The problem is that children cannot assimilate the true importance of information they receive from television. As Peggy Charron of Action for Children's Television notes: "We believe it is only at the junior high level that a child is equipped cognitively and experientially to make the choices television advertising seeks to have the audience make. Before that age, all television advertising will inevitably deceive."[58]

The problem is that such a ban would create economic havoc, with no guarantee, says the industry, that eating habits will change:

> On purely economic grounds, a TV ban on advertising to children under 12 would be difficult to justify. The initial loser would be the television industry, which would have to swallow an annual loss of more than $120 million in toy, cereal, and candy commercials. Beyond that, a study by two economics professors at Lehigh University projects that lower sales of toys, cereals, and candy would result in substantial numbers of lost jobs and even a decline in gross national product.[59]

In addition, First Amendment rights would be seriously abridged. As the *Milwaukee Journal* editorialized:

> . . . such abridgement [of an advertiser's right to promote legal products] would set a fearsome precedent for all forms of expression. . . . It would represent encroachment on the First Amendment. And after bans on children's ads, what next? Already one consumer group wants the FTC to ban advertisements for high-fat foods, such as hamburgers and ice cream. When government begins to censor the air waves in this manner, divining which messages are good and which are harmful, there is no logical limit to potential intervention.[60]

Other measures less drastic than a ban could be explored. Self-regulation, counter ads on nutrition, and reducing the amount of time allowed for children's commercials are alternatives to a total withdrawal of the advertisements.

Cigarette Advertising

Although cigarette advertising was banned from the electronic media in 1971, it was not successful in reducing sales of cigarettes. The tobacco industry merely shifted advertising dollars to the print media, and the electronic media, no longer bound by the fairness doctrine, significantly reduced their anti-smoking ads. This resulted in an increase in the consumption of cigarettes:

> Ending anti-smoking commercials removed the major factor contributing to decreased cigarette consumption. It is not surprising, then, to find that total sales of cigarettes showed an average annual increase of 2.5 percent in the five years following the advertising ban, the greatest increase being 4.4 percent in 1973.[63]

There are now proposals to have tobacco companies fund anti-smoking messages or to restrict advertising to low tar products. An American Cancer Society (ACS) report on smoking set an objective of petitioning the FTC "to seek a voluntary agreement to eliminate advertising of cigarettes with more than 10 mgs. tar and 0.7 mgs. nicotine; and require that carbon monoxide content of cigarettes be reported on each pack."[62] A more stringent measure is being planned by the ACS which is cooperating with the FTC to develop stronger labels on cigarette packs and is working on a ban of "all advertising of cigarettes except those with significantly reduced tar and nicotine content—and that more stringent annual ceilings will be placed on acceptable levels of these and other noxious agents in cigarette smoke."[63] Additional

advertising on the hazards of smoking may not be very productive. As the Hastings Center Report noted:

> By the early 1950s, when scientific studies first showed a link between smoking and lung cancer, cigarette smoking had become a deeply ingrained habit in American life. And, all public education efforts to the contrary, it seems likely to remain so. For all that the anti-smoking messages can offer is a probable reduction of the health risks, a weak antidote to the positive—if illusory—images created in the American consciousness over the past century.[64]

4 Carcinogenic Products Resolution

Resolved: That the Federal Government Should Establish Uniform Standards for Testing and Marketing All Products with Potentially Carcinogenic Effects on Humans.

Basic Concepts

Several of the key terms of this third resolution have been explained in previous chapters. The central issue involves the regulation of cancer-inducing substances. Cancer is the second leading cause of death in the United States. A commonly reported statistic is that over 90 percent of all cancers are environmentally produced. Next year, there will be 700,000 new cases of human cancer reported in the United States and about 390,000 deaths. What is indeed tragic is that many of these deaths are preventable within the confines of currently existing medical information. Dr. Schneiderman of the National Cancer Institute (NCI) has estimated that between one-fourth to one-third of the 330,000 cancer deaths in the U.S. in 1974 could have been prevented. The total of such avoidable cancer deaths came to 99,500. By far the greatest number of preventable deaths—70,000—were caused by cigarette smoking. An additional 5,000 were related to combined smoking and heavy intake of alcohol.[1]

This resolution calls for equal regulations or requirements for those goods which have a likelihood of causing cancer in humans. These requirements can be stricter than those currently used, or present rules can be eliminated entirely. Further testing need not be imposed before the product is marketed. Since marketing is a process, standards may be imposed at any point after a product is finished but before it is consumed. This, of course, includes advertising for goods.

Carcinogenic Effects

The carcinogenic, or cancer-causing, effects of products is the

subject of an ongoing debate in the scientific community. The Occupational Safety and Health Administration (OSHA) defines a potential occupational carcinogen as follows:

> . . . any substance or combination or mixture of substances which cause an increased incidence of benign and/or malignant neoplasms or a substantial decrease in the latency period between exposure and onset of neoplasms in humans or in one or more experimental mammalian species as the result of any oral, respiratory, or dermal exposure, or any other exposure which results in the induction of tumors at a site other than the site of administration.[2]

This definition was derived after years of hearings and testimony from government and industry scientists and represents a view which parallels that of other federal agencies. Generally accepted under this concept is the belief that substances which produce benign tumors in animals or people must be considered to be capable of causing malignant tumors and that there is no safe level of exposure to cancer-inducing substances. Other researchers sharply deny the validity of these assumptions of carcinogenic effect. As Dr. Coulston of the Albany Medical College has noted:

> More and more toxicologists and pathologists recognize that there can be a no-effect level for chemical carcinogens in an animal, particularly the mouse, and that benign tumors should not be called cancer unless there is definite and observable invasion of tissue by tumor cells and metastases to some other part of the animal's body. The regulators are coming close to saying that any inflammatory process or lesion is a cancer. In this case, any black eye or bruise could be considered a precancerous lesion and should be removed by a surgeon![3]

In response to criticism of this view by Drs. Lijinsky and Wolfe, Dr. Coulston concludes that their position on the subject of food additives alone would lead to a situation where "the U.S. chemical and food industries would be set back so drastically that the food supply could be cut in half."[4] If a true zero tolerance level of potential carcinogens is imposed, a large number of everyday activities could be restricted. Richard Wilson of Harvard supplies these examples: "If we decide to ban all known carcinogens, no matter what their potency and exposure level, we must stop all cigarette smoking, fossil fuel burning, wood or charcoal broiling of steaks (all produce benzopyrene). Moreover, as soon as a chemical is found to be carcinogenic we would have to stop its use."[5] (As noted in Chapter One, the issue of risk assumption is central to each of the resolutions.) Wilson concludes that "it is prudent to

base public policy on highly conservative assumptions. However, zero risk is not a prudent public policy goal. Living is risky. Everything we do, or is done to us, has hazards. Ignoring this principle in the case of cancer—by a policy of eliminating any risk of cancer at any cost—leads to irrational public policy.[6] A contrary position is offered by Dr. Wolfe of the Health Research Group: "Although it is theoretically possible that there is a dose or exposure level of a carcinogenic food additive below which none of the 200 million Americans who use it regularly will get cancer, in practice there is no way to determine what this 'safe' threshold is."[7] Testing is required to establish the degree of disease resulting from certain levels of exposure.

Testing

How is potential carcinogenicity determined? OSHA has established a rigorous testing procedure:

> Substances will be classified as Category I potential carcinogens (confirmed) if it is determined that they meet the above definition in a long-term bioassay producing results in concordance with other scientifically evaluated evidence. Evidence of concordance includes positive results from testing in the same or other species; positive results in short-term tests that measure such activities as mutations, chromosomal damages, and changes in growth patterns of mammalian cells in vitro; and evidence derived from tumors at injection or implantation sites.[8]

There are two other types of test results which also add significant information to this process. First, the metabolic or pharmacokinetic activity of a substance may be different in animals and thus would not cause cancer in man. Second, epidemiological studies of humans over a long term may either confirm or deny the cancer-causing properties of questionable carcinogens.[9]

Much of the evidence for an initial label of "cancer-causing" comes from animal tests. There has been established minimal group size for valid animal tests. "The number is usually 50 males and 50 females, a total of 100 animals. A single test for one chemical usually consists of three-dose groups of this size and preferably two species. Such a test on the 600 animals involved over a period of two years usually is estimated to cost about $150,000, setting economic limits on the maximum numbers of animals used."[10] Dr. Lijinsky of the Frederick Cancer Research Center believes that such tests are a valid predictor of human cancers:

> First, animal tests are predictive of carcinogenicity in man, who is not an exceptional species in this regard. Secondly, there

> is a dose-response effect: Larger doses of carcinogen given to experimental rodents make tumors appear within two years (untreated rodents normally live only a little longer than that), whereas the comparatively small doses to which people are exposed make tumors appear in them only after a much longer time. Thirdly, not all of the exposed people developed the cancer, suggesting that a considerable variation in susceptibility to the carcinogen (which might have something to do with genetics), just as we find in experimental animals.[11]

These conclusions have, at times, been substantiated in human studies. Epidemiological studies in man have directed us to the identification of certain substances which are carcinogenic in man, and these substances have been found equally and simultaneously to produce cancerous tumors in experimental animals. In fact, the parallel is so close that almost all substances known to be carcinogenic in man have had the same effect in some suitable animal model.[12] Although there are methodological problems in such animal tests, the direction of error actually is biased in favor of continued use of this procedure. Dr. Wolfe explains:

> Using animal evidence of carcinogenicity to ban human food additives underestimates the problem. As mentioned previously, humans may well be more sensitive to a carcinogen than animals. Equally important, however, is that humans are exposed to many carcinogens rather than just one carcinogen.
>
> Unlike the rat that is exposed to a single carcinogen, a human may get drugs, air, water, and occupational exposure laced with carcinogens, to say nothing of other food additives that may not yet have been tested to see if they cause cancer. A little bit of this plus a little bit of that seems to be, at the least, additive and, at worst, synergistic.[13]

This trust in the results obtained from animal studies is not universal among researchers. As Dr. Coulston notes, "Since there are now more than 1600 chemicals that produce cancer in mice, and only about 15 are known to cause cancer in man, the odds are poor that the mouse is a good predictor of cancer to man . . . . If these chemicals were banned, an economic disaster would occur, not only in the U.S. but worldwide."[14] Despite imperfections, some form of testing is needed to aid scientists in determining the safety of various natural and man-made substances. Animal tests have revealed the harmful effects of certain extremely powerful carcinogens:

> Three of the major occupational or environmental chemicals found to cause cancer in humans since 1970 were all originally determined to be carcinogens in animal experiments.
>
> Estrogens (similar to those now used for menopause and for birth control) were originally found to be carcinogens in large-

dose animal experiments in the 1930's. Now they have been found carcinogenic in humans, too.

Bis-chloromethyl ether was found to cause lung cancer in animals in the late 1960's (after suspicion of human cancer). Now, it's been found carcinogenic in humans, too.

Vinyl chloride—at 5000 to 10,000 ppm—caused liver cancer in animals in 1969-71. Now, it's known to be carcinogenic in humans, too.[15]

Products

Most products do not produce such damage to individuals and the environment as DES and vinyl chloride. Carcinogenicity is a rarity—contrary to popular opinion that "anything will cause cancer if you feed an animal enough of it." A survey of compounds tested for carcinogenic activity shows that less than 20 percent are carcinogenic in animals. Since these compounds were especially selected for testing because of strong suspicion of their carcinogenicity, a far lower percentage of carcinogens among chemicals in general would be expected.[16]

The 1977 Council on Environmental Quality concurs:

> It is important to note that carcinogenic chemicals are probably a small minority among the 3.5 million known chemicals. About 600 have been tested for carcinogenicity. Many were drugs and pesticides, which by definition are biologically active; less than 10% of the compounds have been found to be carcinogenic. In a random list of chemicals, a still lower percentage may be expected to exhibit carcinogenic activity. Of some 70,000 chemicals in commercial production, the number of carcinogens—in particular, the number to which there is widespread population exposure—may be quite small.[17]

Unfortunately, there are still many substances which are alleged to produce cancer in animals and humans. The debater should be familiar with the following examples and others, since most affirmative cases would use one or more for significance.

Saccharin

A series of Canadian studies on high doses of saccharin fed to rats indicated a higher than usual incidence of bladder cancer. The FDA has estimated that this would equal an additional 1,200 deaths each year in the United States alone. Under provisions of the Delaney clause, the FDA was preparing to ban saccharin as a food additive when Congress intervened to temporarily prevent interference with sales of saccharin products. Representative Martin of North Carolina noted one reason for this action: "With-

out a noncaloric, noncarbohydrate sweetener, millions of Americans will cheat on their otherwise bland diet, gain weight, and increase their risk of cancer (colon and breast), cardiovascular disease, diabetes, and hypertension. These preventive medicine benefits of saccharin in diet control are enormous."[18]

In addition, there was widespread criticism of the original study. Dr. Coulston explains:

> Certainly, these studies should be done over, particularly in light of experiments by several colleagues and myself with rhesus monkeys. No cancer or other physiological or pathological change was produced in the monkeys when they were fed saccharin in relatively high doses (as high as 500 mg per kg) for more than six and a half years.
>
> Current research at the National Cancer Institute with rhesus monkeys indicates that they are suitable for chemical carcinogenesis studies. However, the routine carcinogenic studies at NCI on rodents and hamsters, where the maximum tolerated dose of a chemical is given to one group of animals and half that dose to a second group, disregard completely a cardinal rule of toxicology and pharmacology: the dose response in terms of time.[19]

Other studies available in 1977 did not confirm the finding of the Canadians. A joint FDA/NCI group undertook a large scale epidemiologic survey of bladder cancer patients which was completed in 1980. In the NCI study, almost 9,000 people, drawn from five states and five metropolitan areas, were surveyed. About a third of them were newly diagnosed bladder cancer patients, the remaining two-thirds random "control" subjects. The risk of bladder cancer for average users of non-nutritive sweeteners was slight, according to the NCI study.[20] There was a slight risk to heavy users, and to those who smoke regularly. "These increased risks were relatively small in epidemiologic terms, more apparent in females than in males, and without a consistent dose-response relationship," the study notes.[21] Several case studies were also completed early in 1980:

> Dr. Alan S. Morrison and Julie E. Buring of the Harvard School of Public Health compared the dietary habits of 600 patients suffering from cancer of the bladder or urinary tract with nearly as many people without cancer. Drs. Ernst L. Wynder and Steven D. Stellman of the American Health Foundation in New York queried 367 cancer victims and an equal number of healthy controls. By comparing the level of use of artificial sweeteners between cases and controls, the researchers could work out the relative risk, if any, of cancer.
>
> Neither study found a significant relationship between saccharin and cancer.[22]

Even those groups who were found to have greater risks in the NCI study had no excess incidence of cancer. "Over-all, the Harvard survey found the risk of bladder cancer for sweetener users to be no more than 10 percent higher than nonusers. Even long-term or heavy consumption of sweeteners showed no 'consistent' evidence that sweeteners are carcinogenic. For long-term users, the risk was slightly higher, but for men it was actually lower."[23]

The question is still not resolved. In 1977, saccharin was put through a battery of short-term *in vitro* tests sponsored by the Office of Technology Assessment—and its carcinogenicity was found to be weakly positive; in 1978 and 1979, several reports noted that saccharin might be a cancer promoter rather than a cancer initiator.[24] Even Dr. Hoover of NCI cautions youngsters and pregnant women not to consume artificial sweeteners, and heavy use by anyone should be avoided.[25]

Benzene

Benzene is a chemical which was subject to a revised OSHA regulation. In this instance a new exposure level was set: namely, one part per million (ppm) exposure in work areas.

> OSHA went far beyond the 10 ppm that most industrial benzene users adopted voluntarily in the early 1970's. OSHA's reasoning when it proposed the drastically reduced exposure limit followed that adopted by all federal health regulatory agencies—there is no safe level of exposure to a proven carcinogen.[26]

This proposed standard was challenged as illogical because, American Petroleum Institute attorneys contended, it is not possible to demonstrate harm to workers even at the old industry standard of 100 ppm, prevalent before 1970. With the 10 ppm standard, "workers are not going unprotected."[27]

In October 1978, the Fifth Circuit Court of Appeals struck down OSHA standards indicating that the agency must have "some factual basis for an estimate of expected benefits before it can determine that a one-half-billion-dollar standard is reasonably necessary."[28] This imposition of a cost-benefit consideration has been strenuously opposed by the agency. The chief of OSHA, Eula Bingham, noted that it is "inappropriate to substitute cost-benefit criteria for the legislatively determined directive of protecting all exposed employees against material impairment of health or bodily function."[29] Using a cost-benefit analysis, Dr. Wilson of Harvard concluded:

> Using OSHA's own numbers for the cost of regulation, . . . the proposal would cost $300 million to save one hypothetical life. (On this basis, the whole gross national product of $2 trillion could save about 6,000 lives. But the situation carries yet a deeper paradox. Lives will be lost in the process of manufacturing the control equipment—my estimate being on the average, one life lost for every $75 million expenditure. Thus, enormously expensive steps will possibly take four lives in order to save possibly one life.)[30]

This case has been appealed to the Supreme Court where a decision will have tremendous impact on government regulation:

> The U.S. Supreme Court now has before it a case that could fundamentally reshape the way that federal agencies go about making regulatory decisions. The justices are being asked to decide just how far an agency can go in drawing up rules before it is forced to consider their economic impact on the regulated industry.
>
> The case under consideration by the court involves strict limits imposed on worker exposure to benzene by the Labor Department's Occupational Safety & Health Administration.[31]

Asbestos

Asbestos is a mineral. "About 750,000 tons of asbestos were used in the United State annually in 2,000 to 3,000 different products; . . . it is widely used for its insulating and fireproofing qualities in construction materials, auto brake linings, and other consumer goods."[32] But asbestos, unfortunately, also has been determined to be carcinogenic. It takes many years before the effects of exposure become evident, though they appear more rapidly in cigarette smokers.

> The Public Health Service calculates that approximately 1,000,000 men and women are either currently employed or were formerly employed as "asbestos workers" from 1930 to about 1970. Of these perhaps 5 to 7 percent will develop mesothelioma. (In addition, 3 times as many will die of lung cancer.) This unhappy projection does not include people who were not "asbestos workers" but were significantly exposed to the mineral in shipyards, or in households contaminated by fibers brought home on clothes of an exposed worker.[33]

What is being done about this problem? The government has launched an informational advertising campaign to increase the awareness of workers to the potential danger. A newly established Mesothelioma Therapy Research Program "will explore research techniques for very early, preclinical treatment. It will

evaluate new procedures to prevent and treat disease in asbestos-exposed individuals."[34] OSHA has set exposure limits for workers, but other federal agencies are considering more drastic marketing measures. "The Consumer Product Safety Commission and the Environmental Protection Agency have stated that unnecessary uses of asbestos may present an 'unreasonable health risk' to the population. The EPA says it may consider banning or curbing the processing, manufacture, and use of asbestos. The safety commission says it could seek to eliminate all nonessential uses of asbestos in consumer products."[35]

Cigarettes

"January 11, 1964, marks the day when the Surgeon General of the Public Health Service released the now famous Smoking and Health Report indicting cigarette smoking as a major health hazard. Subsequent reports, issued almost every year since then, have contributed to a growing body of scientific evidence that links smoking to a variety of disabling and fatal diseases."[36] The health hazards of smoking a known carcinogen are staggering. The American Cancer Society notes:

> This year cigarettes will claim the lives of over 250,000 Americans: 70,000 smokers will die needlessly from lung cancer, and another 20 to 30,000 from other smoking-related malignancies. Smoking plays a primary role in causing deaths from heart attacks and strokes from high blood pressure and from emphysema.
>
> Also, scientific research has established that when a mother smokes during the last half of pregnancy chances of her baby being stillborn or dying within the first week of life are increased by a third. If such babies live, they are apt to be smaller and to achieve less at school.[37]

There are also direct economic consequences of such illness: "in addition to its toll in human lives and health, smoking is responsible for a loss of some $17 billion a year in the United States. Medical care for patients with illnesses caused by smoking costs about $4 billion a year. The remainder—$13 billion—is from accidents, absenteeism and lost work output.[38]

Although the government does require health warnings on each pack of cigarettes and the Federal Communication Commission has banned cigarette ads on television, the National Commission on Smoking and Public Policy found that:

> the tobacco industry remains virtually unregulated, unaccountable to any department or agency of government for the hazardous content or health consequence of its products . . . .

The commission recommends:

that the subsidy of smokers by nonsmokers should be ended in many areas.

that enforcement be intensified of laws that exist in all states forbidding the sale of cigarettes to minors

that the trend to low tar/low nicotine cigarettes should be recognized and encouraged[39]

The government offers mixed incentives on smoking. For instance, tobacco products are part of the Food for Peace program and are part of the farm price support system. At the same time the government has begun a new $23 million dollar anti-smoking campaign, much of it directed at increased public information and education measures for young people. Former Secretary of HEW Joseph Califano, Jr. had several recommendations on marketing restrictions, including:

Ban on cigarette smoking on commercial airlines
Restriction on smoking in public places
Increased radio and television anti-smoking spots
Lower insurance premiums for nonsmokers
Smoking and health programs in all schools
Maximum levels for tar, nicotine, and carbon monoxide in cigarettes
Stronger restrictions against smoking in hazardous industrial settings
High risk groups listed in warnings in cigarette advertisements[40]

Federal Oversight Agencies

There are many other products which have potential carcinogenic effects; however, the four considered in this chapter demonstrate a variety of government agency responses to several distinct categories of substances. The remainder of this chapter will consider in greater detail those federal agencies involved with testing and marketing oversight of these substances.

Occupational Safety and Health Administration (OSHA)

There are over one million wokers employed in the United States chemical and allied products industry. Many others come in direct contact with potentially carcinogenic substances in their workplaces. Death and injuries are commonplace. As OSHA's director Bingham notes, "Occupational disease costs at least 100,000

American lives a year. . . . Yet, despite the efforts of labor, industry, and government, many workers have little or no idea of the dangers that threaten their lives."[41] OSHA was established to promulgate standards "reasonably necessary and appropriate" to worker health and safety. These standards were to be "feasible," the meaning of which is under discussion in the dispute over benzene exposure limits.

> What Congress intended, William H. Alsup of the U.S. Solicitor General's office told the justices, is for "feasible" to mean technologically and economically "achievable" even if the technology, though not currently available, could become so in the near future.
>
> Representing the industry position, the American Petroleum Institute argues that when Congress enacted the OSHA act it included a substantial evidence test to "keep the Secretary (of Labor) from going overboard," according to API's lawyer, Edward W. Warren.[42]

OSHA deals with carcinogenic substances as they occur in the work environment. Asbestos, benzene, and cotton dust are but a few of the many materials which are subject to regulation. Past efforts have been extremely slow in reaching final form. As OSHA director Bingham sadly concluded, "in the nearly nine years the Occupational Safety & Health Administration has been in business, it has been able to issue final regulations at an average rate of only about two per year. With several thousand potential carcinogens in America's workplaces, we clearly faced an impossible task at this rate."[43] Realizing that this pace would not provide the necessary protection for workers, a new policy aimed at speeding up the regulation process was announced in early 1980. This policy details the criteria for identifying and classifying possible cancer-causing substances. It is anticipated that the new policy should streamline the testing procedure and interpretation of results.

> The new policy establishes two broad categories for occupational carcinogens—confirmed and suspected—and sets forth the criteria that OSHA will use to determine which substances belong in each category. It also outlines, though not quite so specifically, the regulatory actions that will be taken to limit worker exposure to substances in each category.[44]

Industry hopes that these explicit provisions for OSHA's standards-setting process will permit industry to forecast far more accurately than in the past when the agency's probable actions will be dealing with a particular substance. This likely would encourage voluntary compliance even before OSHA takes any official action.[45]

While there is no guarantee that the agency will follow the preliminary list offered by Clement and Associates, over 269 chemicals would be likely candidates for regulation, including over 116 high volume chemicals.

> The 269 chemicals on the list fall into Category I, subject to the toughest rules, such as using protective clothing to reduce short-term exposure as much as possible and posting a "cancer hazard" sign. The consulting firm that compiled the list notes that it included substances in this category if it found two positive reports of carcinogenic or neoplastic effects, if they were scientifically acceptable. An additional 218 chemicals would come under Category II, where evidence of cancer risk is "only suggestive." This would require reducing exposure levels low enough to prevent acute or chronic effects.[46]

This preliminary list was narrowed from the 2,000 chemicals identified by the National Institute for Occupational Safety and Health as having some evidence of potential carcinogenic effects. The firm then examined the scientific literature available on the remaining chemicals used extensively in the United States to determine those substances most likely in need of regulation. Warning requirements for Category I may solve many of the problems associated with workplace carcinogens. Several surveys show that "chemical workers in discussing plant safety frequently express the view that information on hazards is the key to worker safety. Workers contend that if potentially hazardous substances in the plant are adequately labeled, they themselves take adequate precautions."[47]

Environmental Protection Agency (EPA)

The EPA is a government agency responsible for collecting data and monitoring compliance with various federal pollution statutes. Two specific laws which deal with potentially carcinogenic materials are the Toxic Substances Control Act and the Resource Conservation and Recovery Act. Under the former law, industry is required to supply notice to the EPA's Office of Toxic Substances concerning new chemicals, their intended uses, and their expected volume. However, the information has not been as useful as anticipated. Steven Jellinek, the EPA's assistant administrator for pesticides and toxic substances, notes: "the trend seems to confirm what Congress feared—we don't know much about chemicals and the industry isn't trying to find out much. It has strengthened our resolve to propose the kind of minimum data that would be ex-

pected."[48] These data can be gathered under various information gathering mechanisms provided by the law:

> This includes limiting or prohibiting manufacture of a new chemical, pending development of adequate data to assess risk. In some cases, EPA will permit manufacturing to proceed but require toxicity testing or human health and environmental monitoring. Further, EPA may require additional testing for "significant new uses" of chemicals which may present future problems.[49]

Not satisfied with existing powers, the agency is seeking to require that chemical companies submit known but unpublished health data on sixty-one chemical substances. The criteria used to select these included "the quantity of the substance produced annually, the amount released into the workplace or ambient environment, the number of workers exposed and the duration of exposure, and the extent to which the general public is exposed. In short, extent of exposure and potential for adverse effects were the deciding factors."[50] Approximately one thousand firms would "supply EPA with the health and/or medical records of workers exposed to the chemicals, animal study data on the biological effects of the chemicals, and estimates of workplace or ambient air concentrations of the substances."[51] This information would then be used to take necessary regulatory action.

Another important function of the EPA is to deal with regulations for waste hazards.

> In the past few years, the public has increasingly perceived the chemical industry as a contributor to environmental pollution. Such episodes as the disposal of polychlorinated biphenyls in the Hudson River and of the polychlorinated hydrocarbon pesticide Kepone in the James River have increased public concern about the effects of chemical products on air and water. The revelation of the long-term effects of chemicals buried in the Love Canal area of Niagara Falls, N.Y., has created anxiety in residents of areas where the chemical industry is highly concentrated.[52]

The amount of wastes generated is truly staggering. Douglas Costle, the EPA administrator, estimates that there are "750,000 factories or other sources, 60 percent of them in the chemical industry, which are producing 57 million tons of waste each year."[53] About 90 percent of this waste is disposed of in environmentally unsound ways. To remedy this problem the EPA has proposed to tighten controls:

> The new system will require the person generating the waste to determine if it is hazardous and if so, to package it in an approved way and designate an authorized facility for disposal. The manifest must also contain the signatures of everyone transporting the material and the facility receiving it.
>
> The transporters must contact the government in the event of a spill.[54]

Food and Drug Administration (FDA)

The FDA is part of the Department of Health and Human Resources, formerly the Department of Health, Education and Welfare. It has eight different bureaus: foods, drugs, veterinary medicine, radiological health, biologies, medical devices, diagnostic products, and toxicological research.[55] Radiological health "oversees the 2,800 firms that produce or assemble X-ray equipment or manufacture such products as microwave ovens, television sets, sunlamps, and lasers."[56] Overexposure to these products could cause cancer.

Most of the emphasis is placed on food safety and, for carcinogenic substances, on the food additive regulations. The process is described as follows:

> When producers of saccharin or nitrates seek approval to market their product, a food additive petition is required. The petition includes documentation of the additive's safety. Contained in a related file (the Food Additive Master File) is supporting material from producers such as test results and correspondence between them and the FDA. Still another file (the Food Additive Subject File) contains correspondence with industry, consumers and other agencies concerning the safety and efficacy of an additive. Also included are advisory opinions, data reports and results of evaluations on additives.[57]

Much of the discussion centers on the 1958 Delaney clause which provides that "no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal."

> The Delaney clause covers only materials deliberately added to food, including food packaging—and not such contaminants as pesticide residues or natural carcinogens (for example, aflatoxin), for which tolerance levels are set under other FDA regulations, and a few other exclusions. And despite its great fame (or notoriety), the clause has rarely been invoked.
>
> However, stresses one FDA official, although the agency can and has banned food additives suspected of carcinogenicity under its "general safety" powers, the clause makes FDA "keep a closer eye on things."[58]

Although this clause has been invoked only nine times (in the cases of saccharin, two packaging adhesives, oil of calamus, Violet Dye No. 1, safrole, trichloroethylene, DES as an animal feed additive, and diethylpyrocarbonate), the absolute nature of the wording of this amendment has triggered a chorus of dissenting voices. It is claimed that this law allows no balancing of risks, and that as testing procedures become more accurate, an increasing number of products will be banned. As Dr. Coulston concludes:

> Thus, benefit-risk relationships, socio-economic costs, and acceptable risk levels for food additives must all be part of reconsideration of the Delaney clause. Above all, administrators of regulatory agencies should be given the right—based upon adequate scientific data as presented by experts—to accept a reasonable risk if it is in the public's interest.[60]

A contrary view is offered by Dr. Wolfe who says that "no benefit to consumers of any food additive can be so great it outweighs the risk, however small, of cancer . . . ." Dr. Wolfe continues:

> There is, in fact, quite a lot of discretion given to FDA in using this law. FDA can and has rejected animal experiments purporting to show the carcinogenicity of a chemical if there were too few animals used, the experimental animals did not get an appreciably larger number of tumors than control animals, or other experimental deficiencies were present. This is a proper kind of discretion that will continue.[61]

The debater may affirm either side of this controversy over the Delaney clause. The final consideration in this chapter will be current federal efforts at coordinating testing of carcinogens.

Current Efforts

The National Cancer Institute's Clearinghouse on Environmental Carcinogens determines the priority for testing various chemicals in the Institute's bioassay program. This series of $200,000 tests exposes animals to large amounts of chemicals for over two years. David Clayson notes: "I see a time coming when all food additives and over-the-counter drugs are going to be tested [by bioassay]."[62]

Another program is that established by the National Toxicology Program (NTP) of HEW. Several hundred chemicals are being tested for carcinogenic potential in the four agencies coordinated by NTP. NTP encompasses the toxicology activities of the Food and Drug Administration, the National Cancer Institute, the National Institute of Environmental Health Sciences, and the National Institute for Occupational Safety and Health. Its fiscal

1979 budget of $260 million provided about $70 million for basic research, $71 million for testing, and $19 million for methods development.[63] The purpose of this broad program is to increase testing and develop new experimental procedures.

> NTP does provide an effective organizational framework within which the federal health-related research and regulatory agencies can work together as has not been possible in the past.
>
> The program's most important function is consolidating and coordinating a number of activities, such as selecting chemicals to be tested, data management and analysis, and laboratory animal production and quality control, that used to be carried out separately by the agencies involved.[64]

This coordination has been heralded as a new uniform cancer policy by federal regulatory agencies. As Evironmental Protection Agency Administrator Douglas M. Costle declared: "This policy puts on notice those who deal in consumer goods or industrial processes that may contain carcinogens that the government is increasingly vigilant of their activities."[65] As a result of the new uniform policy, the federal agencies that regulate carcinogenic substances will now "use the same scientific basis for their actions, and the actions they take will be complementary and mark the least disruptive, most efficient path to minimizing or eliminating the dangers of cancer-causing substances."[66]

Obviously, it is too early to evaluate this program. However, it does indicate the concern expressed by the federal government for protecting consumers and workers from carcinogenic materials.

5 Getting Started

The preceding chapters have provided a brief overview of some of the policy issues important to the year's debate topic. Now the burden shifts to the debater to begin the process of gathering additional evidence to support the numerous arguments which will be formulated during the upcoming forensic season. Research has been likened to "the mortar and brick that hold arguments erect."[1] While most students or coaches have devised their own methods for gathering vital information, a general review of research procedures may prove helpful.

Research Preparations

First, brainstorm with colleagues and coaches about what case areas and issues are likely to be included as reasonable interpretations of the debate resolution. This discussion can be guided by examining various definitions of the terms and subjects covered in standard books and articles on the consumer topic. However, no suggestion should be ruled out at this point, no matter how bizarre it appears. The purpose of the brainstorming technique is to "generate as many ideas about the problem to be solved as possible."[2] Absence of criticism allows everyone in the group to feel free to make a contribution. The ground rules are easy to understand: (1) evaluation and criticism by group members are forbidden, (2) all contributions are to be encouraged, (3) an attempt is made to create the greatest quantity of ideas, and (4) a combination of ideas and solutions is sought.[3] Keep a list of ideas generated during discussion as well as a synopsis of the reasons offered on the topicality and advantages of each potential affirmative. Our squad is continually amused when approaches to the topic considered "obviously" unorthodox in July, appear as cases in January.

Second, review past high school and college debate resolutions for similarities with this year's topic. While verbatim borrowing

of old cases and disadvantages is to be strongly discouraged, the ideas on concepts could be equally valid under the current consumer interest area. For example, the 1976-77 college topic dealing with consumer product safety and the 1978-79 topic on regulation of the mass media contain a variety of issues common to either the consumer goods or the commercial advertising resolutions. Also, last year's foreign trade topic has a number of major arguments with the potential for a repeat performance. Certainly, issues concerning food and nutrition as well as a consideration of factors likely to trigger a deleterious trade war will appear under the consumer goods resolution. This latter will emerge because government-imposed safety and pollution standards on consumer goods are viewed by some nations as a form of nontariff trade barrier. These countries may become so upset with this United States policy that they will retaliate by erecting barriers of their own. The ultimate consequence would be a significant reduction in the flow of goods between nations and concomitant economic disorder.

Third, closely related to reviewing prior topics is updating evidence for those generic arguments which seem to apply every year. For instance, disadvantages based on a loss of business confidence should have new links to government actions generated by plans on this year's topic.

Research Procedures

With this preliminary work completed, it is time to initiate a procedure for researching the issues revealed by brainstorming and review. Successful results will accrue only after ideas are processed by the group.[4] The most systematic method of researching information is to compile bibliographies on each significant issue likely to be discussed. While articles or books footnoted in this *Analysis* are a good starting point for accumulating sources, the best method involves the use of the card catalogue for books and indexes for journals and magazines. It is important to realize that these are all listed under various subject or topic headings. For example, key terms for this year's resolutions would include: consumer, product safety, advertising, toxic substance, automobile safety, food additives, Food and Drug Administration, Federal Trade Commission, occupational health.

Indexes

Examining a few general books on each of the resolutions will provide a basic understanding of the subject matter. The next step is screening major journals and periodicals. These sources will provide current information on the research topic. Two references are available: indexes and abstracts. "Incidentally, the only difference between an abstract and an index is that abstracts include a brief summary of the article, while indexes have no explanatory information, only the minimum citation necessary to locate the journal article."[5] The most readily available index is the *Reader's Guide to Periodical Literature*, which contains references to over 160 popular, non-technical magazines. More specialized are the *Public Affairs Information Service*, the *Business Periodicals Index*, and the *Index to Legal Periodicals*, which are valuable in researching many issues of consumer interest. The *Monthly Catalog of U.S. Government Publications* inventories "our government's welter of print. The executive, legislative, and judicial branches of government and various regulatory agencies reports are indexed."[6]

In addition to the above, numerous specialized indexes have been targeted for select audiences. The more useful among them are included in the following synopsis:

FDA Clinical Experience Abstracts. Published monthly by the Food and Drug Administration to provide significant human data on the usefulness of drugs, devices, nutrients, cosmetics, household chemicals, pesticides, and food additives. Adverse effects and hazards of these materials are also included. Indexes 180 U.S. and foreign bio-medical periodicals, principally in clinical medicine. Some animal studies are included.

Health Aspects of Pesticides Abstract Bulletin. Another monthly publication from the Environmental Protection Agency. Seeks to foster current awareness of the major worldwide literature pertaining to the effects of pesticides on humans. Five hundred domestic and foreign journals are indexed.

HRIS Abstracts. (Highway Research Information Service) A quarterly publication of the Highway Research Board of the National Academy of Science. International coverage of reports and journals published on transportation, highway design-drainage-safety and construction, traffic con-

trol, measurement and flow, legal studies, soil sciences, urban transportation, land use, and community values.

Highway Research Abstracts. Another publication from the Highway Research Board. Very similar to the *HRIS Abstracts* mentioned above except that it is a monthly rather than a quarterly publication.

Index Medicus. The basic medical indexing service of the U.S. Published monthly by the National Library of Medicine, the *Index* covers the world's medical literature to the tune of several thousand journals. Human health is the major orientation, but biometry, botany, chemistry, entomology, physics, psychology, sociology, veterinary medicine, zoology, and environmental publications are also indexed.

Pollution Abstracts. A bimonthly abstract service designed as a focal point for published information about environmental pollution and its control. Includes journals, conferences, newsletters, newspapers, corporate reports, and news releases. In addition, each issue features stories from both public and private organizations covering their actions in pollution prevention and control.

Psychological Abstracts. Covers over 850 journals, reports, and books. Some relevant subject headings are *food preference, drug effects, eating, hyperkinesis, nutrition.*

Selected References on Environmental Quality as It Relates to Health. A recent monthly index published by the National Library of Medicine. Indexes 2,300 biomedical publications. Pollution, pesticides, drugs, ecology, and environment are included. Human health is emphasized, and magazines only are indexed.

Social Sciences Index. For years prior to 1974, use *International Index* and *Social Sciences & Humanities Index.* Over 270 English-language periodicals covering anthropology, economics, environmental studies, medical sciences, psychology, sociology.[7]

Many major newspapers also provide indexes to their publications. The *New York Times, Christian Science Monitor, Los Angeles Times,* and *Wall Street Journal* are all respected papers with indexes available in many libraries. Also, there are new organizations which utilize computers for information retrieval on

selected topics. A sliding-scale fee is charged the user for a fixed number of annotated bibliographic entries.

Sources

One common problem shared with all indexes and abstracts is the time lag between publication of the journals and listing in the appropriate index. There is a good way to overcome this difficulty. When research is begun in June, recent copies of frequently cited periodicals should be examined copy by copy. Not only will this familiarize the student with a wide variety of material but it will also provide the most recent evidence from sources not yet listed in the indexes. Debaters can then be assigned to monitor a predetermined number of major journals, magazines, or newspapers on a weekly basis. There are several periodicals which should be continually reviewed in this manner. Some are obvious and should be covered on any year's topic. *Time*, *U.S. News and World Report*, *Newsweek*, *Business Week*, *Nation*, and *Fortune* are all good sources meeting a variety of needs for current information. In addition, *Current History* devotes several issues to the debate topic. There are also a number of specific periodicals which are extremely relevant to the consumer topic. A partial list would include the following:

Advertising Age. A weekly publication devoted to news and analysis of concern to commercial advertisers and the media industry. It has been called the "bible" of the industry by some commentators.

Broadcasting. Another weekly tabloid which reports issues of importance to the broadcast community. Topics of current concern such as restrictions on advertising and FCC regulations are discussed.

Chemical and Engineering News. A weekly magazine devoted to concerns of the chemical and engineering community. Issues such as recombinant DNA, the Delaney clause, FDA rules and regulations, and validity of studies on carcinogenic or toxic substances are often covered.

Consumer News. A publication of the Office of Consumer Affairs which reports on consumer issues facing other federal agencies.

Consumer Reports. This magazine is published each month by the independent Consumer Union. Various test results on

products are reported; articles dealing with important issues of general concern to American consumers are featured.

F.D.A. Consumers. This is the official publication of the Food and Drug Administration and covers issues of concern to that agency. A good source supporting the government's position and effort on such issues as over-the-counter drugs, drug testing, food additives, and medical devices.

Journal of Consumer Affairs. One of the few academic publications devoted to consumer issues. Lengthier and more scholarly articles on a variety of topics are typical.

Media and Consumer. This monthly magazine reports on the process of the advertising of products. Issues relating to the basis of governmental policymaking are also covered.

The National Underwriter: Property and Casuality Edition. This is a weekly magazine in newspaper format which covers issues of interest to the insurance industry. Articles on product liability, tort action, regulatory reform, and auto safety have appeared recently.

Finally, a caution sounded by Professor Henderson in last year's *First Analysis* bears repeating:

> Those of you beginning to debate the new topic will want to broaden your reading, consider the implications of this first analysis, and discuss the potential implications with others. A debater should never rely upon a narrow base of information, whether it be a compilation of viewpoints similar to *First Analysis*, a single news source such as a news magazine, a debate quote handbook, or the coach of a debate squad. Instead, the debater must broaden her or his understanding of the political context within which the subject is being debated, and then exhibit that understanding to the reasonable, prudent, thinking individual who serves as judge for the debate.[8]

This diversity of research is the foundation for a successful debate season. A further step in the process of supporting argumentation is selection of evidence.

Evidence

Evidence, whether factual or opinion, is necessary to support positions taken on issues. The question is not whether evidence is needed but rather how it can be used correctly. This year's consumer-oriented resolutions will involve examination of empirical data from different kinds of studies. For example, animal studies

are used in extrapolating potential health hazards to humans, and clinical and survey research have been useful in examining the effects of commercial advertising on target populations. It is generally conceded that the average debater's knowledge of scientific methodology is weak. To remedy this deficiency, students should carefully read the section on evidence in debate textbooks or introductory books on basic research methods such as *Reading Statistics and Research* by Huck, Cormier, and Bounds.

In addition, all evidence should be examined for the expertise and unbiased reporting of the author. The information also should be timely and easily verifiable. Examples of such evidence can be found by examining the footnotes in the preceding chapters. Of course, full source citations should be used whenever such information is to be used in a debate round.

An example of a properly written file card is provided in Figure 1.

(1) B7d

(2) Circumvention of Ad Ban

(3) ROBERT CHOATE, (4) Pres. of the Council on Children, Media and Merchandising,
(5) Broadcasting, (6) March 19, 1979, (7) p. 80

If the FTC issues a rule which concerns Saturday morning in the main, sponsors, advertisers,
(8) and broadcasters will increase their attention to the non-Saturday period to escape any FTC constraints.

(9) DC. 564

Figure 1. The number prefacing various parts of the sample card refer to the following: (1) code number of section for refiling; (2) brief synopsis of the content of the evidence; (3) author of quotation; (4) author's qualifications or experience; (5) source; (6) date of publication; (7) page; (8) one central concept of evidence; (9) initials of student researcher and consecutive number of total evidence cards researched by this debater.

Debaters should become aware of the regulations of their league and national tournaments regarding the editing of evidence. Many competitors would do well to carry a copy of the essential sources for the affirmative case or important negative arguments in order to immediately clarify challenges to evidence. Particular problems often arise when evidence is paraphrased or when seemingly irrelevant information is edited out. As a general practice, this type of editing should be avoided.

The process of researching a debate topic is ongoing and requires constant attention. As evidence is accumulated and new cases encountered, the need to continue to brainstorm, review, and update support for arguments takes on increased importance. There is also need to research likely extensions for major arguments. This requires the debater to consider more than one side of any issue which will be introduced into a round. The consumer topic touches numerous issues of concern to many policymakers and voters. It should provide a rewarding experience for both the debater and the audience.

Good luck during the upcoming year. If the *First Analysis* has given you an informative overview of the topic, its goal has been met.

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