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Book Review

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BOOK REVIEWS

*Reviewed by Carol G. Emerling**

COUNSEL FOR THE DECEIVED — CASE STUDIES IN
CONSUMER FRAUD, by Philip G. Schrag (Pantheon Books,
Random House, Inc., New York, 1972), 200 pp. \$5.95.

PHILIP G. SCHRAG IS A BRILLIANT YOUNG MAN in a hurry. In the course of a few years, he has gone from academia as a student, to the NAACP Legal Defense Fund as a young lawyer representing consumers, to a position as the first Consumer Advocate in New York City's Department of Consumer Affairs, and back again to academia, this time as a professor of law. This book tells of his experiences and philosophical development during these years. The story is interesting as a delightful tale of how things do and do not get accomplished "in the system." But its deeper significance lies in the inner conflicts it reveals on the issues of whether a sensitive crusader can remain in the system and whether anything significant can be achieved if one does remain in this system. These are issues which trouble all of us who hope to accomplish public service goals through the system.

Mr. Schrag's efforts in the passage of New York City's Consumer Protection Law apparently were his first experience with government. And it was the typical ludicrous experience of the work that was not done having more influence on the passage of the law than the work that was done. Although Schrag's intensive last-minute efforts helped passage of the law in the form he desired, its passage in that form was really guaranteed by the inaction of City Council staff counsel and of industry.

After playing a skillful game with the Civil Service Commission, Schrag — who was by that time Chief of Enforcement of the Department of Consumer Affairs — hired an idealistic young staff, most of whom were former students of his at a Columbia Law School seminar. He himself had the title of "Consumer Advocate" and played the role well.

The book details three experiences of the Consumer Advocate and his staff trying to enforce the new Consumer Protection Law by the route shown in the law books. Much to their surprise, they found their efforts frustrated by obstructive opposing counsel, ob-

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structive corporation counsel representing the Department of Consumer Affairs, slow-paced courts, and unsympathetic judges. At one point, Schrag wrote:

Perhaps it is in the nature of bureaucracy that its members spend as much time battling each other as they devote to the mission of the institution. It may be that we were lucky to avoid serious conflict within the Department, and could reserve our strength for warfare with other city agencies. Such sentiments were small solace; we regarded the city's Law Department as a more serious threat to consumer protection than any ravaging corporation, and having weekly to beg, cajole, and outwit our own supposed advocate demoralized us for long periods.

In response to this demoralization, the New York Department of Consumer Affairs changed its tactics. It relied less on systematized methods of law enforcement and began to live by its wits in the hope of being more effective. It tried the threat of litigation against a company awaiting an FCC license renewal and found the company anxious for an immediate settlement favorable to the Department.

Other tactical moves ensued. Publicity about a company's practices, notices to all customers of their right to rescind contracts, pressure on retail outlets for a company's products, and infiltrating a consumer fraud suspect's business followed. All of these tactics were more successful in stopping consumer fraud than was the previous method of following the letter of the new Consumer Protection Law.

Philip Schrag had the luxury of an excellent consumer protection law which he had written, an intelligent, courageous and completely supportive boss in the beautiful Bess Myerson, on whom he showered compliments, and a bright, young, aggressive staff whom he had recruited. He praised them all enthusiastically, yet resigned in disappointment after a brief fifteen months as Consumer Advocate.

In the book's concluding chapter, he discussed how his idealistic assumptions about effective consumer protection through law enforcement had been shattered. He enumerated various alternative solutions for coping with consumer fraud, ranging from consumer education to letting the wronged consumer suffer without aid, and found them all equally unsatisfactory.

In the last sentence of the book, Mr. Schrag, by some sort of circular reasoning, arrives back at the court system as the solution for consumer problems. But this is not to be the same court system

which he has already condemned with finality. These will be "new types of courts," "new procedures" and new lawyers and judges who use this new system "as a way of achieving justice." But, Mr. Schrag, how are we to achieve this viable enforcement system? Should we who are trying to work within the system to seek reform remain here? Or should we retreat to an ivory tower to write our criticisms, as you have done? The questions are still with us. The answers remain elusive.

*Prepared by Dean H. Keller**

A SELECTIVE CHECK LIST OF BOOKS AND ARTICLES
CONCERNING KENT STATE UNIVERSITY, MAY 4, 1970

EDITOR'S NOTE:

There has been a great deal of material published about the events of May, 1970 on the Kent State University campus. Approximately seven full-length studies have been published in book form and at least one more is currently in press. Members of the law review staff read each of these books with the idea of publishing a review of each that would be directed toward the legal issues raised by each.

However, it was found that, almost without exception, aside from occasional mentions of the need for a grand jury investigation, none of the books raised the type of legal issue that is being treated by this special issue of the *Cleveland State Law Review*. Instead, the books deal at great length with the facts of the events of May, 1970 as seen by each individual author; although some seem to be more objective than others, each does have a particular bias as to the meanings of the events.

Certainly enough reviews have been published about the general issues in each book. Rather than repeat that type of review, we felt that it would be more valuable to our readers to provide a comprehensive bibliography of much of the material that has been written in case any of the readers care to pursue on their own an investigation of the complicated fact patterns that evolved from the incidents of May, 1970.

THIS CHECK LIST IS BASED UPON the "May 4th Collection" in the Kent State University Archives. This collection, which is open to the public, contains a vast amount of printed, manuscript, and pictorial material concerning the incident on the Kent State campus on May 4th, 1970, and its aftermath. The selection of books and articles listed here was made to give the researcher a lead into the large quantity and variety of material on this subject.

No attempt has been made in this list to cite all of the news articles, columns, and editorials on the incident which have appeared in newspapers and magazines. The reader is referred to the *Readers' Guide to Periodical Literature*, *Social Sciences and Humanities Index*, *Education Index*, *New York Times Index*, and similar reference works

*Curator of Special Collections, Kent State University Libraries, Kent, Ohio.