

Complaint

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IN THE MATTER OF

EASTERN DETECTIVE ACADEMY, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 8793. Complaint, July 22, 1969—Decision, June 30, 1971*

Order requiring a Washington, D.C., school offering courses of instruction as private and public detectives and investigators to cease misrepresenting that there is a great demand for its graduates, that many of its graduates have obtained employment at desirable wages, misrepresenting the placement service of the school, that the school has a shooting range, that students will receive training in the use of handguns, and placing with any debt collection agency any contract which has been deceptively procured. The order also requires that respondents' contract contain a notice that it may be cancelled by a student within seven days, and also forbids respondents to deceptively induce a prospective student to sign an installment contract.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Eastern Detective Academy, Inc., a corporation, and Earl M. Leven, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Eastern Detective Academy, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 724 14th Street, NW., in Washington, D.C.

Respondent Earl M. Leven is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the operation of a school, offering a course of instruction to those seeking employment as private or public detectives, investigators or agents.

PAR. 3. In the course and conduct of their aforesaid business, and

for the purpose of inducing enrollment in their course of instruction, respondents engage and for some time last past have engaged in the advertising of their course of instruction in newspapers of interstate circulation. In the further course and conduct of their business, respondents from their offices in the District of Columbia solicit and for some time last past have solicited students by means of advertising brochures mailed to persons located in various other States of the United States; and respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing enrollment in their course of instruction, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and in promotional material, of which the following are typical and illustrative, but not all inclusive thereof:

TRAINED UNDERCOVER
PEOPLE ARE ALWAYS IN DEMAND

Male and Female Undercover
Agents in Demand Now

Free Job Placement Service for
Advanced Students & Graduates

Our Placement Service has placed several hundred persons in investigative work in just the past year.

MEN & WOMEN
EXCITING BIG PAY JOBS OPEN FOR
PRIVATE DETECTIVES
IF YOU ARE
* A PERSON OF GOOD
CHARACTER

* WILLING TO TAKE TRAINING
IN YOUR SPARE TIME

Thank you for your inquiry regarding our Training Program Leading to Private Detective, Undercover Investigator and General Law Enforcement Officer.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of their employees, the respondents have represented, and are now representing, directly or by implication that:

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1. There is a great demand for graduates of respondents' course as detectives, investigators, undercover agents and in other similar positions and employment in such positions is available upon the completion of respondents' course of instruction.
2. Several hundred persons who attended respondents' course have obtained employment in investigative work within one year.
3. Completion of respondents' course of instruction qualifies persons to be detectives, investigators, undercover agents, or for employment in other similar positions at commensurate wages.
4. Respondents provide a placement service which places a significant number of advance students or graduates of respondents' course in positions for which they have been trained by respondents.

PAR. 6. In truth and in fact:

1. There is no significant demand for graduates of respondents' course, whose training is limited to completion of their course of instruction, as detectives, investigators, undercover agents or in other similar positions and employment in such positions is not ordinarily available upon completion of respondents' course of instruction to persons with limited practical experience.
 2. In no year did several hundred persons who attended respondents' course obtain employment in investigative work or in other positions for which they were trained by respondents. Respondents have neither enrolled nor graduated several hundred students during any one year.
 3. Completion of respondents' course of instruction does not qualify persons to be detectives, investigators, undercover agents or for employment in other similar positions at commensurate wages. Employment in the aforementioned positions is conditioned upon the aptitude and practical experience of the individual rather than the training afforded by respondents' course of instruction and a substantial number of graduates from respondents' course are unable to obtain positions which pay wages commensurate with those paid individuals in the aforementioned positions.
 4. Respondents do not provide a placement service which places a significant number of advance students or graduates of respondents' course in positions for which they have been trained by respondents.
- Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof, and others of similar import and meaning but not expressly set out herein, were and are false, misleading and deceptive.
- PAR. 7. In the further course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their course of

instruction, respondents have made and are now making numerous statements and representations by means of brochures and promotional materials and by oral statements of their employees, in which the respondents have represented, and are now representing directly or by implication that:

1. Respondents maintain a staff of seventeen instructors qualified by practical experience or training in the Army Security Agency, District of Columbia Courts, U.S. Supreme Court, U.S. Air Force, Office of Special Investigations, Army Counter-Intelligence School, U.S. Signal Corps Radio Communications, Constabulary of Great Britain, Illinois State Security Forces, Maryland State Internal Security Police, Armed Forces Institute of Pathology, Washington, D.C. Metropolitan Police-Detective Division, Department of the Provost Marshal General, United States Army-Criminal Investigation Division, Federal Bureau of Investigation, and Detective Bureau-New York City Police.

2. Students will be trained in the firing of handguns on respondents' shooting range and that the respondents have student training equipment such as polygraph instruments which the students will be trained to operate through practical exercise.

3. Each of the testimonial letters, which respondents display or enclose with their brochure, from graduates of respondents' course and businesses which have employed graduates of respondents' course are unsolicited and unbiased testimonials as to the value of respondents' course.

PAR. 8. In truth and in fact:

1. Respondents do not maintain a staff of seventeen instructors qualified by practical experience or training as represented by respondents. The number of instructors maintained by respondents is significantly less than seventeen and respondents' staff of instructors is not qualified by practical experience or training in all the areas represented by respondents. In a number of instances, instructors so qualified had terminated their employment with respondents a number of years prior to such representations. In other instances, the aforementioned representations were without foundation and therefore false.

2. Students are not trained in the firing of handguns on a shooting range and respondents do not have student training equipment such as polygraph instruments which the students are trained to operate through practical exercise. Respondents do not operate a shooting range and the only firing done by the students during the course of respondents' instruction, is the firing of a pistol into an enclosed metal box. The only instruction the students receive on polygraph

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instruments is in the form of a lecture at which time a rented or borrowed polygraph machine is brought into the classroom but is not made available for student use.

3. In a number of instances, the testimonial letters from graduates of respondents' course and businesses which have employed graduates of respondents' course which respondents displayed or enclosed with their brochure, were neither unsolicited nor unbiased. In some instances, these letters were written by respondents' employees and in other instances respondents induced the writing of said letters through bargaining.

Therefore the statements and representations as set forth in Paragraph Seven hereof, and others of similar import and meaning but not expressly set out herein, were and are false, misleading and deceptive.

PAR. 9. In the further course and conduct of their aforesaid business, respondents through their employees have regularly obtained potential students' signatures on installment payment contracts through failing to disclose the nature of the instruments and by falsely representing that such instruments were non-binding enrollment applications or that the classes were paid for on a pay as you go basis and the prospective students could cancel their enrollment at any time that they chose to do so. Thereafter, when these prospective students failed to attend respondents' course and make payments under the contract, respondents systematically brought legal actions and obtained judgments against the prospective students or assigned the contracts to a collection agency for the bringing of legal actions and the obtaining of judgments against the prospective students.

Therefore, such statements, representations and practices constitute acts and practices which were and are unfair, misleading and deceptive.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of instruction to those seeking employment as private or public detectives, investigators or agents, of the same general kind and nature as that sold by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said state-

ments and representations were and are true and into the purchase of substantial quantities of respondents' services by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Donald L. Bachman and Mr. Edward D. Steinman supporting the complaint.

Mr. Earl M. Leven, pro se and for corporate respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

FEBRUARY 20, 1970

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on July 22, 1969, charging them with engaging in unfair methods of competition and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements, representations and practices in connection with their operation of a school offering a course of instruction to those seeking employment as detectives, investigators or agents. After being served with said complaint, respondents appeared without counsel and filed their answer, denying certain allegations of the complaint and not responding to certain other allegations thereof.

Pursuant to notice duly given, a prehearing conference was convened herein on September 16, 1969, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to act as hearing examiner in this proceeding. At said conference respondents were advised by the hearing examiner that, under the Commission's Rules of Practice (Section 3.12(b)(ii)), their failure to answer a number of the allegations of the complaint constituted an admission thereof. Since respondents indicated that they were not aware of this in filing their answer, they were permitted to orally amend their answer by responding to those allegations to which they had previously made no response and by modifying their answers to certain other allegations. In accordance with the examiner's order scheduling said prehearing conference, complaint counsel supplied to re-

spondents (a) a list of their potential witnesses, together with a general statement of the nature of the expected testimony of such witnesses, and (b) a list of their proposed documentary exhibits, together with copies thereof. A number of the exhibits proposed to be offered in evidence by complaint counsel were marked for identification and the respondent agreed that certain of them were genuine and authentic. Respondents were advised by the examiner that at the hearings to be held herein, they would be permitted to cross-examine witnesses called by counsel supporting the complaint, and to call witnesses in their own behalf. By agreement of the parties, the transcript of the prehearing conference was made a part of the public record in this proceeding, and the results thereof were embodied in a prehearing order of the examiner dated October 7, 1969.

Hearings for the reception of testimony and other evidence were held in Washington, D.C., from October 16 to October 23, 1969. At said hearings, testimony and other evidence were received in support of, and in opposition to, the allegations of the complaint, such evidence being duly recorded and filed in the office of the Commission. All parties appeared at the hearings and were afforded full opportunity to be heard, and to examine and cross-examine witnesses. At the close of all the evidence, the parties were given an opportunity to file proposed findings of fact, conclusions of law and an order, on or before November 24, 1969. On motion of counsel supporting complaint, and without objection by respondents, the time for filing proposed findings was extended until December 29, 1969. Proposed findings as to the facts, conclusions of law and an order were filed by counsel supporting complaint, on December 29, 1969.

Although no proposed findings were filed by respondents, they requested the examiner, by letter dated January 26, 1970, to dismiss the complaint in this proceeding for the reason that they were not represented by counsel herein due to financial inability. Said request, which was treated as a motion, was denied by order of the examiner dated January 29, 1970. However, respondents were advised in said order that they could submit a new application, on or before February 9, 1970, requesting the assignment of counsel, together with appropriate facts and documents to support their claim of financial inability to retain counsel. No such application was submitted by respondents. However, respondents thereafter requested an extension of time to file proposed findings. Such request was denied by order of the examiner dated February 17, 1970.

After having carefully reviewed the evidence in this proceeding

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and the proposed findings and conclusions,¹ and based on the entire record, including his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT²

I. The Respondents

A. *Identity and Business*

1. Eastern Detective Academy, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 724 14th Street, NW., in Washington, D.C. Respondent Earl M. Leven is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent (Admitted, PHO, par. 1; Tr. 4; CX 111-A, I).

2. Respondents are now, and for some time last past have been, engaged in the operation of a school, offering a course of instruction to those seeking employment as private or public detectives, investigators or agents (Admitted, in part, PHO, par. 2; CX 1, 2, 4, 6-8, 10-B, 11-15, 39, 42-73, 221-226, 229-233, 235-244, 247, 248).³

B. *Commerce*

3. In the course and conduct of their aforesaid business, and for the purpose of inducing enrollment in their course of instruction, re-

¹ Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

² References are hereinafter made to certain portions of the record, in support of particular findings. Such references are to the principal portions of the record relied upon by the examiner, but are not intended as an exhaustive compendium of the portions of the record reviewed and relied upon by him. Although no proposed findings were submitted by respondents, the examiner has not relied solely on the proposed findings submitted by counsel supporting the complaint in making factual findings herein, but has made his own, independent review of the testimony and other evidence in the record. The following abbreviations are used in referring to the record: "Tr." (for the transcript of testimony), "CX" (for complaint counsel's exhibits), "RX" (for respondents' exhibits), and "PHO" (for the examiner's prehearing order).

³ Respondents contended at the prehearing conference that their course of instruction was not offered to those seeking employment as "public" detectives, but was limited to those seeking employment as "private" detectives (Tr. 7-9). While many of respondents' advertisements refer to their course of instruction as being offered for "private detective training," a number do not use the qualifying adjective "private" and refer to their training course as being in "Civil and Criminal Investigations" (emphasis supplied) or as involving "Complete Detective Training," and its list of courses include a number in the field of criminal offenses, such as are normally investigated by public detectives or policemen (CX 6, 39, 42-73, 223-226, 241-244, 247, 248).

spondents engage, and for some time last past have regularly engaged, in advertising their course of instruction in (a) newspapers published in the District of Columbia and distributed throughout the metropolitan area thereof, including portions of the States of Maryland and Virginia, (b) in the yellow pages of the telephone directory distributed in the metropolitan area of the District of Columbia, including portions of the States of Maryland and Virginia, and (c) in transit buses operating in the District of Columbia and adjacent areas of the States of Maryland and Virginia. In the further course and conduct of their business respondents, from their offices in the District of Columbia, regularly solicit, and for some time last past have solicited, students by means of advertising brochures mailed to persons located in various other States of the United States, and by means of sales representatives who visit prospective students in their homes in various other States of the United States. The volume of respondents' advertising and solicitation of students through interstate media and by vehicles and individuals traveling across state lines has been, and now is, substantial. (Admitted, in part, PHO, par. 3; Tr. 10-17, 195, 202-222, 224, 227-242, 281, 334-349, 439-445, 514-517, 527-528, 567-568, 590-592, 603; CX 1, 2, 4-8, 10-15, 216-248, 250-252).⁴

C. Competition

4. In the course and conduct of their business, and since at least July 1967, respondents have been, and now are in substantial competition, in commerce, with other corporations, firms or individuals engaged in the sale of courses of instruction to those seeking employment as private or public detectives, investigators or agents, of the same general kind and nature as that sold by respondents. (Tr. 512, 510).

II. The Alleged Illegal Practices

A. The Challenged Advertising

5. The charges in the complaint are based primarily on the making by respondents of certain allegedly false, misleading and deceptive statements and representations, concerning the nature and benefits of their course of instruction, in newspaper advertisements,

⁴ At the prehearing conference respondents admitted the insertion of advertisements in newspapers and the mailing of brochures to students, but contended that the volume involved was not substantial (Tr. 11). As the above record references establish, respondents placed a substantial number of advertisements in the Washington Post and/or Washington Daily News between 1966 and 1969, and contracted for the insertion of over 1,000 display cards in D.C. transit buses in 1967 and 1968.

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transit bus displays and brochures distributed to prospective students. Respondents do not dispute the fact that they made the challenged statements in advertising, but contend that certain of the statements were discontinued or modified at various times prior to the issuance of the complaint herein. They also deny that such statements were false and deceptive.

6. Typical of the statements made by respondents in newspaper advertisements, transit bus displays and promotional material, for the purpose of inducing enrollment in their course of instruction, are the following:

- A. TRAINED UNDERCOVER PEOPLE ARE ALWAYS IN DEMAND
- B. Male and Female Undercover Agents in Demand Now
- C. Free Job Placement Service for Advanced Students & Graduates
- D. Our Placement Service has placed several hundred persons in investigative work in just the past year.
- E. MEN & WOMEN EXCITING BIG PAY JOBS OPEN FOR PRIVATE DETECTIVES IF YOU ARE A PERSON OF GOOD CHARACTER WILLING TO TAKE TRAINING IN YOUR SPARE TIME
- F. Thank you for your inquiry regarding our Training Program Leading to Private Detective, Undercover Investigator and General Law Enforcement Officer.

7. As noted above, respondents concede the making of the above-quoted statements, but contend that certain of them were discontinued prior to the issuance of the complaint, *viz.*, that statements "A" and "B" were discontinued approximately two years ago, statement "D" was discontinued three or four years ago, and statement "E" was discontinued two or three years ago, and that the reference in statement "F" to "Undercover Investigator" was discontinued about three years ago (PHO, par. 4; Tr. 23-25). No affirmative evidence was offered by respondents to establish when the use of the statements in question was discontinued. However, the evidence offered by counsel supporting complaint establishes that statement "A" was still being used in newspaper advertisements in late 1968 and early 1969 (CX 239, 240). Statement "B," which is substantially similar to statement "A," appeared in newspaper advertisements at least as late as September 1967 (CX 223), and an identical statement appeared in display card advertising in D.C. Transit buses until at least mid-1968 (CX 1; Tr. 345, 342). Statement "D" was used frequently in newspaper advertisements during 1966 and 1967 (CX 7-8, 11, 14, 221-222, 229-237). A similar statement, in which the earlier reference to the number of students placed (*i.e.*, "several hundred") was deleted, but in which respondents stated that "many of our graduates were placed in interesting, well-paying positions," appeared in

newspaper advertisements in late 1968 and early 1969 (CX 239-240). Statement "E" was in use at least during 1967 and 1968 in display card advertising in D.C. Transit buses, and in cards distributed to prospective students in their homes (Tr. 281, 344, 514; CX 2-A, 10-B). As late as March and April 1969, respondents were advertising "Detective Training * * * for good paying jobs" (CX 224-226).

B. The Representations

8. The complaint alleges (Par. Five) that through the use of statements in advertisements such as those set forth above, and through oral statements made by their employees, respondents have represented and are now representing, directly or by implication, that:

A. There is a great demand for graduates of respondents' course as detectives, investigators, undercover agents and in other similar positions, and employment in such positions is available upon the completion of respondents' course of instruction.

B. Several hundred persons who attended respondents' course have obtained employment in investigative work within one year.

C. Completion of respondents' course of instruction qualifies persons to be detectives, investigators, undercover agents, or for employment in other similar positions at commensurate wages.

D. Respondents provide a placement service which places a significant number of advance students or graduates of respondents' course in positions for which they have been trained by respondents.

9. Respondents admit making the representations set forth in subparagraphs A and B above, but contend they were discontinued, in line with their assertion that statements A, B, D and E, set forth in Paragraph 6 above, were discontinued (PHO, par. 5; Tr. 30). However, as heretofore noted, no affirmative evidence as to the discontinuance of such statements was offered by respondents. Moreover, as above found, the evidence affirmatively discloses that such statements or substantially similar statements were made at least between 1967 and 1969. Respondents' denial as to having made the representation set forth in subparagraph C above, is based on the alleged lack of clarity in the phrase "similar positions at commensurate wages" (Tr. 32-33). However, the examiner finds no lack of clarity in the phrase in question. The words "similar positions" obviously refer to positions which are similar to "detective, investigator [and] undercover agents," and the words "commensurate wages" clearly refer to wages which are commensurate with those paid to detectives, investigators, and undercover agents. Respondents denial as to subpara-

graph D above, is based on the alleged lack of clarity in the phrase "significant number" (Tr. 40). The phrase obviously means respondents have represented that the number of students placed by them is of an order of magnitude which would be considered as substantial. From the statement made by respondents in their advertisements that they have placed "many of our graduates," and that they had placed "several hundred persons * * * in just the last year," is clear that they have made the representation alleged in subparagraph D above. Moreover, in addition to the above-quoted statements in advertisements, respondents' sales representatives (including respondent Leven himself) informed prospective students that respondents provided a placement service and had placed many students and graduates in well-paying positions (Tr. 311, 597, 602, 785, 847, 864, 879, 898). It is, accordingly, concluded and found that, by means of statements in the advertisements quoted in Paragraph 6 above, and those of similar import, and through oral statements and representations of their employees, respondents have made the representations set forth in Paragraph 8 above and have continued to make such representations until at least early 1969.

10. In addition to the representations set forth in Paragraph 8 above, the complaint (Par. Seven) alleges that respondents have made certain other representations to prospective students in brochures and promotional material and by oral statements of their employees, as follows:

A. Respondents maintain a staff of seventeen instructors qualified by practical experience or training in the Army Security Agency, District of Columbia Courts, U.S. Supreme Court, U.S. Air Force, Office of Special Investigations, U.S. Army Counter-Intelligence School, U.S. Signal Corps Radio Communications, Constabulary of Great Britain, Illinois State Security Forces, Maryland State Internal Security Police, Armed Forces Institute of Pathology, Washington, D.C. Metropolitan Police-Detective Division, Department of the Provost Marshal General, United States Army-Criminal Investigation Division, Federal Bureau of Investigation, and Detective Bureau-New York City Police.

B. Students will be trained in the firing of handguns on respondents' shooting range, and that the respondents have student training equipment such as polygraph instruments which the students will be trained to operate through practical exercise.

C. Each of the testimonial letters, which respondents display or enclose with their brochure, from graduates of respondents' course and businesses which have employed graduates of respondents'

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course are unsolicited and unbiased testimonials as to the value of respondents' course.

11. Respondents concede the making of the statement set forth in subparagraph A above, but contend that it was discontinued around March 1969, when they revised the brochure in which it appeared (PHO, par. 7; Tr. 46-47; CX 107-A). Respondents also concede having made the representation set forth in subparagraph B above, except for the portion thereof alleging that they would provide practical training to students on the polygraph instrument (Tr. 50-52). The record establishes that in their advertising and promotional material respondents made specific reference to the "Lie Detector" as being included in the "training" which they provided (CX 2-A, 10-B, 247-248). Respondents suggested, during the course of the hearing, that prospective students should have understood their training on the polygraph or lie detector would be limited to a demonstration on how it operated and would not include practical training in its operation, since it takes many months of training to learn to operate the instrument and students cannot be taught to operate it during the course of the two-hour lecture assigned to the topic. The trouble with respondents' position is that it assumes a degree of sophistication in what is entailed in lie-detector training which the average student does not possess. Most of the students had no idea until after they were registered that training on the polygraph was limited to a two-hour lecture. From the statements made in respondents' advertising that they would receive "training" on the "Lie Detector" and from oral statements of respondents' sales representatives most students were under the impression that they would receive practical training in how to operate the polygraph (Tr. 302, 312, 484, 491, 842, 849).⁵ While respondents denied having made the representation set forth in subparagraph C above, there is no dispute that the brochures and promotional material shown to prospective students included testimonial letters from graduates and from businesses which employed graduates of re-

⁵ Several witnesses called by respondents testified either that they were not told they would be taught how to operate the polygraph instrument, or that respondents' representative told them the course would be a "cursory" one in which they would merely observe how the instrument operated (Tr. 1057, 947, 965, 992, 1022-23). The testimony of these witnesses is of little probative value insofar as contradicting the testimony of other witnesses to whom contrary oral representations were made. Moreover, it is of no value insofar as contradicting the express representation made in respondents' advertisements that students would receive training on the lie detector. Where the impression created by an advertisement is deceptive, the fact that an oral explanation is later given does not cure the initial deception. *Federal Trade Commission v. Carter Products, Inc.*, 186 F. 2d 821 (7th Cir. 1951).

spondents' course (CX 23-38; Tr. 426, 528, 532, 766, 768, 850, 880, 898). Whether it was affirmatively represented to prospective students or not, it is clear that in the context in which the letters were exhibited to such persons, for the purpose of inducing them to enroll in respondents' school, they had every right to infer, and there is affirmative evidence that they did infer, that such letters were unsolicited and unbiased testimonials as to the value of respondents' course (Tr. 768, 850, 881). It is, accordingly, concluded and found that respondents have made and, until at least recently, have continued to make the statements and representations set forth in Paragraph 10 above.

12. The complaint further alleges that, in the course and conduct of their business, respondents have regularly obtained potential students' signatures on installment contracts through failing to disclose the nature of the instruments, and by representing that such instruments were non-binding enrollment applications, or that the classes were payable on a pay-as-you-go basis and prospective students could cancel their enrollment at any time (Compl., par. Nine). Respondents denied such allegation (Ans., par. Nine), but conceded that there may have been salesmen who, without authorization, misrepresented the nature of the obligation assumed by students (Tr. 66-67). The record establishes that prospective students were requested to sign a form entitled "Enrollment for Private Detective Training" (CX 105). A large proportion of the prospective students solicited by respondents' sales representatives were Negroes, many with limited educational backgrounds. Most of the students who testified in this proceeding did not understand that they were signing a binding contract, but thought that it was a mere enrollment form under which they would not be obligated to make further payment if they decided to discontinue the course. Respondents' sales representatives did not inform them as to the nature of the documents they were signing and, in a number of instances when the students made inquiry, they were informed that they would not be obligated if they decided to discontinue the course (Tr. 310-311, 454-455, 574, 595, 770, 791, 819, 832, 852-853, 885, 899, 916). Given the type of student solicited by respondents, the ambiguous nature of the so-called enrollment form exhibited to them, and the failure by respondents' sales representatives to clearly reveal the nature of the instrument which the students were required to sign, as well as the affirmative statements made by some of respondents' sales representatives, it is concluded and found that respondents have regularly obtained signatures on installment payment contracts through failing

to disclose the nature of the instruments, and by representing that such instruments were non-binding enrollment applications or that classes could be paid for on a pay-as-you-go basis and students could cancel their enrollment at any time if they chose to do so.

C. Alleged Falsity of Representations

a. *Demand for, and Qualifications for Employment of, Respondents' Graduates*

13. The complaint contains two separate but related allegations regarding the falsity of respondents' representations concerning the opportunities for employment of respondents' graduates, *viz.*, (1) that there is no significant demand for such graduates, and that employment as detectives, undercover agents or in similar positions is not available to them upon completion of respondents' course of instruction, and (2) completion of respondents' course of instruction does not qualify persons to be detectives, investigators, undercover agents or for employment in other similar positions at commensurate wages, since employment in such positions is conditioned upon the aptitude and practical experience of the individual, rather than the training afforded by respondents' course of instruction, and that a substantial number of respondents' graduates are unable to obtain employment in positions which pay wages commensurate with those paid individuals in the aforementioned positions (Compl., par. Six, subpar. 1 and 3). Respondents deny such allegations (Ans., par. Six; PHO, par. 6). The evidence of record substantially supports the allegations of the complaint, as more fully found below.

14. To a major extent, respondents' course of instruction consists of courses which are related primarily to the field of criminal investigation and the work of public detectives and policemen (Tr. 748-749, 718). It includes such courses as Common Criminal Offenses, Homicide, Homicide Investigations, Restraint Techniques, Police Photography, Police Communications, Safe and Loft Burglary, Narcotics, Moulage and Casting, and Weapons (CX 39-73). Most of the course material was prepared by persons with a background in criminal law, either civilian or military (Tr. 253-262). A number of its instructors are actual or former municipal policemen or detectives, or military officers working in the field of criminal investigation (CX 111 A-E; Tr. 361-364, 801, 953). Respondents make a calculated effort to conduct their school in such a manner as to simulate that of an institution for public detectives or policemen. Its officers and employees are given such titles as Superintendent, Cap-

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tain, Lieutenant, and Sergeant. Employees working in the office wear uniforms and badges, simulating those of policemen. Students and graduates receive badges (CX 111 A-F, 202 A; Tr. 303, 563-566, 1030). In some of the display material shown to students and prospective students, respondents simulate scenes which are characteristic of those involved in the work of policemen and public detectives (CX 16-22).⁶

15. For the most part, private detectives and investigators in Washington, D.C., and the surrounding area, where most of respondents' students would normally seek employment, do not perform duties where training in criminal-type investigations would be of value. Most of their work involves such routine duties as investigations of credit, employment applicants, or personal injury claims, conducting of opinion surveys, acting as store detectives or guards, and similar work (Tr. 707-708, 627, 690). In large part, the training provided in respondents' course would be of little value in the performance of such work. For example, a knowledge of restraint techniques and weapons would be of value only for those persons who are employed as store detectives or guards. A knowledge of the various criminal law subjects would be of value only in the relatively few cases where a private detective is called in after the police have been unable to solve a crime or where, for reasons of desired confidentiality, a particular client does not wish to involve the police. Persons who are employed to perform such investigations are generally individuals with prior law enforcement experience, such as with the FBI or as public detectives (Tr. 621-623, 687-690, 707-711, 748-752).

16. The credible and uncontradicted testimony of a number of operators or supervisory officials of private detective agencies establishes that persons taking respondents' course would have limited opportunities for employment as private detectives, investigators, undercover agents or in other similar positions at commensurate wages since, (a) respondents' course of instruction is geared largely to the type of work performed by public detectives and is inade-

⁶ Respondent Leven testified that such display material (consisting of photographs) was just a "glamour advertising type" which was intended to "dress up" the sales kit of his salesmen, but that it did not reflect the actual training given in the course (Tr. 358-359). However, many of the students to whom such material had been exhibited were under the impression that it reflected the type of detective work for which they would be trained (Tr. 767, 786, 897, 911-912). Many of them had the impression that they would be trained for glamorous-type detective work, such as that exemplified in television programs like "I Spy," featuring Bill Cosby (Tr. 470). Several sales representatives testified that they used the photographs as reflecting the type of training students would receive (Tr. 443-444, 590-591).

quate to prepare persons for employment as private detectives, investigators or similar positions; (b) the graduates of schools such as respondents, who have had no practical experience, would have limited employability, and then largely in low-paying jobs such as conducting credit or pre-employment investigations, or as trainees; (c) graduates of respondents' school, in particular, would not qualify for employment in better-paying positions as private detectives and undercover agents because many of them are of limited educational and intellectual background; and (d) to the extent a limited number of graduates of respondents' school would be considered for employment, it would generally be in such low-paying positions as store detectives or guards, or in conducting routine credit and pre-employment investigations (Tr. 621-630, 634-636, 661-663, 665-666, 689-694, 704-707, 712-725, 747-752). The testimony of these witnesses concerning the lack of employability of respondents' graduates in the better-paying detective positions is corroborated by the evidence as to the actual employment experience of such graduates. As will be hereafter more fully discussed, the record establishes that respondents were able to place only a handful of their graduates, and then generally in the low-paying positions of guards and store detectives, for which a course of instruction such as respondents' is unnecessary.

b. Placement of Respondents' Graduates

17. The complaint contains two separate but related allegations concerning the falsity of respondents' representations concerning the placement of its graduates, *viz.*, (a) that in no year did several hundred persons who attended respondents' course obtain employment in investigative work or in other positions for which they were trained; and (b) that respondents do not provide a placement service which places a significant number of advanced students or graduates in positions for which they have been trained by respondents (Compl., par. Six 2, 4). Respondents deny such allegations (Ans., par. Six; PHO, par. 6). The allegations of the complaint are amply supported by the record.

18. Although advertising that its "Placement Service has placed several hundred persons in investigative work in just the past year," which was later modified to read "many of our graduates were placed in interesting, well-paying positions," and many of its students were assured by its sales representatives that they would obtain employment upon graduation from the course (see par. 6-9, *supra*), the record establishes that respondents, (a) had no organized

placement service; (b) never placed several hundred persons in investigative work during any one year; and (c) never placed any substantial number of persons in positions for which they purportedly were being trained. Respondents' placement service consisted of occasionally tacking a slip of paper on a bulletin board in the school, noting possible employment openings. No record of employment openings was maintained, and no particular employee was responsible for handling requests for employment (Tr. 292, 353-354, 424, 565, 859-860). For the most part, such openings as were sporadically posted were for low-paying positions as guards and store detectives, for which positions respondent Leven conceded no training in the school was necessary (Tr. 547, 355-357, 858-860, 1043). Respondent Leven conceded that his organization had not placed 200 students in recent years and had no recollection when it had ever placed such a number of students (Tr. 285, 287-288). The credible evidence establishes that the total number of students enrolled in respondents' course in any one year never exceeded 200, of which only a fraction graduated, and that the maximum number of persons placed in any positions by respondents did not exceed 10 or 15 a year (Tr. 519-523, 418-419).⁷

c. Respondents' Staff of Instructors

19. As previously found, respondents have represented that they maintain a staff of 17 instructors who were qualified by practical experience and training in the following organizations:

Army Security Agency, District of Columbia Courts, U.S. Supreme Court, U.S. Air Force, Office of Special Investigations, U.S. Army Counter-Intelligence School, U.S. Signal Corps Radio Communications, Constabulary of Great Britain, Illinois State Security Forces, Maryland State Internal Security Police, Armed Forces Institute of Pathology, Washington, D.C. Metropolitan Police-Detective Division, Department of the Provost Marshal General, United States Army—Criminal Investigation Division, Federal Bureau of Investigation, and Detective Bureau—New York City Police.

The complaint alleges that respondents do not maintain a staff of 17 instructors qualified by practical experience or training, as represented by them, and that the number of instructors is significantly less than 17. Further, that such instructors are not qualified by training or practical experience in the areas represented by respondents (Compl., par. Eight 1). Respondents allege in their answer that

⁷ According to respondent Leven's own testimony, only 10% of the school's graduates sought assistance in obtaining employment (Tr. 960). Since the number of graduates was considerably less than 200, it is clear that even if every graduate was placed by respondents the number would not approach 200.

they did "at a prior date" maintain a staff of 17 instructors, but that they "inadvertently overlooked" changing the wording in their advertisements when their staff "waned" (Ans., par. Eight). As previously found (par. 11, *supra*), respondents continued to use advertisements containing such language until at least six months prior to the commencement of hearings herein.

20. The record establishes that during the period January 1, 1965, to February 1967, the maximum number of instructors employed by respondents was 11 (CX 111 A-C, 112-A). Thereafter, the number of instructors declined so that during the balance of 1967 and during 1968 and 1969 the number of instructors ranged from four to nine, with the average number teaching at any one time generally being three or four. Even during the period when the maximum number of teachers was employed at respondents' school, there were no teachers who possessed practical experience or training in certain of the areas represented by respondents, including Army Security Agency, Constabulary of Great Britain, New York City Police Department and Office of Special Investigations. When the number of instructors declined after 1967, the remaining instructors lacked qualifications and training in a number of other areas referred to by respondents in their advertising. With respect to certain of the organizations in which respondents' instructors were represented as having practical training and experience, including specifically Illinois State Security Forces and Maryland State Internal Security Police, the only qualified individual was respondent Leven, who during various periods between 1967 and 1969 did not perform actual teaching duties at the school (Tr. 315, 360-364, 367, 373, 410, 461, 485, 504, 507, 529-531, 539, 800, 953-954, 263; CX 202, 111 A-C).

d. *Training in Firing Handguns and Use of Polygraph Equipment*

21. The complaint alleges that respondents' representations concerning the training they afforded to students in the firing of handguns and the use of equipment, such as the polygraph instrument, is false since (a) respondents do not operate a shooting range and the only firing done by students is the firing of a pistol into an enclosed metal box; and (b) the only instruction which students received on the polygraph instrument is in the form of a lecture at which the polygraph instrument is brought into the classroom, but is not made available for student use (Compl., par. Eight 2). Respondents deny such allegations (Ans., par. Eight 2). In the main, the record supports the allegations of the complaint concerning the limited training afforded in the firing of handguns, and fully supports the alle-

gations thereof concerning the lack of training on the polygraph instrument.

22. The record establishes that a number of respondents' students received some oral instruction in the use of handguns, but received no practical training in the firing thereof. In a number of other instances where practical training was afforded, it was of an extremely limited nature, sometimes involving a single opportunity to fire a few plastic bullets at a stationary target on a limited-distance firing range (Tr. 314, 318, 374, 382, 409, 485, 561). According to the credible testimony of several expert witnesses called by complaint counsel, the limited training afforded by respondents is inadequate to qualify students in the actual use of handguns (Tr. 684-686, 317-319).

23. The record establishes that a number of respondents' students received no instruction whatsoever on the polygraph instrument. Where such instruction was afforded, it was limited to a portion of a two-hour lecture in Interrogations and involved a demonstration by the instructor as to how the polygraph instrument operated. On occasion, one of the students would act as a "guinea pig," with the instructor putting him through a lie detector test. However, the students received no practical training in the actual operation of the polygraph instrument. The type of instruction afforded the students was characterized by one of the instructors as being of the "information" or "entertainment" type generally given to club members at a luncheon or dinner meeting. The credible testimony establishes that such training is inadequate to prepare students in the operation of the polygraph instrument (Tr. 312-313, 384, 406, 484, 491-492, 561-562, 612-616, 856).

e. Use of Testimonial Letters

24. As heretofore found, respondents have displayed testimonial letters to prospective students, which the latter inferred or understood were unsolicited and unbiased testimonials as to the value of respondents' course (par. 11, *supra*). The complaint alleges that, in a number of instances, the testimonial letters were neither unsolicited nor unbiased, but that the senders thereof were induced by respondents to write such letters and, in some instances, the letters were actually written by respondents (Compl., par. Eight 3). This allegation of the complaint is amply supported by the record. According to the admission of respondent Leven, and the credible testimony of one of respondents' former supervisory employees, a number of former students and some business firms employing respondents' graduates were asked to write testimonial letters to the school, and in

some instances, the letters were actually composed and written by respondents (Tr. 350-352, 532-534). The evidence further establishes that a number of prospective students were induced to attend respondents' school after being shown such testimonial letters, since they were of the view that if other graduates were satisfied with the school and had been able to obtain investigative positions at good salaries, they too could do so (Tr. 768, 850, 880-881, 896, 899).

f. Failure to Disclose Nature of Instrument Signed by Students, and Enforcement Thereof

25. As heretofore found, respondents regularly obtained potential students' signatures on installment contracts. Such contracts were designated "Enrollment for Private Detective Training." The record also establishes that prospective students were not informed that such forms were actually installment payment contracts and that, in some instances, respondents' sales representatives informed prospective students they would not be bound by the contracts if they decided not to take, or to discontinue, respondents' course. Most students were not aware that they were signing a binding contract, and were under the impression that the only penalty they would sustain by failing to take or continue the course was the loss of any deposit or installments which they had paid (par. 12, *supra*). In the actual fact, when students who had signed the so-called enrollment form failed to attend class and continue installment payments, respondents undertook to enforce payment. It did this, initially, by informing students of their legal obligation, and thereafter by turning the matter over to a collection agency which sent a series of so-called dunning letters to the students. When payment was not forthcoming after such efforts, suits on the enrollment contracts were brought in the courts of the District of Columbia and judgments were obtained. When such judgments were not paid, or a settlement made, garnishments of the students' salaries were obtained (CX 212-214; Tr. 388, 774, 822, 838, 857, 890, 905).

D. Effect of Practices

26. It is concluded and found, from the record as a whole, that the use of respondents of the aforesaid false, misleading and deceptive statements, representations and practices had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true, and into the purchase of substantial quantities of respondents' services by reason of said erroneous and mistaken belief.

E. Alleged Discontinuance

27. Respondents contended at the prehearing conference that certain, but not all, of the representations made by them in advertising and by other means had been discontinued at various periods of from two to four years prior to the inception of this proceeding. As heretofore noted, despite some modifications respondents continued to make use of most of the advertisements until at least early 1969. Moreover, respondents continued to maintain, and still maintain, their basic method of operation without major change. They still seek to induce students to take a course of instruction to become private detectives at high-paying salaries. Many of such students lack the basic educational qualifications and aptitude to take such a course. Moreover, the course of instruction itself is not calculated to prepare such students for detective positions of the type which they have been led to believe they can obtain by taking such course. The best most of them could achieve if they completed respondents' course of instruction would be employment as store detectives and guards, in which their compensation would not be much of an improvement, if any, over their former earnings, and for which positions a course such as respondents' is unnecessary.⁸ Accordingly, it is concluded and found that any changes which respondents have made in their advertising program involves incidental matters and that their basic appeal and approach to prospective students remain unchanged.

CONCLUSIONS OF LAW

1. Respondents were, at all times material herein, engaged in substantial business intercourse, in commerce, and maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. Said respondents were, at all times material herein, in substantial competition with other corporations, firms and individuals in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. The acts and practices of respondents, as hereinabove found, were all to the prejudice and injury of the public and of said re-

⁸ As previously found, many of respondents' students are Negroes, a number of whom have limited educational backgrounds and aptitude for detective work. Many of them are employed in the construction field where their compensation averaged around \$150-\$200 weekly. They looked upon respondents' course as offering them an opportunity to do exciting detective work at high-paying salaries, whereas the best they could hope for if they completed respondents' course would be employment in the routine job of store detective or guard, at remuneration of from \$2 an hour to \$125 a week (Tr. 470-471, 629, 664-665, 693, 713, 755, 779, 809-810, 844, 875).

spondents' competitors, and constituted unfair methods of competition, in commerce, and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

4. The Commission has jurisdiction over the subject matter of this proceeding and of the respondents, and this proceeding is in the public interest.

ORDER

It is ordered, That respondents Eastern Detective Academy, Inc., a corporation, and its officers, and Earl M. Leven, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any course of instruction or any other service or product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that there is a great demand for individuals who have completed respondents' course of instruction as detectives, investigators, undercover agents or in other similar positions, or that employment in such positions is available upon completion of respondents' course of instruction; or misrepresenting, in any manner, the demand or opportunities for employment of individuals who complete any course of instruction.

2. Representing, directly or by implication, that several hundred persons who attended respondents' course obtained employment in investigative work or in any other position within one year; or otherwise misrepresenting the number of persons attending any course who have obtained employment through the training afforded, or the nature of such employment.

3. Representing, directly or by implication, that persons who complete respondents' course of instruction are thereby qualified for employment as detectives, investigators, undercover agents or in any other similar position; or otherwise misrepresenting the positions for which the graduates of any course will qualify.

4. Representing, directly or by implication, that persons who complete respondents' course of instruction will thereby be qualified for employment at wages commensurate with those paid detectives, investigators or undercover agents; or otherwise misrepresenting the wages or compensation available to graduates of any course of instruction.

5. Representing, directly or by implication, that respondents provide a placement service which places a significant number of graduates or students in positions for which they have been trained by respondents; or misrepresenting, in any manner, their capabilities or facilities for assisting graduates or students of any course in finding employment, or the assistance actually afforded graduates in obtaining employment.

6. Representing, directly or by implication, that respondents maintain a staff of seventeen instructors, or that the staff of instructors maintained by respondents has certain experience, training or qualifications which they do not have; or misrepresenting, in any manner, the number of instructors maintained or their experience, training or qualifications.

7. Representing, directly or by implication, that respondents operate a shooting range or have polygraph instruments, unless such is the fact; or misrepresenting, in any manner, the facilities or equipment which respondents have and make available for the training of students.

8. Misrepresenting that students will receive training in the firing of handguns on a shooting range or that students will receive practical training in the use of polygraph instruments; or misrepresenting, in any manner, the nature or extent of training students will receive.

9. Misrepresenting that graduates of respondents' course, or businesses which have employed graduates of respondents' course, have written unsolicited or unbiased testimonials.

10. Using photographs or any other promotional device to misrepresent the training, facilities or equipment available to students of respondents' academy.

11. Failing to reveal, disclose or otherwise inform prospective customers, in a manner that is clearly understood by them, of the non-cancellable nature and of all terms and conditions of any installment contract or other instrument of indebtedness to be signed by any customer.

12. Inducing or causing customers or prospective customers to execute installment contracts or any other instruments of indebtedness by falsely representing that such contracts, or other instruments are non-binding enrollment agreements or that such contracts or other instruments are cancellable at the discretion of the prospective customers; or otherwise inducing or causing customers or prospective customers to execute installment con-

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tracts or any other instruments by misrepresenting the true nature or effect of such documents.

13. Placing in the hands of a debt collection agency for the purpose of obtaining satisfaction of an alleged debt, any agreement, contract or other instrument of indebtedness which has been procured through any of the deceptive acts and practices prohibited by Paragraphs 1 through 12 hereof.

14. Seeking to enforce or obtain a judgment on any contract or other instrument executed after the final date of this order between respondents and any party, or the transferring of any such contract or other instrument to a third party for the purpose of enforcing or obtaining a judgment on said contract or instrument, where the respondents or their employees misrepresented the nature or the terms of said contract or instrument at the time or prior to the time the contract or instrument was signed.

15. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' courses or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondents Eastern Detective Academy, Inc., a corporation, and its officers, and Earl M. Leven, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any course of instruction or any other service or product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Entering into any contract which shall become binding on the customer prior to midnight of the seventh day, excluding Sundays and legal holidays, after date of execution.

(2) Failing to disclose orally, prior to execution of the contract, and in writing on any trade acceptance, conditional sales contract, promissory note or other instrument executed by the customer, with sufficient conspicuousness and clarity to be observed and read by such customer, that the customer may rescind or cancel the contract by directing or mailing a notice of cancellation to respondents' address prior to midnight of the seventh day, excluding Sundays and legal holidays, after the date of the sale.

(3) Failing to provide a separate and clearly understandable form which the customer may use as a notice of cancellation.

(4) Negotiating any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the ninth day, excluding Sundays and legal holidays, after the date of execution by the customer.

(5) *Provided, however*, That nothing contained in this portion of the order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the State in which the contract is made. When such obligations are inconsistent respondents can apply to the Commission for relief from this provision with respect to contracts executed in the State in which such different obligations are required. The Commission, upon proper showing, shall make such modifications as may be warranted in the premises.

OPINION OF THE COMMISSION

JUNE 30, 1971

By JONES, *Commissioner*:

On July 22, 1969, the Commission issued a complaint against respondents Eastern Detective Academy, Inc., and Earl M. Leven, individually and as an officer of the corporate respondent. The complaint charged the respondents with violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1964), through the use of various false, misleading and deceptive statements and practices in the course of the promotion and operation of their school offering instruction to those seeking employment as private detectives, investigators or undercover agents.

The case proceeded to hearing in October of 1969. The hearing examiner issued an initial decision finding against the respondents on all issues and entering a proposed order requiring them in essence to cease and desist from continuing the offending practices and to make various affirmative disclosures about certain aspects of the instruction being offered.¹

Respondents appealed to the full Commission and the matter is now before us for decision. Respondent Leven throughout this pro-

¹ The examiner's initial decision, which was rendered on February 20, 1970, was vacated by the Commission because of the individual respondent's claim of indigency and request for counsel, which is discussed more fully below; the initial decision was reinstated by the Commission on May 13th after respondent Leven failed to press his claim.

ceeding has been represented by himself *pro se* and no counsel has entered an appearance on behalf of either respondent.² At one point in the proceedings, respondent Leven requested the assignment of counsel but when asked to substantiate his claim of indigency he refused to press the request and continued to represent himself. In view of the fact, however, that respondent Leven acted as his own counsel, we have carefully reviewed the merits of the entire record on our own, and have not confined our review to matters challenged by the respondents on their appeal. While respondent Leven during the oral argument confirmed that his failure to press his claim of indigency and his request for counsel was a matter of free choice and asserted that he no longer took the position that he was entitled to appointment of counsel, it will be useful to review the circumstances involved before considering the merits of the charges, the evidence underlying the hearing examiner's conclusion of liability and the scope of the remedial relief proposed by him.

I

Respondents' Appearance Pro Se

Throughout all of the hearings in this case, respondent Leven appeared and took an active part in presenting documentary and oral testimony in opposition to the complaint allegations and actively examined the witnesses offered by complaint counsel in support of the allegations.

The hearing examiner was scrupulously careful to give Mr. Leven every assistance he needed to facilitate his presentation of his defense and his cross-examination of complaint counsel's witnesses. At the prehearing conference held on September 16, 1969, for example, the examiner proposed to respondent Leven that he orally amend his filed answer wherever necessary to make certain that he would not be held to inadvertent admissions of matters he had failed to deny in his pleading.³ At the prehearing conference, the examiner also

² Apparently respondents did retain counsel during the early stages of the investigation, since the record contains a letter from an attorney purporting to represent respondents in matters concerning returns to a Commission subpoena (CX 114A-B). However, there is no indication in the record as to precisely when or why this representation terminated.

³ In making this ruling the hearing examiner explained his position in response to a question from complaint counsel:

MR. BACHMAN: . . . According to his answer, he failed to deny paragraph two. At this point are you allowing him to amend this?

HEARING EXAMINER LEWIS: Yes, I am. In view of the fact that he does not have counsel [and] is not sophisticated in these matters I feel that it's my duty to assure the respondent a fair hearing and due process. . . . I get the impression that he was addressing his answer to the more or less substantive allegations, those that charge violations rather than the . . . formal allegations and I want to be sure that he understood what he was doing. [Tr. 9-10.]

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conducted stipulations regarding the admissibility of documentary evidence (Tr. 84-146), during which he explained carefully to Mr. Leven the method of introducing documents at the hearing, and gave him ample opportunity to object.⁴

On January 26, 1970, three months after the evidentiary hearing was closed, respondent Leven sent a letter to Hearing Examiner Lewis requesting that the complaint be dismissed and asserting, in part, as follows:

I would like to state, Mr. Lewis, that you were as considerate as possible in my behalf to the limits of your function as Hearing Examiner. However, in many areas I was unable to make a reasonable defense due to my lack of legal knowledge. I believe that if I had had a lawyer in the hearings, he would have been able to ask the right questions and made [*sic*] the proper references to law which would have proved beyond any doubt that I have not violated any laws. . . .

As I was unable to buy the transcript of over 1000 pages which amounted to almost \$900.00, I had to take additional time off from my work in an attempt to formulate my findings at the Commission's Offices, and after a very rough draft was made it seemed fruitless to send such a thing to the Commission, particularly after reading the one prepared by the Commission's attorneys. . . .

The letter concluded with a quotation from *American Chinchilla*⁵ and a request that the complaint be dismissed. Treating the letter as a motion, the examiner denied the motion for dismissal in an order issued January 29, but also granted Leven until February 9 to re-submit his request for assignment of counsel, together with appropriate facts and documents to support his claim of financial inability to retain counsel.

In a letter dated February 10, 1970, respondent asserted to the hearing examiner that he had "attempted to obtain the services of

⁴ See, e.g., Tr. 109-110:

HEARING EXAMINER LEWIS: You have a right to object to any document going into evidence. One step in having a document received in evidence is to have an agreement . . . that it is a genuine and authentic document. . . . To the extent that you are unable to do so now and will require additional time to review the documents . . . you will be given that time. . . . If you do have objection, then we will just pass on them at the hearing. . . .

MR. LEVEN: Right, sir.

HEARING EXAMINER LEWIS: There may be some documents that you do not question being genuine. . . . You may, however, question whether they should be received in evidence because of the fact that they were discontinued or something of that sort. You are at liberty to raise any such objections even though you do stipulate that it is an authentic document. . . .

Do you understand that situation?

MR. LEVEN: Yes, I do very clearly, sir.

⁵ The Commission's decision in *American Chinchilla*, Docket No. 8774 [76 F.T.C. 1016], holding that the Commission would not maintain an action against a respondent who was unrepresented by counsel solely because of his indigency, was handed down December 23, 1969.

an accountant to prepare a financial statement," but had been unable to do so. He also requested an extension of time within which to file proposed findings. The examiner denied this request on February 17, stating in passing that the respondent had "elect[ed] not to request an assignment of counsel." The examiner thereupon issued his initial decision on February 20, 1970, upholding all of the charges of the complaint.

In a letter received by the Secretary's office on March 13, 1970, respondents complained in general terms that they had not been afforded an adequate opportunity to seek assigned counsel, and that they had been denied a fair hearing. In response to this letter, the Commission on April 6, 1970, vacated the initial decision stating "it is not clear in the particular circumstances that the hearing examiner provided a full opportunity for respondents (a) to establish their asserted financial inability to pay counsel and (b) to file their proposed findings and conclusions." The matter was returned to the examiner for further consideration of these issues.⁶

The examiner's decision was reinstated by the Commission on May 13, when Leven again failed to provide the requested documentation to support the indigency claim. Both respondents appealed the examiner's decision.

Having carefully examined the entire record, we are satisfied that Mr. Leven knowingly and deliberately determined to appear *pro se* on behalf of both himself and the corporation. The Commission's Rules of Practice provide in Section 4.1(a)(2) that "A corporation or association may be represented by a bona fide officer thereof upon a showing of adequate authorization." It is clear that respondents' choice to take advantage of this provision and to represent themselves was freely and consciously made.

⁶ On April 6, the examiner entered an order which stated, in part:

If respondents still desire the assignment of counsel, they should submit a new application therefor, on or before May 1, 1970. Such application should consist of (1) a sworn narrative statement setting forth in detail the facts on which they base their assertion that they are unable to pay for counsel to represent them and (2) appropriate supportive documentary evidence consisting of financial statements, income tax returns and such other documents as will permit an objective appraisal of their financial ability or lack of ability to retain counsel. So that there will be no misunderstanding, the examiner wishes to make it clear that respondents are not required to retain an accountant to prepare a special financial statement. Any financial statement which may have been prepared during the past year will suffice. If there are no such statements in existence, respondents need not submit any financial statement, except that if they conclude it would be to their advantage to submit a currently-prepared financial statement they may do so. The examiner's order also provided that "[i]n the event respondents elect not to submit a request for the assignment of counsel, . . . but prefer to submit . . . informal findings without the use of record references and legal terminology or references, such findings and conclusions shall be submitted on or before May 1, 1970."

All of the papers which respondent Leven filed in this matter are signed by himself and by the corporation in the following form:

EASTERN DETECTIVE ACADEMY, INC.

[s] *Earl M. Leven*

Capt. Earl M. Leven,
Respondent.

Moreover, respondents' answer denying the complaint allegations was phrased in the layman's phrase "we." Leven apparently holds virtually all of the outstanding stock in the corporate respondent, and, in addition, is the chief moving officer (*See* CX 111 A, 111 I).

More significantly, when the issue arose during the oral argument before the full Commission, respondent Leven did not dispute complaint counsel's assertion, in response to Chairman Kirkpatrick's question, that the record demonstrates that Mr. Leven was appearing *pro se* both for himself and for the corporate respondent.⁷

The record also makes clear that the hearing examiner made every effort at each step of the proceedings to avoid the possibility that respondents might take some action out of ignorance which would be harmful to their defense. Respondents' papers and the transcript of Mr. Leven's participation at the hearings reflect an intelligent awareness of their rights and of their undoubted ability to protect themselves adequately and present a full and complete defense.⁸

Finally, we conclude that respondent Leven was afforded more than sufficient opportunity to demonstrate his right to an assignment of counsel. The record clearly demonstrates that Mr. Leven's failure to press forward on his claim of indigency was not the result of any inadvertence or misunderstanding on his part. Rather, as he stated

⁷ During oral argument, the following colloquy took place:

CHAIRMAN KIRKPATRICK: Mr. Leven, of course, is appearing *pro se* for himself as an individual [respondent], but who is . . . representing the company?

MR. BACHMAN: Mr. Leven, also.

CHAIRMAN KIRKPATRICK: Is that clearly of record . . . [?]

MR. BACHMAN: I think the record would demonstrate that Mr. Leven, if not the sole stockholder, owns at least 99 percent of the stock. (Tr. at 5-6.)

⁸ The record is replete with examples of respondents' familiarity with their rights and with the issues in the complaint. An excellent example of respondents' full ability to protect their interests can be seen in their Motion for a More Definite Statement, which they filed on August 8, 1969, pursuant to Section 3.11(c) of the Rules of Practice, three weeks after the complaint was filed. In this motion, respondents took issue with a number of quantitative terms in the complaint, such as the phrase "significant demand" in the sentence in paragraph six of the complaint which alleged that in truth and in fact "There is no significant demand for graduates of respondents' course," and the phrase "commensurate wages" in the allegation that "Completion of respondents' course of instruction does not qualify persons to be detectives, investigators, undercover agents, or for employment in other similar positions at commensurate wages." This motion alone attests to respondents' full understanding of the protection of their rights and interests.

it, for his own reasons he chose not to take advantage of that opportunity.⁹

We find absolutely no unfairness in any aspect of this proceeding and conclude that, on the contrary, respondents adequately and competently represented their own defenses to the charges contained in this complaint.

II

The Allegations of Deception

Respondents are engaged in the interstate operation of a school which offers courses of instructions to those seeking employment as detectives, investigators or agents (ID 1-y).

The alleged illegal practices of respondents fall into three principal categories:

1. Misrepresentations of the nature of the course of training offered by the school and of the types of jobs and salaries available to graduates of respondents' school;
2. Misrepresentation of the assistance given by respondents to their graduates to find appropriate employment; and
3. Misrepresentation of the nature of the enrollment papers and installment contracts executed by prospective students.

Respondents denied that the alleged representations were deceptive and raised, in addition, several other defenses such as abandonment of the practices in question and lack of public interest in the need for any order to be entered here.

The hearing examiner found that the complaint allegations had been proven in all instances and that it was necessary to enter an order against respondents in order to make certain that the practices found to have violated the law will not be continued in the future (ID 20).

⁹ This point was made with particular clarity in the following colloquy between Commissioner Jones and Mr. Leven which took place during the oral argument of this case before the full commission:

COMMISSIONER JONES: You claimed that you could not afford counsel, and the Hearing Examiner . . . asked you to give him certain information, data, to support your claim that you couldn't afford counsel. And the record indicates that you didn't come forth with any data.

Do you want to speak to any reasons why you didn't submit any data?

MR. LEVEN: Well, frankly, and I thank you for your offer, Miss Jones, but I don't feel that I would like to bring that up. . . . I appreciate the Commission's statement about it, and I do feel that I was in error about it. I should have taken advantage of the opportunity, but I didn't. Certain pressing things came up, that I just couldn't do it. [Oral Arg. Tr. 30-31.]

1. *The Allegations Respecting the Nature of Respondents' Courses and Qualifications of Their Students*

The complaint alleged that respondents' representations falsely led prospective students to believe that attending respondents' school would enable them to qualify as private detectives and procure glamorous high-paying jobs (Compl. paras. 5(1)-(3), 6(1)-(3)). The testimony offered on this point centered around two questions: what the respondents' advertisements and promotional materials did, in fact, represent, and second, whether the course and instruction actually offered by respondents were accurately described by these representations.

There is no question that the respondents' promotional materials placed heavy emphasis upon (1) the exciting, glamorous and action-filled type of work performed by those who worked in the general area of private investigation; (2) the great demand that supposedly existed in this field for qualified people; and (3) the high pay which was supposedly available. For example, one newspaper advertisement used repeatedly by respondents stated:

PRIVATE DETECTIVE TRAINING
MEN & WOMEN

TRAINED UNDERCOVER PEOPLE ARE ALWAYS IN DEMAND

You may not become rich and famous by taking our training like JAMES BOND, SAM SPADE, MATA HARI, and some of the other glamor guys and gals you see and read about

BUT

In our seventh year of operation here, many of our graduates were placed in interesting, well-paying positions, both full and part time. [CX 239; see also CX's 4, 238, 240.]

Of similar import is CX 2A, the respondents' business reply card, which bore the boldface legend:

MEN & WOMEN
EXCITING BIG PAY JOBS OPEN FOR
PRIVATE DETECTIVES
IF YOU ARE

* A PERSON OF GOOD CHARACTER
* WILLING TO TAKE TRAINING
IN YOUR SPARE TIME.

Variations on these themes can be found throughout respondents' print advertisements.¹⁰

¹⁰ E.g., CX 221 ("Exciting Security Action Jobs Open For Private Detectives"); CX 223 ("Male and Female Undercover Agents in Demand Now"); CX 235 (Men & Women Exciting Security Action Jobs Open For Investigators and Undercover Work Private Detectives); CX 7 ("Men and Women Exciting Jobs Open Big Pay For Private Detectives").

The allegedly "glamorous" and "exciting" aspects of private detective work were even more heavily emphasized in a series of promotional photographs used by respondents (CX's 16-22; *see also* Tr. 443-445, 460-461, 567-568); in these photographs, respondents' students are depicted as "lifting latent finger prints," firing pistols, "arresting" and searching "suspects" while brandishing a variety of weapons, using short-wave radio equipment, and engaging in other similar activities. The testimonial letters used by respondents, which are described more fully below, were of similar effect, although here the emphasis generally was placed upon the security, prestige, and high pay available in the jobs which respondents' graduates obtained.¹¹

It is clear from the record that the lure of exciting, high-paying and readily available jobs held out by respondents' promotional materials was a powerful inducement for prospective students to take respondents' course; as one former student put it, "everyone tries to improve himself or herself, so I saw the advertisement on the bus and I was sent a card by the detective academy and the thing that captured my mind was that I could get big pay and skilled training for part-time jobs or full-time jobs" (Tr. 878; *see also* Tr. 766, 810, 845-846, 864).

In sharp contrast to the glowing picture of job opportunities painted by respondents was the testimony of complaint counsel's expert witnesses regarding employment conditions in the field of private investigation. The thrust of this testimony was that within the general field of private investigation there is a distinction between detectives and undercover agents, who perform the more exciting and interesting kinds of investigations and are relatively well paid, and security guards and personnel who perform routine credit, employment, and skip-tracing investigations and receive more modest wages. The expert testimony also shows that most of the work performed by private detective agencies falls within the latter categories, and that the "glamor" jobs that are available usually go to people who have worked for law enforcement agencies or have other

¹¹ *See* CX 23 ("qualified me for my first job in Detective work as a surveillance man"); CX 25 ("I have just recently been promoted to the rank of Provost Marshal Investigator" [sic]); CX 26 ("I have gained employment with Taylors Detective Agency"); CX 28 ("Just a few lines to thank you and your staff for qualifying me for the job of First Detective in one of the largest [sic] stores in the state of New Jersey"); CX 32 ("I have been employed by Executive House as Security and House Detective"); CX 33 ("I was employed by a leading local Detective Agency as an undercover agent"); CX 34 ("a full-time undercover assignment with a very reputable company mid-way of my schooling"); CX 36 ("I was able to secure a very special position with Scott Detective Agency").

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investigative experience or qualifications not provided by respondents' courses. Finally, there is substantial testimony that completing respondents' course would have very little impact upon students' ability to obtain the high-paying glamorous jobs mentioned so prominently in respondents' promotional materials. (*See generally* Tr. 627, 686-687, 689-690, 693-696, 706-708, 712, 718, 725, 747, 749-751, 755.)

Respondents' principal appeal points regarding this aspect of the complaint concern the credibility and qualifications of complaint counsel's expert witnesses, including alleged inadequacies in their responses to questions involving hypothetical investigative situations posed by respondent Leven on cross-examination (Res. App. Br. at 7-9). These kinds of questions are primarily for the hearing examiner to determine as the initial trier of fact, and our review is necessarily limited; nonetheless, we have carefully reviewed the portions of the transcript containing these witnesses' testimony, and we conclude that the examiner was fully justified in finding their testimony credible. Therefore, we uphold the examiner's findings and conclusions on this aspect of the complaint.

A related provision of the complaint is the allegation that respondents misrepresented the nature and performance of the placement services which they offered their students (Compl. paras. 6(2), 6(4)). The examiner found that these allegations were "amply supported by the record" (ID Fndgs. 17, 19); however, these findings rest in part on the testimony of Jack Ezell, a former employee of respondents (Tr. 511-556). On cross-examination, respondent Leven attempted to impeach Ezell by introducing into evidence an apparently false testimonial letter which Ezell used after leaving Eastern Detective Academy and founding a similar school (*see* Tr. 547-554). This letter was received into evidence as RX 1 (Tr. 554), but is now missing from the record.

In light of this gap in the record, we have determined to strike Ezell's testimony; however, the examiner's findings and conclusions regarding respondents' placement service are adequately supported by the independent evidence cited therein and, accordingly, will be upheld.

The complaint also charged several specific misrepresentations by respondents with respect to their courses of instruction: the first, that the school had 17 instructors (Compl. para. 8(1)); the second, that respondents' students would be trained in the use of hand guns and the polygraph or lie detector (Compl. para. 8(2)); and the third, that testimonial letters used by respondents in their promotional ma-

terials were neither unsolicited nor unbiased as represented (Compl. para. 8(3)).

The examiner in his initial decision carefully reviewed all of the evidence bearing on these allegations and concluded that they were amply supported by the weight of the evidence (ID 20, 21).

Our review of the record on the question of the number of instructors on respondents' staff convinces us that certainly for the period 1965-1967 respondents had 11 or fewer instructors. However, the record is confusing and ambiguous both as to the precise number of instructors on respondents' staff after this period and as to the time period during which the challenged representations were made by respondents.¹² Because of these ambiguities, we conclude that the allegation is not sufficiently supported by the preponderance of the evidence and vacate the examiner's findings and conclusions on this allegation.

With respect to the allegations of the complaint charging that respondents misrepresented the nature and extent of the hand gun and polygraph training they offered, respondents have essentially maintained that the pistol training was adequate for the purposes of the course and accurately represented, and that prospective students knew or should have known that respondents' polygraph instruction consisted of mere familiarization with the apparatus rather than training to become a polygraph operator (*see* Res. App. Br. at 2, 6).

The examiner found that respondents had conceded making the representation that students would be trained in the use of hand guns (Fndg. 11).¹³ He also found that respondents' students were allowed to fire their pistols only a few times, and that this was inadequate to train them in the proper use of these weapons (Fndg. 22).¹⁴ Both of these findings are fully supported by the record.

¹² The primary difficulty with the record in this respect is that two lists of instructors submitted by the respondents and introduced into evidence (*see* Tr. 794-799) are now missing from the record. According to complaint counsel, these exhibits were lost by the reporter (C.C. Ans. Br. at 11).

¹³ The record pages cited by the examiner in support of this finding (Tr. 50-52) deal with the polygraph rather than pistol representations; the proper pages are Tr. 49-50, where the following exchange took place during the prehearing conference:

HEARING EXAMINER LEWIS: . . . Did you represent that your students would be trained in the firing of hand guns on your shooting range?

MR. LEVEN: Yes.

HEARING EXAMINER LEWIS: You did represent that?

MR. LEVEN: Yes, sir.

¹⁴ Respondents urged error on the part of the examiner on this point because of the weight he apparently ascribed to the fact that the practice pistol firing which did take place in respondents' course was performed with bullets that had plastic slugs, and was at short range (Res. App. Br. 24). The testimony of the expert witness Moseley, relied upon by the examiner in making the latter finding, emphasizes that the key factor was not the plastic bullets or the short range, but rather the few brief opportunities which the students had to practice handling and firing the weapons (Tr. 685-86).

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With respect to the polygraph, the examiner noted that while respondents vigorously contested the charge that they had represented that their course would train students to become polygraph operators, their advertisements specifically referred to "training" on the lie detector (Fndg. 11).

The examiner also found that the single two-hour session offered by respondents is inadequate to train polygraph operators (Fndg. 23)—a fact which was not seriously disputed by the respondents. The record conflicts on the point of whether the students knew or should have known that they would receive only quick familiarization on the lie detector, but it is clear that at least some of the students who testified believed that respondents' course would qualify them to become polygraph operators. (*See generally* Tr. 842, 312, 481, 491-92.)

We agree with the examiner that the advertisements themselves amply support the allegation. When the advertisements are viewed against the testimony of students who were in fact deceived by the representations, we conclude that the examiner's findings are supported by the record and should be upheld.

Respondent Leven admitted that he solicited testimonial letters and both composed and had letters typed for former students which they thereafter proofread and signed (Tr. 350-52). The complaint allegations charge that respondents represented the letters as "unsolicited and unbiased testimonials as to the value of respondents' course."

The examiner concluded in Finding 11 that:

[I]t is clear that in the context in which the letters were exhibited to [prospective students], for the purpose of inducing them to enroll in respondents' school, they had every right to infer, and there is affirmative evidence that they did infer, that such letters were unsolicited and unbiased testimonials as to the value of respondents' course. * * * [Fndg. 11.]

The testimonial letters were used by respondents as part of their "brochure," which was evidently a series of promotional documents used in both mail and oral presentations. Although the content of the brochure probably varied from time to time, in general it contained photographs purporting to represent various facets of respondents' course of instruction (CX's 16-22), a list of the subjects taught in respondents' course, testimonial letters, and, at least at one time, a list of two-way radio signals. When sent through the mail, the brochure would be accompanied by a letter inviting the prospective student to visit respondents' offices; when used in the offices, it was in the format of a three-ring notebook given to prospective stu-

dents for their perusal. The relevant testimony generally indicates that there was no specific sales pitch associated with the presentation of the testimonial letters, but rather that they were allowed to speak for themselves. (*See generally* Tr. 428-429, 567-571, 898-899.)

Complaint counsel introduced consumer testimony purporting to show that prospective students believed the testimonial letters to be unsolicited and unbiased, and that this was a material aspect in the consumer's assessment of respondents' promotion. However, this testimony was sparse and inconclusive,¹⁵ and we conclude that, on balance, it is simply not sufficient to support the examiner's finding of violation with respect to the letters. Accordingly, we vacate the examiner's findings and conclusions on this point.

2. *The Allegations Respecting Respondents' Enrollment Practices*

Paragraph 9 of the complaint alleged that:

[R]espondents through their employees have regularly obtained potential students' signatures on installment payment contracts through failing to disclose the nature of the instruments and by falsely representing that such instruments were non-binding enrollment applications or that the classes were paid for on a pay as you go basis and the prospective students could cancel their enrollment at any time that they chose to do so. Thereafter, when these prospective students failed to attend respondents' course and make payments under the contract, respondents systematically brought legal actions and obtained judgments against the prospective students or assigned the contracts to a collection agency. * * *

The examiner upheld this charge of the complaint, basing his conclusion upon the ambiguity of respondents' enrollment agreement, the testimony of deceived consumers, the limited educational background of respondents' students, and the fact that "[r]espondents' sales representatives did not inform [prospective students] as to the nature of the agreements they were signing and, in a number of instances when the students made inquiry, they were informed that they would not be obligated if they decided to discontinue the course" (Fndg. 12).

¹⁵ In support of the finding quoted above, the examiner cited the testimony of three former students of the respondents' course. The first student stated that he had been shown a number of letters, and that "My impression was that the graduates of this school found employment and that they were satisfied with the salary and the type of work they did" (Tr. 768). The second testified that he "saw the letters from other members that had been to the school, telling how the work was with them, how they had made it, and things of that nature" (Tr. 850); similarly, the third of these witnesses simply stated that "They showed us some letters of some of the students which had graduated and it was shown as how [*sic*] the jobs that they had gotten after they had graduated and the kids were writing back thanking them for the training which they received" (Tr. 880). We have not found any other evidence in the record which tends to demonstrate how prospective students interpreted and evaluated the testimonial letters.

Respondents' attack on this finding in the present appeal is essentially twofold: They contend the examiner erred in finding that a substantial number of former and prospective students were uneducated, and that the scope of the legal obligations assumed by the student was clear and unambiguous on its face (Res. App. Br. 3-4). We conclude that both contentions lack merit.

We have carefully examined the enrollment forms used by respondents (*e.g.*, CX 129-131, 138, 157). We conclude, with the examiner, that these papers were indeed ambiguous on their face, both as to the manner and form in which they became legally binding contracts, and also as to the student's obligation to pay the tuition regardless of whether he took the course.

The so-called contract is captioned as an "Enrollment for Private Detective Training" and is styled as a "request" that respondents "accept" the student's "application" for the course of instruction. Contrary to respondents' assertions, there is no clear statement in the contract to the effect that students are obligated to pay the tuition regardless of whether they start or complete the course. Instead, the student's obligations to pay are variously referred to in the text of the "enrollment" or "application" in connection with the taking or completing the course.¹⁶ The wording of the payment obligation used by respondents was equally ambiguously phrased, frequently associating the payment terms in connection with references to the "complete Private Detective Training" or the "completion of all lessons with a passing grade." This association of words could be easily understood by an applicant as conditioning the obligation to pay on completion of the course.¹⁷ Finally, the contract is confusing with respect to the question of when or whether it becomes a legally bind-

¹⁶ For example, the fourth paragraph of the contract states, "Upon completion of all the lessons with a passing grade * * * and upon payment of the full tuition fee heretofore mentioned [which was typically made payable in monthly or weekly installments], I am to be designated a graduate. * * *" This is at least consistent with a situation in which the obligation to pay was linked to or conditioned upon the satisfactory completion of each lesson. Of similar import is the statement in the following paragraph that "I further understand that no refunds, in whole or in part, shall be given on any tuition paid to The Eastern Detective Academy."

¹⁷ The first, and most important, paragraph of the contract provides: "Gentlemen: Please accept my application for your complete Private Detective Training as outlined below, for which I promise to pay the Eastern Detective Academy the sum of Three Hundred Ninety Seven Dollars (\$397.00) in the following manner: \$ herewith as my first installment, and the balance in monthly installments of \$ each. * * *." In some instances the word "monthly" was crossed out and "weekly" written in (*e.g.*, CX 129, CX 130).

Grammatically, the operative phrase "for which I promise to pay" seems to modify "complete private detective training"; this, together with the immediate juxtaposition of the installment terms, easily could deceive consumers into believing that the obligation to pay extended only to the course units completed.

ing obligation. As noted above, the words "enrollment" and "application" can hardly be calculated or expected to alert the layman to the fact that he can become legally obligated to pay a substantial sum of money by signing the document. Also, the agreement refers to respondents' "acceptance" of the application, and the salesman's "recommendation" that it be accepted. All of this may well obscure the fact that a prospective student's last chance to escape a large, long-term legal obligation is at the time he affixes his signature to the "enrollment agreement". The sentence preceding the student's signature, which states that by signing the student acknowledges his understanding that he "certifies he is an adult," "approves" the agreement and "assumes" payment of the tuition, in no sense alters the ambiguities replete throughout the contract as to the precise nature of the obligation which the student is being asked to assume.

These factors would be sufficient, in our opinion, to render this contract deceptive, wholly apart from the special audience at which it was directed. But we cannot ignore the substantial likelihood that vocational school promotions like respondents' find their primary targets among the members of the public who have the least formal education, whether from lack of aptitude or insufficient resources or for other reasons, and who are striving for a chance to improve themselves—in short, to the poor and the credulous. Many of the consumer witnesses who testified in this proceeding certainly fit within this description, and the examiner specifically noted this in his initial decision. To these consumers, the obligation to pay nearly \$400 over a long period of time, regardless of the usefulness of the courses or their satisfaction with the instruction provided by respondents, must have been a very important undertaking.

In our judgment, a commercial enterprise has certain very definite minimum obligations in handling these kinds of transactions under circumstances in which the layman involved typically has no notion of his need for a lawyer and, in fact, nothing in the situation leads him to the belief that a lawyer would provide any benefit. Respondents had a duty to insure that the legal obligation being undertaken by their students in executing the enrollment contract be precisely and clearly stated in simple affirmative terms. They further had a duty to insure that the nature and significance of these legal obligations and, most importantly, the consequences to them of default, would be clearly understood by these prospective students. To allow respondents to hide behind the ambiguity and legalistic phrasing of their contracts in this situation would be to eviscerate the well-estab-

lished principle that Section 5 of the Federal Trade Commission Act serves to protect the credulous as well as the sophisticated.¹⁸

We agree with the examiner's findings and conclusions with respect to the unfairness and deceptiveness of these contract provisions. However, the order provisions entered by the examiner to eliminate these practices is unnecessarily vague. Therefore, we have modified the examiner's order, in a manner entirely consistent with the record evidence in this case, in order to define with greater specificity the parameters of respondents' permissible future conduct both to insure that these unlawful practices are not repeated and to insure the provisions of this order are not circumvented.

III

Respondents' Miscellaneous Appeal Points

1. *Lack of Public Interest*

Respondents argue that the proceeding is not in the public interest because "Respondents' school has no more than seventy-five students in attendance as of the date of this brief," and that the matter would have been handled adequately by the Better Business Bureau (Res. App. Br. at 30).

The record makes clear that respondents' violations of Section 5 were systematic and widespread. The average amount of each of the contracts involved was between three and four hundred dollars. Clearly, any deceptions or unfairness in soliciting students to assume such obligations had the capacity to impose serious adverse impact upon those deceived, many of whom were low-skilled workers trying to improve their lot. Additionally, CX 111 A shows that the corporate respondent had total receipts of \$39,622.22 in 1965, \$54,300.73 in 1966 and \$7,170.59 through February 14, 1967.

We conclude that deceptions as substantial as those revealed in this record are of serious public concern, and that an order in the instant case is imperative to make certain that these deceptive and unfair practices do not continue in the future.

2. *Bias of the Hearing Examiner*

The respondents asserted at oral argument, and suggested at several places in their appeal brief, that the hearing examiner was biased and, in particular, aided complaint counsel while giving respondents short shrift. A reading of the entire transcript reveals

¹⁸ *FTC v. Standard Education Society*, 86 F. 2d 692, 2 S.&D. 366 (1936).

that, in fact, the examiner was an active participant in the questioning of witnesses. However, it is also obvious that there is nothing prejudicial in the mere fact of such active participation, particularly in a case in which one of the parties is a layman appearing *pro se*. Moreover, in the instant case the record makes it quite clear that the examiner's participation was performed in an impartial manner designed to move the case along and to make certain that respondents' inexperience in handling their own case would not, in fact, prejudice them in any way or unduly protract the hearing. Thus, we find this argument unmeritorious.

3. *Improper Conduct by Complaint Counsel*

Respondents argue that complaint counsel used devious and unethical means to conspire with competitors and "frame" the respondents (Res. App. Br. at 27-28). While respondents made several specific assertions regarding complaint counsel's allegedly improper conduct, nothing exists in the record which in any sense supports these contentions. Moreover, it is significant that respondents made no effort to document the claim that complaint counsel pressured witnesses to give false testimony by calling the people in question as their own witnesses or addressing any questions to them to support the allegations. We conclude that these assertions by respondents are totally without any basis of support in the record and must be rejected.

4. *Due Process and the Discontinuance Defense*

The examiner found that many of the representations for which respondents asserted a discontinuance defense were used after the issuance of the complaint, and cited substantial record support for these findings (Fndg. 7). Respondents do not directly challenge these findings, but rather take issue with the statement in the initial decision that "No affirmative evidence was offered by respondents to establish when the use of the statements in question were discontinued" (*Id.*). Respondents make what appears to be a due process claim in the following terms:

This is surely a slanted and biased statement by the Examiner as Respondent was not asked for proof of discontinuance nor were the mechanics of discontinuance evidence outlined to him. [Res. App. Br. at 1.]

It is clear from the context of the finding that the examiner was simply pointing out that there was ample evidence of post-complaint use of the representations in question, but nothing to indicate discontinuance beyond respondents' mere assertion. Beyond this, it is clear that the passage quoted above is simply not accurate; the ex-

aminer did explain the discontinuance defense to respondents at some length (Tr. 19-20). And, it is not merely a familiar proposition of law but also a self-evident common sense proposition that a party possessing evidence relevant to a matter that he is claiming as a defense can be expected to try to get it before the decision maker. Respondent did not do this.

The examiner made this point abundantly clear to respondents during prehearing when he told respondent, "It's up to you if you want to show that [a particular representation] was discontinued at some time and it is no longer in use, but *there is no obligation on their [complaint counsel's] part to show that the state of facts continues down to the present moment*" (Tr. 61; emphasis added). The examiner also explained to him that, "If you claim that the situation has changed, then you are at liberty to show that, but a state of facts once shown to have existed is shown to have continued unless the contrary is shown. That's an ordinary legal assumption" (Tr. 62). In light of these statements and others in the record, it is plain that respondents were fully informed as to what was involved in the presentation of a discontinuance defense.

IV

The Order

In accordance with our decision to vacate the examiner's findings regarding respondents' use of testimonial letters and their representations concerning the number of instructors employed by the Academy, we have deleted subparagraphs 6 and 9 of the first ordering paragraph of the order entered by the examiner. In accordance with our conclusions on the impact of the deceptions found to have inhered in respondents enrollment practices and contracts, we have modified subparagraphs 11 and 12 of the first ordering paragraph and subparagraph (3) of the second ordering paragraph of the examiner's order.

In all other respects, we find the examiner's order necessary and adequate to protect the public, and respondents do not take exception to its terms. Therefore, the order entered by the examiner, as herein modified, is adopted as the Final Order of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, having rendered its decision determining that the initial decision issued by the examiner should be modified in accordance with the views and for the reasons expressed in the accompanying opinion and, as modified, adopted as the decision of the Commission:

It is ordered, That Findings 19, 20 and 24 of the initial decision issued by the examiner be, and they hereby are, vacated;

It is further ordered, That the initial decision issued by the examiner be, and it hereby is, modified by striking therefrom the following citations: Finding 3, Tr. 514-517, 527-528; in Finding 4, Tr. 512; in Finding 7, Tr. 514; in Finding 11, Tr. 528, 532; and in Finding 18, Tr. 547, 519-523;

It is further ordered, That the order to cease and desist issued by the hearing examiner be, and it hereby is, modified by striking therefrom subparagraphs 6 and 9 of the first ordering paragraph and by striking therefrom subparagraphs 11 and 12 of the first ordering paragraph, and substituting to read in full the following:

11(a) Failing to disclose orally or in writing or to otherwise inform prospective customers in a manner that is clearly understood by them that the terms and conditions of the contract or other instrument of indebtedness are not cancellable except in accordance with the cancellation provision included in this order, when it is respondents' business practice to offer contracts which may not be cancelled before completed.

(b) Failing to disclose on all contracts or other instruments of indebtedness as described in paragraph (a) above, clearly and conspicuously above the space provided for the customer's signature, the following notice:

Notice

You are signing a contract. You have 7 business days during which you may cancel this contract for any reason. To cancel, use the cancellation form provided with this contract, and mail it to the address on the form. If you do not cancel within this 7-day period, the contract will become final, you may be asked to pay the full amount of the contract price whether or not you complete the course.

Nothing in this notice shall be construed to limit any of the customer's rights under any federal law or the law of the state where the contract is made.

(c) Failing to disclose orally and in writing or to otherwise inform the prospective customers in a manner that is clearly un-

derstood by them, when it is respondents' regular business practice to permit cancellation of contracts with refunds before said contract is completed, the terms and conditions of such policy, including the form of notice that the customer must give and the method or criteria used to determine the amount of money to be refunded or the amount of the unpaid obligation to be remitted.

12(a) Using the caption heading "Enrollment for Private Detective Training," "Enrollment Application," "Application for Admission" or any similar term or terms to name, caption, title or otherwise describe any document which is or may be treated as an installment contract or any other evidence of indebtedness.

(b) Inducing or causing prospective customers to execute installment contracts or any other instrument of indebtedness by falsely representing that such contracts, or other instruments of indebtedness are non-binding enrollment agreements, or that such contracts or other instruments are cancellable at the discretion of the customers, or that such contracts or other instruments are cancellable in any manner other than the manner described in this order; or otherwise inducing or causing customers or prospective customers to execute installment contracts or other instruments by misrepresenting the true nature and effect of the instrument;

the order to cease and desist issued by the hearing examiner be, and it hereby is, modified by the addition of the following sentence to subparagraph (3) of the second ordering paragraph to read in full:

(3) Failing to provide a separate and clearly understandable form which the customer may use as notice of cancellation. This form must also state clearly the address to which said form must be mailed to make the cancellation operative.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

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It is further ordered, That the hearing examiner's initial decision and order to cease and desist, as above modified and as modified by the accompanying opinion, be and they hereby are adopted as the