

Complaint

96 F.T.C.

IN THE MATTER OF
MACMILLAN, INC., ET AL.

FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9110. Complaint May 23, 1978—Decision, Sept. 4, 1980

This order requires a New York City publishing firm and its Chicago, Ill. subsidiary, LaSalle Extension University, among other things, to cease, in connection with the advertising and sale of correspondence courses, misrepresenting the school's admission policy; the need or demand for graduates of their courses; the employment prospects and potential earnings available to them; and the requirements or qualifications necessary to obtain employment in their chosen fields. Advertisements containing any job or earnings claim must include a disclaimer stating that "Graduation from this course does not guarantee you will get a job;" and testimonials which do not reflect the typical student experience must advise that the described experience is atypical. Further, if respondents represent to any prospective student that there is an employment demand for graduates of a relevant course, they must clearly and conspicuously disclose specified information regarding the vocation success rate of previous students. Additionally, respondents are prohibited from misrepresenting or failing to disclose material facts concerning a student's financial obligations upon enrollment, and right to cancellation and refund.

Appearances

For the Commission: *Alice S. Perlin.*

For the respondent: *Bella Linden and Frederick F. Greenman, Linden & Deutsch, New York City and Abe Fortas, Fortas & Koven, Washington, D.C.*

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 Macmillan, Inc., a corporation, and LaSalle Extension University, a corporation, hereinafter sometimes 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. Respondent Macmillan, Inc. (hereinafter sometimes referred to as Macmillan) is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of

Delaware, with its principal place of business located at 866 Third Ave., New York, New York.

Respondent LaSalle Extension University (hereinafter sometimes referred to as LEU) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 417 South Dearborn St., Chicago, Illinois. Respondent LaSalle Extension University is a wholly-owned subsidiary of respondent Macmillan, Inc.

The aforementioned respondents have cooperated, and acted together in carrying out the acts and practices hereinafter set forth. Respondent Macmillan has known of, condoned and approved, expressly or tacitly, the acts and practices of respondent LEU hereinafter set forth. Respondent Macmillan has assumed financial responsibility for respondent LEU.

PAR. 2. Respondents have been, and are now, engaged in the advertising, promotion, formulation, offering for sale, sale and distribution of correspondence courses of instruction to the public involving high school courses and those purporting to prepare completing students thereof for employment, advancement, or increased earnings in the fields of air conditioning and refrigeration, interior decorating, computer programming, hotel/motel executive training and various other fields of employment. Their volume of business has been, and is, substantial. [2]

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and caused to be disseminated by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, certain advertisements concerning their correspondence courses, including but not limited to advertisements inserted and published in newspapers and magazines of general interstate circulation, by means of brochures, pamphlets and other promotional materials disseminated through the United States mail, commercial announcements on radio and television transmitted across state lines, and by other means for the purpose of obtaining leads or prospects for the sale of such correspondence courses and for the purpose of inducing the purchase of such correspondence courses.

Respondents have caused, and now cause, said courses of instruction to be shipped and distributed from their places of business or sources of supply to purchasers and prospective purchasers thereof located in various States of the United States other than the state of origination. Respondents transmit and receive and have caused to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such correspondence courses, advertis-

ing and promotional materials, invoices, checks, enrollment contracts, retail installment contracts, collection notices and various other commercial papers or documents to and from prospective students and students located in various States of the United States, other than the state of origination.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such correspondence courses, and other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their aforesaid business, for the purpose of obtaining leads or prospects for the sale of their correspondence courses and for the purpose of inducing the purchase of such correspondence courses, respondents have made numerous statements and representations in oral sales presentations to prospective students and in magazines, brochures, and other media regarding opportunities for employment or advancement, occupational demand, earnings potentials, the qualifications of students who complete respondents' correspondence courses, the instruction and assistance available to students, and other related matters.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not expressly set forth herein, respondents have represented, directly or by implication that:

1. There is substantial need or demand for students who complete respondents' correspondence courses in the positions and career fields for which respondents train such students. [3]

2. Students completing respondents' correspondence courses will receive high wages or salaries from employment in the positions or career fields for which respondents train such students.

3. Students completing respondents' correspondence courses are qualified thereby to secure employment in the positions or career fields in which respondents train such students without further training or experience.

4. Respondents have admissions requirements and procedures to screen prospective students and to determine whether such prospective students have the qualifications and ability to assimilate successfully and complete respondents' correspondence courses.

PAR. 6. In truth and in fact:

1. There is not substantial need or demand for students complet-

ing respondents' correspondence courses in the positions or career fields for which respondents train such students.

2. In many instances students completing respondents' correspondence courses have not received high wages or salaries from employment in positions for which respondents train such students.

3. In many instances students completing respondents' correspondence courses are not thereby qualified to secure employment in the positions or career fields in which respondents train such students without further training or experience.

4. Respondents do not screen prospective students. To the contrary, respondents require few qualifications of prospective students and accept all or most persons for enrollment in such courses who are willing to execute a contract to pay for such correspondence courses. Any admission requirements or procedures used by respondents do not determine whether such prospective students have the qualifications and ability to assimilate successfully and complete respondents' correspondence courses; to the contrary, any such admission requirements or procedures are used by respondents as promotional devices to induce the purchase of respondents' correspondence courses.

Therefore, the statements and representations set forth in Paragraphs Four and Five were and are false, misleading, deceptive or unfair acts or practices.

PAR. 7. Through the use of the aforesaid advertisements, materials, oral presentations and otherwise, respondents have represented, directly or by implication, that there is or will be a substantial need or demand for all or most of the students enrolled in respondents' correspondence courses in [4]career fields for which respondents train them. Respondents at the time of said representations had no reasonable basis adequate to support such representations. Therefore, the aforesaid acts and practices were and are unfair acts or practices.

PAR. 8. In the further course and conduct of their aforesaid business, respondents have represented that students who have finished respondents' high school courses and received a diploma therefrom, have, on that basis alone, qualified themselves as high school graduates and were recognized as such by the state in which they were domiciled or worked.

PAR. 9. In truth and in fact all or virtually all of the States of the United States require a person not a graduate of a resident high school to take a general equivalency or other similar test in order to be recognized as a high school graduate.

Therefore, the aforesaid acts and practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 10. Respondents further have offered for sale correspondence courses intended to give students high school training without disclosing that all or virtually all States of the United States allow a person over 19 years of age to take a high school equivalency or similar test which would qualify the person as the equivalent of a high school graduate who had received a diploma, without the necessity of taking any courses. Therefore, the aforesaid acts and practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 11. Through the use of the aforesaid advertisements, materials, oral presentations and otherwise, and for their purpose of inducing the purchase of correspondence courses, respondents have degraded, debased or disparaged the present or potential career opportunities, education, training, family standing, community status, self-image or other personal characteristics of prospective students. Further, respondents represent, directly or by implication, that such prospective students can alter or improve such personal characteristics through respondents' correspondence courses.

The effect of the aforesaid disparagements and representations has been to aggravate and continue the unfair and deceptive effect of the acts and practices set forth herein. Therefore, the aforesaid acts and practices of respondents were and are unfair acts or practices.

PAR. 12. In the further course and conduct of their aforesaid business, respondents have failed to disclose or have misrepresented the true nature of the financial obligation to students who signed enrollment agreements or contracts.

The deceptions resulting from the acts or practices described in this Paragraph Twelve are continuing, in many instances, through the period of the students' enrollment and concomitant deferred payment obligations. [5]

Therefore, the aforesaid acts and practices of respondents were and are false, misleading, deceptive or unfair acts or practices.

PAR. 13. In the further course and conduct of their aforesaid business, and in furtherance of their purpose of inducing prospective students to execute enrollment contracts for the purchase of their correspondence courses, respondents and their employees, sales force members, and representatives, through the use of the false, misleading and deceptive statements, representations and practices set forth herein in this Complaint, have been able to induce prospective students into executing enrollment contracts upon initial contact without affording such students sufficient time to carefully consider

the purchase of correspondence courses. Therefore, the aforesaid are unfair acts or practices.

PAR. 14. Through the false, misleading and deceptive acts or practices, and the unfair acts or practices herein set forth in this Complaint, respondents have induced students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money to purchase or pay for respondents' correspondence courses. In many instances such monies were paid to and received by respondents although such courses were of little value to students in fulfilling the expectations created by respondents' representations or contracts. Respondents have received the aforesaid monies and have failed to offer to refund such sums to, or to rescind contractual obligations of, many students and other persons or entities participating in the financing of such correspondence courses.

By inducing students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money for respondents' correspondence courses where such correspondence courses are of little value to students and by failing to offer or refund such sums to, or to rescind the contractual obligations of many students and other persons or entities where such courses are of little value, respondents have engaged in unfair acts and practices.

Therefore, the said acts or practices constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

PAR. 15. By and through the use of the aforesaid acts and practices, statements and representations, respondents have placed in the hands of others the means and instrumentalities by and through which they mislead and deceive the public in the manner hereinabove alleged.

PAR. 16. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of members of the general public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, [6]and to induce a substantial number thereof to purchase respondents' correspondence courses by reason of said erroneous and mistaken beliefs.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

Initial Decision

96 F.T.C.

INITIAL DECISION BY THEODOR P. VON BRAND, ADMINISTRATIVE
LAW JUDGE

APRIL 28, 1980

PRELIMINARY STATEMENT

The complaint charges that Macmillan, Inc. and LaSalle Extension University in the course of operating a correspondence school violated Section 5 of the Federal Trade Commission Act.

The complaint alleges essentially that respondents misrepresented: [2]

1. the occupational demand for respondents' graduates in the fields for which respondents train their students.
2. the earnings potential of students completing respondents' correspondence courses.
3. that graduates of respondents' courses would be qualified to secure employment in the fields, in which respondents trained such students, without further training or experience.
4. that respondents had admission requirements to screen prospective students to determine that such students had the qualifications and ability to successfully assimilate and complete respondents' courses.

(Paragraphs Four and Five)

The complaint substantially alleges:

That respondents had no reasonable basis to support the representation that a substantial need or demand existed for all or most of the students enrolled in respondents' correspondence courses in the fields for which they trained.

(Paragraph Seven)

That respondents, as part of their sales or promotional effort, debased or disparaged the career potential, self image or other personal characteristics of prospective students, and that respondents further represented directly or by implication that prospective students could alter or improve such personal characteristics through respondents' correspondence courses. It is charged that such disparagement was unfair since it aggravated and continued the unfair and deceptive effect of the other acts and representation alleged illegal in the complaint.

(Paragraph Eleven)

[3] That respondents failed to disclose or misrepresented the true nature of the financial obligation incurred by those signing enrollment agreements or contracts.

(Paragraph Twelve)

That respondents through the use of false misleading and deceptive statements and practices alleged in the complaint induced prospective students to execute enrollment contracts without affording them sufficient time to consider such purchase.

(Paragraph Thirteen)

That respondents through the deceptive or unfair acts and practices alleged by the complaint induced students or others to pay substantial sums of money for their correspondence course. In many instances, it is alleged, such monies were paid to and received by respondents "although such courses were of little value to the students in fulfilling the expectations created by respondent's representations or contracts." The failure to refund or offer to refund such sums where the courses were of little value to students is alleged to be unfair.

(Paragraph Fourteen)

Paragraphs Eight, Nine, and Ten of the complaint alleged various misrepresentations concerning respondents' high school courses. No evidence was offered in support of these charges and they were dismissed.

This matter is now before the undersigned for decision based on the allegations of the complaint, the answers, the evidence of record and the proposed findings of fact, conclusions and briefs filed by the parties. All proposed findings of fact, conclusions and agreements not specifically found or accepted herein are rejected. The undersigned, having considered the entire record and the contentions of the parties, makes the following findings of fact and conclusions, and issues the orders set out herein. [4]

FINDINGS OF FACT

I. Identity of Respondents and the Nature of Their Business

1. Respondent Macmillan, Inc. (hereinafter cited as Macmillan) is a corporation organized, existing and doing business under and by

virtue of the laws of the State of Delaware with its principal office and place of business located at 866 Third Ave., New York, New York (Comp. Par. 1; Macmillan Ans. Par. 1).

2. Macmillan is engaged, directly and through its subsidiaries, in five lines of business: publishing, educational instruction, printing, manufacture of musical instruments, and film and book club distribution (CX 376C-D, 377D, 378E, 379B).

3. Respondent LaSalle Extension University (hereinafter cited as LaSalle) is a wholly-owned subsidiary of Macmillan (Comp. Par. 1; LaSalle Ans. Par. 1; Macmillan Ans. Par. 1). LaSalle is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 417 South Dearborn St., Chicago, Illinois (Comp. Par. 1; LaSalle Ans. Par. 1). It operates the Wayne School as an unincorporated division of LaSalle Extension University (RA 15).

4. LaSalle has been and is now engaged in the offering for sale and the sale of correspondence school education courses to the public (Comp. Par. 2, LaSalle Ans. Par. 2).

5. LaSalle is accredited by the National Home Study Council (CX 330). It operates under annual Certificates of Approval issued by the Office of the Superintendent of Education, State of Illinois and is licensed to do business in 17 other states (CX 327J).

6. LaSalle, as of 1975, offered correspondence courses in the following areas:

- Accounting
- Administrative Assistant
- Associate Degree Program in Accounting
- Associate Degree Program in Banking and Finance
- Associate Degree Program in Business Management [5]
- Associate Degree Program in Hotel and Restaurant Administration
- Bachelor of Science in Commerce and Social Studies
- Banking and Finance
- Basic Computer Programming
- Business Management
- California Law Program
- Drafting
- Electronics, FCC License
- Law for Executive Leadership
- Hotel/Motel Executive Training
- Interior Decorating
- LaSalle Writing Program

Personnel Management
 Real Estate
 Restaurant/Club & Food Management
 Secretarial Training
 Stenotype
 Supervisory Management
 Traffic and Transportation
 Writing
 Basic Air Conditioning and Refrigeration Service
 Basic Diesel Mechanics
 Dental Office Assistant
 High School

(CX 151R). New enrollments in the Basic Computer Programming course were terminated at approximately the end of 1977.

7. In the period 1973-1977, LaSalle enrolled the following numbers of students in its courses:

	<i>Total (All Courses)</i>	<i>Computer Programming</i>	<i>Air Conditioning & Refrigeration Service</i>	<i>Interior Decorating</i>
1973	86,913	2,363	3,575	10,282
1974	92,551	2,732	2,870	11,086
1975	53,187	1,500	1,477	6,744
1976	37,283	1,117	872	5,108
1977	34,704	1,038	857	3,901

(RA 22, 23, 24, 25).

8. In the course and conduct of its business, LaSalle disseminated and caused to be disseminated by various means in [6] or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, certain advertisements concerning its correspondence courses, including but not limited to advertisements inserted and published in newspapers and magazines of general interstate circulation. It has also utilized brochures, pamphlets and other promotional materials disseminated through the United States mail, commercial announcements on radio and television transmitted across state lines, as a means to obtain leads or prospects for the sale of correspondence courses and to induce the purchase of such courses (Comp. Par. 3; LaSalle Ans. Par. 3).

9. LaSalle is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in connection with

the offering for sale and sale of correspondence school courses for compensation (Comp. Par. 3; LaSalle Ans. Par. 3).

10. LaSalle maintains and has maintained a substantial course of trade in its correspondence courses and other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended (Comp. Par. 3; LaSalle Ans. Par. 3).

11. Macmillan's sales and revenues in the period 1973-1977 were as follows:

1973	\$420,372,000
1974	466,584,000
1975	477,347,000
1976	493,425,000
1977	512,727,000

(RA 21). Its volume of business has been, and is, substantial.

12. LaSalle's sales and revenues for the years 1973-1977 were as follows:

1973	\$35,573,000
1974	36,582,000
1975	21,737,000
1976	17,192,000
1977	14,505,000

(RA 20). Expressed as a percentage of Macmillan's sales and revenues, LaSalle's contribution was:

1973	8.46%
1974	7.74 [7]
1975	4.55
1976	3.48
1977	2.83

(RA 20).

13. LaSalle's volume of business has been, and is, substantial.

II. Interrelationship of Macmillan and LaSalle

A. Corporate Officials

14. On August 30, 1978, Macmillan's Corporate Officials were the following:

Chairman of the Board and Chief Executive Officer (RA 1)	Raymond C. Hagel
President and Chief ¹ Operating Officer (from June 8, 1976) (RA 2)	Robert A. Barton
Vice-Chairman of the Board, Deputy Chief Operating Officer, Director (RA 9)	Alan L. Baker
Senior Vice President and Controller (RA 8)	James P. Kressler
Treasurer and Assistant Secretary (RA 6)	Gordon H. DeWerth
Secretary (RA 5)	Jeffrey R. Minot

15. LaSalle's principal officers as of September 1978 were:

[8]President and Chairman of the Board	Robert A. Barton ²
Vice-President	Robert Cornwell
Vice-President	Charles Marshall
Vice-President	Calvin Israel
Controller	John Sadler

(CX 110B; RA 2).

1. Overlap between Macmillan and LaSalle Officials and Involvement of Macmillan Officials in LaSalle's Business

16. Robert A. Barton, Director, President and Chief Operating Officer of Macmillan was also Director, Chairman of the Board and President of LaSalle (RA 2). Mr. Barton reported directly to Macmillan's Chairman of the Board (Barton 1795). As President of Macmillan, he was responsible for the assets of Macmillan and its subsidiaries as well as Macmillan's business strategy as carried out by its subsidiaries (Barton 1794).

17. Alan L. Baker, a Director, Vice-Chairman of the Board and Deputy Chief Operating Officer of Macmillan and a Director of LaSalle shared certain of Mr. Barton's responsibilities in managing Macmillan's business. He reported directly to Mr. Barton (RA 9; Barton 1795-96).

18. James P. Kressler, Senior Vice President and Controller of Macmillan was a Director of LaSalle and LaSalle's Executive Vice-

¹ Mr. Barton was Executive Vice President of Macmillan in the period 1973-June 8, 1976 (RA 2).

² Mr. Barton held these positions from May 1975 and was still in these positions as of August 30, 1978 (RA 2).

President of Finance (RA 8). Mr. Kressler reported directly to Macmillan's Chairman of the Board (Barton 1797). As Macmillan's senior financial officer, he had primary responsibility for the books and accounts of Macmillan and its subsidiaries. He was responsible for the auditing, accounting policy and the financial reporting system of the parent company and its subsidiaries (Barton 1796).

19. Gordon H. DeWerth was Treasurer and Assistant Secretary of Macmillan and Treasurer and a Director of LaSalle (RA 6). Mr. DeWerth, who reported directly to Macmillan's Controller was responsible for Macmillan's consolidated cash management, [9]investment of excess cash for foreign exchange, and pension investments (Barton 1796-97; DeWerth 1834).

20. The predecessor of Macmillan's current Treasurer and Assistant Secretary had also concurrently held the position of Director and Treasurer in LaSalle (RA 4).

21. Jeffrey A. Minot was Secretary of both Macmillan and LaSalle on August 30, 1978 (RA 5).

22. The predecessor of Macmillan's current Secretary was concurrently Secretary of LaSalle (RA 7).

23. The Chairman of the Board of Macmillan selected LaSalle's directors in consultation with Mr. Barton (Barton 1798). It is common practice to have some employees of Macmillan as Directors of LaSalle (Barton 1798-99).

24. There was extensive overlap in the positions of the officials and directors of Macmillan and LaSalle. See the following chart showing the positions held by certain key officials in the parent company and LaSalle as of January 1, 1977:

Robert A. Barton

Director, President, Chief Operating Officer, Macmillan
Director, Chairman of the Board, President, LaSalle

Warren B. Smith

Senior Vice-President, Macmillan
Director, LaSalle

Alan L. Baker

Director, Vice Chairman of the Board, Deputy Chief
Operating Officer, Macmillan
Director, LaSalle

James P. Kressler

Senior Vice-President, Controller, Macmillan
Director, Vice-President, Finance, LaSalle

Gordon H. DeWerth

Treasurer, Assistant Secretary, Macmillan

Director, Treasurer, LaSalle
Jeffrey R. Minot
Secretary, Macmillan
Secretary, LaSalle [10]

B. Duties and Reporting Relationships of LaSalle Officials

25. Robert A. Barton, LaSalle's Chairman of the Board and President, while serving as Macmillan's President, Chief Operating Officer and Director, was responsible for the business strategy of LaSalle, including development of long and short-range plans devised to achieve the long-range objectives. He had responsibility for decisions respecting the type of business to be pursued by LaSalle, the manner in which it would be pursued, and LaSalle's investment decisions (Barton 1797).

Mr. Barton represented LaSalle on the National Home Study Council (hereinafter cited as NHSC) (Barton 1829-30). He signed and certified as correct the LaSalle Self-Evaluation Report (CX 327), which had been prepared for purposes of LaSalle's accreditation by that organization. Mr. Barton submitted the report to the NHSC (CX 327B). He was also responsible for implementing the changes in LaSalle recommended by the NHSC (Barton 1830).

26. In 1978, Alan L. Baker, Macmillan's Deputy Chief Operating Officer and Vice Chairman of the Board, received monthly financial and operations reports from LaSalle (CX 554-63, 565-79; see Finding 17). He related the results to Mr. Barton (Barton 1802-03). Before 1978, Mr. Barton had received monthly reports directly from LaSalle (CX 501-51; Barton 1802-04).

27. John Sadler, the Controller of LaSalle and its chief financial officer also acted as LaSalle's Chief Operating Officer in 1978 (Barton 1810-11; DeWerth 1838-39). Mr. Sadler, who received reports from LaSalle's Vice Presidents and other personnel, consolidated such reports and reported in turn to Alan L. Baker, Vice Chairman of the Board and Deputy Chief Operating Officer of Macmillan (Barton 1798; 1804).

28. In 1979, LaSalle hired Henry Broido to head up a continuing education group and to take responsibility for overall operations at LaSalle. Certain changes in the reporting relationships occurred at that time. Mr. Barton thereafter received monthly operations and financial reports from Mr. Broido (Barton 1820-21).

29. John Sadler, LaSalle's Controller and its chief financial officer (Barton 1810-11; DeWerth 1838-39) commenced [11]reporting

to Mr. Broido after the latter was employed by LaSalle (Barton 1820).

30. Charles B. Marshall, LaSalle's Vice-President for Education (Marshall 1887) had submitted monthly reports to Alan Baker, Macmillan's Vice Chairman of the Board and Deputy Chief Operating Officer through Mr. Sadler, the LaSalle Controller (CX 575-79; Marshall 1892-93). These written reports concerned educational services, regulatory and financial matters, personnel matters and extraordinary events (Marshall 1897-98). Subsequent to Mr. Broido's appointment in 1979, Mr. Marshall reported to him (Marshall 1892-93).

31. Calvin Israel, LaSalle's Vice-President and Field Sales Manager since 1972 (Israel 1987) had overall responsibility for the field sales operation (Israel 1988). Mr. Israel reported to Alan Baker, Macmillan's Vice Chairman of the Board and Deputy Chief Operating Officer through John Sadler, the LaSalle Controller (CX 565-74; Israel 1988). Previously, he had reported to Sadler's predecessors in the position of LaSalle's chief operating officer (Israel 1988).

32. Robert Cornwell, LaSalle's Vice-President for Advertising since 1973 had overall responsibility for advertising and mail order sales (Barton 1797; Cornwell 1867). Mr. Cornwell reported to Alan Baker, Macmillan's Vice Chairman of the Board and Deputy Chief Operating Officer with copies of the reports to John Sadler, who was LaSalle's Controller, and who also acted as LaSalle's Chief Operating Officer (CX 554-63; Cornwell 1868-69). Mr. Cornwell had channeled previous reports to Sadler's predecessors as LaSalle's Chief Operating Officer (Cornwell 1867-68). Beginning in 1979, he reported to Mr. Broido (Cornwell 1867).

33. David Hetzel was LaSalle's Vice-President for Student Relations from 1971 through 1977 (Hetzel 3063-64). Hetzel was responsible for the student relations department, enrollment department, clerical operations department, systems, purchasing, warehouse, shipping and receiving. The Student Relations Department was responsible for maintenance of student grade records, responses to student inquiries and complaints, providing study materials, and calculating tuition (Hetzel 3064-65).

34. Douglas Linde has been Assistant to the President of LaSalle and University Administrative Officer for over 10 years (Linde 1852-53). His responsibilities included liaison and filing of documents with various federal and state agencies, submission of license applications to state agencies, and handling of third-party inquiries relating to students (Linde 1853). Mr. Linde reported in the past to Mr. Sadler and to Mr. Sadler's predecessors as chief operating officer of LaSalle

(Linde 1855-57). His reports were written monthly activity reports covering his areas of responsibility [12](Linde 1855-57). Subsequently, he reported to Mr. Broido who took charge of LaSalle's operations in 1979 (Linde 1854-55).

35. Gordon DeWerth, Treasurer of Macmillan and Treasurer of LaSalle, had no direct reporting relationship at LaSalle; his reporting relationship was at Macmillan. As Treasurer of LaSalle, he reported to Mr. Kressler, the parent company's Senior Vice President of Finance (DeWerth 1836-37). His responsibilities at LaSalle were limited to cash management, insuring that LaSalle had sufficient cash to meet its requirements and that excess cash, when available, was loaned to Macmillan (DeWerth 1836).

C. LaSalle Reports to Macmillan

36. Macmillan executives received, on a monthly basis, written activity reports from LaSalle's personnel respecting the ongoing operations of LaSalle (Barton 1803-05). Although the recipient of these reports has varied, since 1973 the chief operating officer at LaSalle has submitted the reports to either Mr. Barton directly or to Mr. Baker, who then prepared a monthly report on LaSalle's operations for Mr. Barton (Barton 1805). Using the information contained in these reports, Mr. Barton prepared reports, which contained information on LaSalle's operations, for Macmillan's Chairman of the Board. He also reported, orally, to the Macmillan Board of Directors (Barton 1805-06).

37. Macmillan kept apprised of LaSalle's financial condition through monthly financial statements submitted by Mr. Sadler to the accounting manager of Macmillan's corporate accounting department (DeWerth 1842). These financial statements were then incorporated into Macmillan's annual report to shareholders and into financial statements filed with the Securities and Exchange Commission (DeWerth 1842-43).

38. Additionally, Mr. DeWerth submitted a monthly report to Messrs. Hagel, Barton, Baker and Kressler covering long and short-term cash forecasting, special projects, and stock reports (DeWerth 1839-40). This report was prepared in both consolidated and subsidiary-by-subsidary form (DeWerth 1840-41).

39. LaSalle's executives prepared, on a yearly basis, a long-range plan which set forth, in both narrative and financial terms, LaSalle's business strategy for the succeeding five years (CX 425; Barton 1809-10). The long-range plan was a collective effort of LaSalle's management and was approved by Macmillan following discussions between

LaSalle's chief operating officer and Robert Barton and Alan Baker (Barton 1810-11). [13]

40. In addition to the long-range plan, LaSalle prepared an annual plan which expressed, in both narrative and financial terms, what LaSalle planned to do in any given year. The annual plan, an implementation of the strategy developed in the long-range plan, was approved by Macmillan after consultation between Messrs. Barton, Baker and LaSalle's chief operating officer (Barton 1809-11, 1813).

41. LaSalle executives have dealt directly with Macmillan executives on questions relating to LaSalle's operations. In 1978, for example, Mr. Baker went to LaSalle on three or four occasions and met with LaSalle's operating committee, composed of LaSalle's Vice-Presidents and Controller, to discuss their individual areas of responsibility (CX 3271; Cornwell 1874-75).

42. Mr. Baker asked Mr. Marshall, LaSalle's Vice-President for Education to prepare a report setting forth planning suggestions for future operations (Marshall 1894). The report, entitled "A Plan to Make LaSalle Profitable Beyond 1980" (CX 426), was reviewed by Mr. Baker and portions of the plan were implemented shortly thereafter (Marshall 1894-95). Additionally, Mr. Marshall consulted with Mr. Baker respecting a suggestion for a new course offering in medical-dental reception (Marshall 1893).

43. The following are examples of transactions where Macmillan's approval was required prior to action by LaSalle:

(a) The purchase of any capital asset costing more than \$100 (Barton 1806-07).

(b) A significant revision in an existing course (Barton 1807-09);

(c) Funding for development of new courses (Marshall 1953-54);

(d) Salaries for LaSalle personnel in excess of \$20,000 (Barton 1821);

(e) Borrowing of money by LaSalle (Barton 1813);

(f) Expenditures for advertising in excess of budgeted amounts (Cornwell 1870-71).

(g) Personnel changes involving high-level LaSalle executives (Barton 1832); and

(h) Execution of consent agreements with state or federal agencies, when such [14]agreements concern LaSalle's operations (Barton 1818-19).

D. Macmillan's Financial Responsibility for LaSalle

44. Since 1973 Macmillan has guaranteed the financial stability

and performance of LaSalle to the NHSC, state and federal accrediting agencies (CX 326A, 329K, 380, 381A, 382). In many instances, such assurance has been accompanied by a copy of Macmillan's annual report (CX 326A, 329K, 380, 381A, 382).

45. The importance of Macmillan's financial resources to LaSalle was reflected in LaSalle's application to the NHSC for accreditation renewal. In response to the question, "What do you consider to be your single greatest asset which has been most responsible for your growth?" LaSalle replied, in part:

... financial support from the parent corporation, Macmillan, Inc., America's largest educational/information/culture publishing congeneric.

(CX 281C, G; see also CX 425K). In the NHSC's summary of its accreditation committee findings, LaSalle was found to be "sheltered under the umbrella of the financially strong MacMillan, Inc." (CX 328I).

46. Macmillan established uniform accounting practices for itself and all of its subsidiaries (Barton 1815); its auditors, Deloitte, Haskins and Sells, audited Macmillan's books and those of every Macmillan subsidiary on a periodic basis. In those years when Deloitte, Haskins and Sells did not audit LaSalle's books, Macmillan's internal audit department conducted the audit (Barton 1815-16).

47. Macmillan filed a consolidated corporate income tax for all of its domestic subsidiaries and incorporated the financial statements submitted by LaSalle into its annual report and SEC filings (Barton 1816-17).

48. Macmillan established a common checking system in its name in Seattle, Washington, which was used by LaSalle and thirteen other subsidiaries to handle accounts payable (DeWerth 1844-45). LaSalle, which used the common checking system in the normal course of its business, submitted invoices for payment to the common accounts payable system (DeWerth 1844-[15]45). Macmillan issued the check to the vendor about two weeks later. LaSalle paid its vendors through the common checking system unless the check had to be issued in less than two weeks (DeWerth 1845). LaSalle used the Macmillan account to issue refunds to former LaSalle students (RX 688A, B).

49. Macmillan loaned money to LaSalle (Barton 1817; DeWerth 1843). LaSalle was not empowered to borrow money on its own behalf (Barton 1817). When LaSalle had an excess of cash, it loaned the sum to Macmillan and if LaSalle needed cash, it borrowed directly from

Macmillan. All Macmillan subsidiaries followed this practice (DeWerth 1843, 1850). No minimum amounts were involved in such transactions, which were set up on a demand arrangement, and ranged from a few thousand to several million dollars (DeWerth 1850).

E. Miscellaneous Indicia of Macmillan's Control over LaSalle

50. Employees of both Macmillan and LaSalle have often participated in the same benefit programs such as a pension plan (DeWerth 1848), a welfare benefits plan (RA 10), and a dental insurance plan (RA 11).

51. Macmillan and LaSalle shared computer facilities, which were located at LaSalle (Barton 1825).

52. LaSalle operated the Business Information Reference Service as part of its Successful Small Business program (CX 426NN). This service was basically identical to the Crowell Collier Reference Service, which was offered through a different subsidiary of Macmillan (CX 426NN), but Business Information Reference Service was operated by LaSalle (CX 426III) and used by LaSalle faculty members (CX 426KKK; see also CX 426JJJ).

53. The activity reports submitted by LaSalle executives to Robert Barton dealt with matters, such as, a lack of dental benefits booklets for LaSalle employees, a lost requisition for replacement of a secretary (CX 506D), plans for testing LaSalle radio advertisements using Macmillan air time credits (CX 550G), or minor changes in advertisements (CX 541).

54. Macmillan approval was required before LaSalle could discontinue marketing its courses through field sales representatives and make a major investment in a mail-order marketing program (Barton 1806-07).

55. Although LaSalle was responsible for establishing the compensation schedules for its sales representatives, Mr. Barton's prior approval was required (Barton 1826-27). [16]Significant changes in the sales commission structure also required approval by Macmillan (Barton 1806-07).

F. Macmillan's Power To Control the Practices of LaSalle

56. On March 23, 1977, Robert A. Barton, acting as President of Macmillan, sent a letter to the Indiana Private School Accrediting Commission, conveying Macmillan's guarantee, as LaSalle's corporate parent, for the full performance by LaSalle of its obligation to provide the educational services contemplated by LaSalle's contract

with each student previously or prospectively enrolled who remains in good standing (CX 383). The Board of Directors of Macmillan ratified Mr. Barton's letter in April 1977 (CX 384B).

57. Macmillan has the authority and power to direct the policies and practices of its subsidiary, LaSalle (Findings 14-56).

III. Promotion, Marketing, and Sale of LaSalle Correspondence Courses

A. In General

58. Respondents disseminated advertisements in various publications of general circulation in order to obtain leads for the sale of their correspondence courses (Comp. Par. 3; LaSalle Ans. Par. 3). These publications included *T. V. Guide*, *American Home*, *Cosmopolitan*, *Mademoiselle*, *Glamour*, *Decorating Ideas*, and group publications such as the Fawcett Detective Group, Secret Romance Group, and Complete Men's Group (CX 1-65).

59. Until March 31, 1979, respondents used a field sales force dealing directly with the public to sell and market their correspondence courses (Israel 1988, 1990; Letter of respondents' counsel, dated December 14, 1978).

60. LaSalle relied upon its nationwide advertising to develop a market for its courses. Attached to each advertisement was an inquiry card, on which prospective students indicated their name, address, and course of interest (CX 1-[17]65). The inquiry cards were converted into "blue leads" which contained the prospective student's name, address, and course of interest (CX 151U; RX 101C). The leads were distributed to sales representatives through their regional or district managers (CX 151H; RX 101C, 102D, 103D). Blue leads (RX 224) were the sales representatives' primary source for identifying prospective students (Werner 2795-97).

61. Sales representatives were also responsible for obtaining "personally developed" leads, referred to as "PD's" (CX 151V; RX 101C, 102D, 103D). Similarly, leads were developed through LaSalle's Goodwill Club (CX 151H, V; RX 101C) and through contacts with corporations (Werner 2797).

62. In addition to accepting applications submitted by its field sales force, LaSalle accepted enrollments through a mail-order procedure (CX 327UUUU-VVVV, 425X; Berry 2338-40; Brooks 2679; Miller 2922; Visser 2941). LaSalle had used a direct mail order sales solicitation program at sometime prior to 1977, which it discontinued because it was unsuccessful (CX 528B).

63. After receipt of an inquiry, detached from one of its advertise-

ments, LaSalle, in addition to preparing and distributing a blue lead card to its sales representatives, sent a brochure to the prospective student describing the course in which the student had expressed an interest (CX 151W, 327BBBBB). The brochures were accompanied by a cover letter informing the prospective student that a LaSalle sales representative would call on him personally (CX 101-08; 115-19; 151W, X, 167C). As a general rule, prospective students received such brochures in the mail prior to contact with the sales representative (CX 153MM).

1. Respondents' Field Sales Force

64. In the period 1975-1978, the LaSalle field force ranged from 1000 to 108 individuals; the sales force diminished toward the end of that period (Israel 1989; CX 327DDDDD). In 1975, about 500 of the sales representatives received at least one enrollment in any given week (CX 327DDDDD).

65. The LaSalle representatives were paid commissions for enrollments secured. The compensation schedule as set forth in the 1976 Representatives Manual was the following:

The three commission amounts paid are:

- Enrollment commission - You will be paid \$70.00 for each student you enroll whose application [18]is accepted and processed in the home office. This commission will be paid on all courses; there are no exceptions.
- 30-day service commission - You will be paid \$25.00 for each 30-day callback you make in person. The callback must be made on time, the student's tuition payment must be current and the Records Confirmation Slip must be received and processed by the home office on schedule.
- PD enrollment commission - You are paid \$25.00 for each PD enrollment which is paid to date at 90 days. This means the first three monthly payments must have been submitted on time.

66. The enrollment commission was received from the first payment remitted by the student. When a student did not pay the tuition agreed upon in the Retail Installment Contract, LaSalle would recover part or all of the commission already paid to the salesman under a "chargeback" or repayment of the commission (CX 151DDD).

67. If a student remained enrolled in a course for more than 90 days and his payments were current at the end of that period, the representative would not lose any of his commission if the student dropped out at that point (RX 103G; Werner 2822).

68. The number of enrollments was a major factor in a sales representatives' earnings (Werner 2823-24).

69. In 1971, LaSalle instituted a Graduation Bonus Plan under which a representative received a 50 percent bonus for all enrollees who graduated. This program, however, was discontinued in 1975 (CX 327FFFFFFF; Werner 2821-22). Respondent also had a quality bonus to reward representatives who secured better studying and paying students (CX 327FFFFFFF).

70. LaSalle representatives were expected to maintain a high conversion rate on leads generated by advertising because [19]they represented a major expense item. Respondents informed their representatives "We expect new representatives to sign up at least one person in ten; some experienced representatives sign up two or three out of ten" (CX 151H).

71. LaSalle's representatives were subject to immediate termination for cause such as dishonesty, misconduct and misrepresentation. In addition, representatives, except under unusual circumstances, were terminated if they failed to submit at least one application in a 30-day period (CX 327GGGGG).

72. The turnover rate for respondents' sales representatives was high. Approximately 75 percent of the active sales representatives were employed less than one year (CX 328, Report of Accrediting Examining Committee, National Home Study Council submitted December 2, 1975).

73. LaSalle stopped sending leads to its representatives in December 1978. It continued to process and accept enrollments obtained by representatives without leads until March 31, 1979. On that date, the remaining representatives were terminated (CX 327UUUU; Marshall 1907; Werner 2793; Finding 59).

B. The Sales Presentation

74. Generally, sales representatives established initial contact

with the student by telephone (CX 514B; Mull 329-30; Shulock 362; Muhar 446; Waller 657-58; Mastrangelo 752; Wilmot 795-96; Lapeer 837; Nehls 864; Kammer 887-88; Reed 1571; Deet 1686; Patrone 1754; Wilson 3271; Sellers 3258-59; Kohlmyer 3338; Ostland 3489; Burritt 3625-26).

75. LaSalle representatives did not enroll applicants. Enrollment was done by the Home Office. Sales representatives were instructed to interview applicants to see if they qualified in terms of having the time, money, and motivation to study and succeed, fill out an enrollment contract and secure a down payment (CX 168R).

76. LaSalle's sales representatives were trained and instructed to use a standard sales presentation "The Qualifying Interview" (CX 151K, 153F, 154, 168D). "Practically the entire interview is a readoff from printed materials plus a few passages to be memorized" (CX 153C). The sales presentation did not require a knowledge of the subject matter of the courses (CX 328U).

77. The LaSalle sales representatives were instructed that:

The Qualifying Interview is a field proven technique which lets you take control of the interview and keep control of it. The [20]qualifying format insures an orderly step by step presentation that takes you from the applicant's door, through the presentation and brings you to filling out the enrollment contract and Congratulatory Talk. The LaSalle Method enables you to eliminate costly digressions or sidetracks and answers most of the applicant's questions before they're asked.

Through the use of a printed Qualification Questionnaire and an all-course Visual you can quickly learn how to conduct a Qualifying Interview. With practice you'll deliver it skillfully each and every time.

... Each step is vital to the success of your presentation. Failure to adhere to this method usually results in poor quality enrollments. To maximize your time and efforts learn each step in the Qualifying Interview well.

(CX 168D)

78. LaSalle's standard sales presentation consisted of five parts: prescreening or greeting the prospect, intensive qualification, visual presentation, the close, and the after sale or congratulatory talk (CX 154, 168D; RX 101D, 102D, 103D, 133D).

79. Respondents' sales representatives were instructed to memorize the following pre-screening talk:

Mr. Miller, in the short time I have to spend with you, I'd like to speak with both you and Mrs. Miller. May we be seated at a table please?

As I said, Mr. & Mrs. Miller, I'm the local representative of LaSalle Extension University. I'm here in response to your inquiry about self-improvement. To begin, I want to be sure that we have a program that is right for you, Mr. Miller, and that you

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are right for the program. As a leading [21]correspondence school, LaSalle will only accept students who can benefit from its program of study. To determine whether you can benefit, Mr. Miller, we'll be discussing your reasons for wanting more education and your desire and ability to study and succeed.

(CX 168D)

The purpose of the pre-screening talk was to put the student on notice that he had to qualify for admission to the LaSalle Program and that acceptance was not automatic (CX 153L; 168E).

80. The heart of the sales presentation was the "intensive qualification". This part of the presentation was conducted by means of LaSalle's "Confidential Qualification Questionnaire." The purpose of the questionnaire was to help the sales representative discover the applicant's needs, character, capabilities, financial means, and whether the applicant qualified for enrollment (CX 168I; Wilmot 797-08, 803-08). Sales representatives were further instructed that "The QQ [Qualifications Questionnaire] is a powerful tool in the hands of a person [respondent's salesman] who has learned to use it for all its worth" (CX 153 O). The Qualification Questionnaire, according to respondents' directions could also be used to meet "objections and stalls what may come up later at the close" (CX 153 O).

81. After the intensive qualification, the sales representative used a visual presentation to describe the course content, the advantages of home study and LaSalle (Wilmot 810-14; CX 153F, MM, NN, 157, 168R). The brochure received by the prospective student prior to the sales presentation was used by LaSalle's representatives to supplement the material in their sales binder (CX 153MM, 157; Shulock 373-76).

82. The next step of the sales presentation was the "close" (CX 153QQ). LaSalle instructed the sales representative to use an "assumptive close" namely assume the prospect is ready to fill out the enrollment application, sign a contract, and make a down payment (CX 153SS). If a prospect appeared hesitant at this point, the sales representative was to go back to key questions and answers elicited in the "intensive qualification" in order to meet objections (CX 153BBB-CCC).

83. After concluding the sale, LaSalle's sales representatives were instructed to give an after sales talk congratulating the prospect on his decision "to reinforce the sale" "And help keep it sold" (CX 153EEE, 154D, U, 168Q). The student was told he had three obligations: to study and succeed, to provide his family with a better

way of life, and to submit his tuition payment on time (CX 153EEE, 168R). [22]

1. The Retail Installment Contract

84. The retail installment contract or field enrollment form/contract used by LaSalle was a two-part document. The field representatives were instructed to leave a carbon copy with the prospective student. In the case of a mail order enrollment, a duplicate of the original was returned to the student upon enrollment acceptance (CX 327VVVV).

85. LaSalle's "Federal" retail installment contract incorporated federal, Illinois, and NHSC requirements and LaSalle policies. It was used, according to respondents, where those requirements were more to the student's benefit than the applicable state regulations. The other contract forms bearing the names of particular states were used because the regulation of that state required some specific language or because the state regulations, according to respondents, were more beneficial to the student than the federal regulation (CX 327VVVV).

86. The mail order forms complied with the regulations of the State of Illinois, where LaSalle was domiciled (CX 327VVVV).

87. The "Federal" form of the Retail Installment Contract was the one most widely used (Martins 2668).

IV. Representations Made by LaSalle in Marketing Its Course

A. Success through LaSalle Theme

88. The major theme that permeated LaSalle's communications and representations to the public was the potential for success generated through completing a LaSalle course—the promise of higher salaries and future opportunities. This success through LaSalle theme was repeatedly expressed in LaSalle's advertising, which consisted of both combination advertisements and advertisements focusing on individual courses, its course literature, its brochures, and orally by its sales representatives.

89. Respondents' advertisements relied heavily on endorsements by satisfied LaSalle graduates to convey the success through LaSalle theme (CX 8A, 32, 559D, 577). These testimonials created the impression that such success was ordinary and typical of LaSalle graduates. [23]

90. LaSalle's print advertisements frequently covered not only individual courses, but a number of courses (CX 3-5, 10-25, 34-46,

116, 557). When testimonials were used in conjunction with combination ads, they conveyed the impression that the reader could be as successful as the person in the testimonials by enrolling in any one of the courses featured in the combination ad.

91. In combination with representations that the LaSalle diploma was a "recognized" or "useful credential" and that the diploma was evidence that a graduate of a LaSalle course had been "thoroughly prepared" by "one of America's most respected schools" (CX 101I, S, 103I, 104I, S, 105M), the testimonials created the impression that the LaSalle graduate needed no further training to enter the field of his choice.

B. Interior Decorating

92. LaSalle's advertisements regarding their complete interior decorating course appealed to women to put their "Love for decorating into a dream career" (CX 6B, 8A). Reiterating the basic theme of success through LaSalle, LaSalle advertisements billed interior decorating as "a high-income field where a woman is in her glory. There is a good demand for decorating services and opportunities are abundant" (CX 29).

1. LaSalle Represented There Was a Need or Demand for LaSalle Graduates in the Field of Interior Decorating

93. LaSalle represented that there was a demand for LaSalle graduates in the field of interior decorating. LaSalle advertisements contained such statements as:

There is a good demand for decorating services and opportunities are abundant. . . . A tremendously expanded field (CX 29).

94. Representations such as these coupled with statements such as:

I have now opened a studio . . . and I am already getting demands for interior decorating services (CX 711A). [24]

LaSalle's interior decorating course gives you complete, up-to-date instruction at home (CX 6B, 32).

The LaSalle course in Interior Decorating has been prepared to give you practical, complete and up-to-date preparation for this exciting career (CX 29).

which created the impression that the LaSalle graduate was a trained interior decorator, resulted in the impression that there was

a need or demand for LaSalle graduates in the field of interior decorating.

95. After the initial contact with LaSalle through its advertising, the prospective student received a course brochure which further outlined the benefits of the particular LaSalle course. "Your Future in Interior Decorating" was the title of the two brochures used to illustrate the success possible with LaSalle's interior decorating course (CX 101, 104). A headline in CX 101C characterized interior decorating as "a vastly expanded field where you can turn your creativity into profit." The text of both brochures represented that there was an increasing need or demand for interior decorators.

Opportunities for trained decorators are increasing each year. It used to be that only the wealthy employed decorators. That's no longer true. Large numbers of average homemakers now rely on the services of decorators. . . .

Decorators today are busy in many areas besides homes. Their talents are employed in decorating hotel rooms, business offices, building lobbies, hospitals and many other interesting places. Some decorators operate their own businesses; others work in major stores, showrooms and design studios. (CX 101C)

Opportunities for trained decorators are increasing each year. Their talents are employed in decorating hotel rooms, business [25]offices, building lobbies, hospitals and many other interesting places. Some decorators operate their own businesses; others work in major stores, showrooms and design studios. (CX 104C)

96. The impression was created in the first few pages of the brochure that there was a demand for interior decorators; the remainder of the brochure, dedicated to showing the prospective student how LaSalle trains him to be an interior decorator, created the impression that the LaSalle trained graduate would be qualified to enter this expanding field.

How LaSalle training prepares you for a career as an Interior Decorator (CX 101I; see also CX 104I).

If you want to start an exciting career as an interior decorator, LaSalle will prepare you for it in a home study program that is both practical and delightful (CX 101M).

These representations in conjunction with and as an integral part of the LaSalle presentation, which included the representations that there was a substantial need or demand for interior decorators, created the impression that there was a substantial need or demand for LaSalle graduates in the field of interior decorating.

97. LaSalle's sales representatives were instructed to repeat the employment opportunity claims made in LaSalle's brochures; they were not to make any representations of their own contrivance (RX

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102G, 128B). Student testimony indicates that such claims were repeated.

Q. Did she describe what career opportunities might be available to you in interior decorating?

A. Yes.

Q. What did she say?

A. That you could go into many areas, such as working for a furniture [26]store, become a buyer for department stores, an interior decorator, whatever appealed to you (Haselden 2196).

98. The continued repetition in LaSalle's advertisements, brochures, and orally by its sales representatives of the need or demand for interior decorators coupled with the representation that the LaSalle course offered complete training had the capacity to convey to prospective students that there was a need or demand for LaSalle interior decorating graduates.

2. LaSalle Represented That Its Interior Decorating Graduates Would Increase Their Earnings

99. In a number of ways LaSalle's advertisements created the impression that students completing respondent's correspondence courses would receive high wages or salaries from employment as interior decorators. The advertisements boldly stated that whatever your assignment as an interior decorator "you'll be well paid for it" (CX 6A, 8A) and "a decorator earns good money for work she enjoys" (CX 32). Testimonials from graduates of the LaSalle course were also included in some advertisements and appeared to substantiate the success through LaSalle theme. These graduates attested to increased earning power:

Mrs. Faye C. Haynie
Benton, Kentucky

Now I feel like Onassis when I compare my earnings with what I used to make (CX 559D).

I feel rich when I compare my earnings with what I once used to earn (CX 8A, 32).

Lucy Kovesi, Town Gallery
New York, New York

LaSalle training helped me develop my own successful gallery of art for decoration. I've enjoyed increased earnings and prestige (CX 6B, 7B, 8B). [27]

In other advertisements successful graduates were used as examples of the increased earnings made possible by a LaSalle diploma in

interior decorating. Mrs. Faye C. Haynie's success story of markedly increased earnings is featured repeatedly in advertisements (CX 6A, 7A-B, 8A-B, 30A-B, 31, 740). Other examples were used such as Susan Wilson, Opelika, Alabama (CX 33) and Sara P. Hendren, Indianapolis, Indiana (CX 711B) whose salaries were reported as having doubled.

100. LaSalle's advertisements implied a parallel between the individual in the success story and the individual reading the advertisement. Sometimes the parallel was expressly drawn as in CX 711B "These people have a lot in common with you" referring to the success story of Mrs. Haynie and that of Sara P. Hendren. Although in some instances there was language in the text of the advertisement which proposed to limit the scope of these success stories, the limiting language did not cancel out the effects of the testimonials which led the prospective student to believe that such success was ordinary and typical of LaSalle graduates.

101. For example in CX 33, which consisted of a number of testimonials from LaSalle interior decorating graduates from across the country, the caveat "An exceptional case, of course, but it does show how well some creative women can do when they develop their talents" is lost amid numerous testimonials and headlines proclaiming "The success of LaSalle graduates."

102. The course brochures used by LaSalle reiterated the promise of higher earnings:

A vastly expanded field where you can turn your creativity into profit (CX 101C).

103. The brochures also utilized testimonials from successful LaSalle graduates (CX 101R, 104R).

Your Interior Decorating course has given me many, many enjoyable and profitable hours.

Lorraine Howland
Regina, Saskatchewan
(7/11/77)

As an Interior Designer my salary has more than doubled. [28]

Janiene Church
Lakeland, Florida
(8/27/76)

(CX 104R)

My salary has doubled.

Linda Rae Kronberger

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Sturgeon Bay, Wisc.

My interior decorating course enabled me to get a terrific new position in a furniture showroom and most importantly, my salary has doubled.

Deborah A. Cosgrave
Reading, Pa.

. . . and my salary has more than doubled since I started my new career.

Susan C. Wilson
Opelika, Ala.

(CX 101R)

104. Ms. Wilson's success story was the subject of a double page spread in CX 104E. Her successful climb from secretary to interior decorator at "twice former salary" is featured under her picture and the headline "How LaSalle helped change the life of Susan Wilson" (CX 104E).

105. Although the statement at the end of Susan Wilson's story characterized her as an exceptional case, the overall impression conveyed was that similar success could be expected by the reader after LaSalle training (CX 104E). Even the statement that was to limit her success to that of an exceptional individual concluded with:

but it does show how far *your* natural talents can take *you* with the help of LaSalle training (emphasis added) (CX 104E). [29]

106. The promise of monetary success which was awakened by LaSalle's written materials was further stimulated by its sales representatives in the qualifying interview.

J: OK. Let's take that complacent chap again. Mr. Miller, are you satisfied with your present earnings?

Mr. M: Oh, we're getting along pretty good.

J: You're completely satisfied? There isn't anything you'd buy or do if you had more money?

Mr. M: Oh, sure. You can always find places to spend money.

J: Mrs. Miller, are you satisfied with his income?

Mrs. M: Oh, he provides for us pretty well.

J: There isn't anything you'd do differently if you had more money?

Mrs. M: Well, there's probably all kinds of things we'd do.

J: For instance?

Mrs. M: Well, we'd get a better house.

Mr. M: After we'd get a new car.

Mrs. M: We'd take a real vacation.

J: These are all things you'd be able to do when you get started in your career in accounting.

Mr. M: We hope so.

* * * * *

N: What about this next question? What would you like to earn five years from now?

J: Well, the first thing to realize about that question is that the average person you're talking to never thinks much beyond next month or next Christmas or the date he feels [30]he'll be due for his next pay increase. He's almost never given thoughts to what he wants to be making 5 years from now.

N: So you may have to lead him. You have to be prepared to suggest a figure if he doesn't come up with one.

J: Right. No matter what he's earning today, I get him to set a target figure that he'll agree he can't possibly reach through normal advancement in his present situation. But a figure that is realistic in relation to whatever course it is he wrote in about.

N: Setting the stage for the next question—What can you do about it?

J: And if he fumbles around with the answer to that one—I simply hammer home the obvious. That the only way he can possibly get there from here is by self-employment through further education (CX 153BB-DD).

107. Some students who testified about the qualifying interview stated that the representative represented the student would be entering a high paying field:

A. Specifically, I can't tell you, because I can't remember that far back. Approximately what went on was basically that it was a good course, that after completing the course, you can get a good paying job, and you would be a qualified interior decorator, and you'd receive a certificate from them stating so.

Q. Do you recall anything else that was said at the sales presentation?

A. He brought up the fact of a friend being in real estate and decided to go into interior decorating because it was such a good paying area (Mastrangelo 753).

A. He asked me where I was working, and informed me that I would—by taking this course, I would be able to increase my [31]salary or my earnings far more than what I had been getting (Muhar 448-49).

108. The overall impression that was created was that the LaSalle interior decorating graduate would be able to command a high salary or high wages.

3. LaSalle Represented That Its Graduates Would Be Qualified To Enter the Field of Interior Decorating with No Further Training

109. LaSalle created the impression that completion of the LaSalle interior decorating course qualified the student to secure employment in the field without further training or experience.

110. Advertisements stated that "the LaSalle course in interior decorating gives you *complete* up-to-date instruction at home" (CX 6B, 7B, 30B, 31, 32) (emphasis added) or that "the LaSalle course in Interior Decorating has been prepared to give you practical, complete and up-to-date preparation for this exciting modern career" (CX 29).

111. Aside from stating that LaSalle's course was up-to-date, practical and complete, the advertisements represented, directly and through the use of testimonials, that LaSalle had prepared many other women for successful interior decorating careers.

LaSalle training has helped many other women become successful decorators. LaSalle could help you do it, too.

For a beginning, you may prefer a position in a decorating studio, home furnishing gallery, or smart department store. With experience, you'll have every opportunity to build an independent business of your own (CX 6A).

112. In conjunction with Mrs. Faye C. Haynie's testimonial and a number of other testimonials, advertisement CX 7A-B proclaimed that: [32]

They turned their love for decorating into a dream career. Perhaps you can too. Free Booklet tells how LaSalle helps women train at home in spare time for interior decorating.

113. The featured testimonials showed how LaSalle graduates had achieved successful employment in the interior decorating field with LaSalle training.

Thanks to my LaSalle training I became the interior decorator for a leading department store.

Mrs. Joan Koston
Mentor, Ohio

(CX 7B)

114. The combination in LaSalle's advertisements of the success stories featured in the testimonials, the claims of complete, up-to-date training, and the representations to the effect that you, the reader, would be able to turn your love for decorating into a dream career conveyed the impression that a graduate of LaSalle's interior decorating course would be qualified to obtain employment in the field of interior decorating without further training.

115. LaSalle's course brochure continued the impression that the graduate would be fully qualified for employment.

How LaSalle training prepares you for a career as an Interior Decorator (CX 101I; see also CX 104I).

116. Even the course objectives listed in the brochure gave the impression that the LaSalle graduate would be qualified as an interior decorator.

COURSE OBJECTIVE: The Interior Decorating course is designed to give the student

practical knowledge and skills which may be applied commercially as well as personally in his or her own home. [33]

Upon successful completion of the 21-lesson course, the graduate will be able to apply sound decorating principles to problems ranging from simple furniture arrangement or window treatments to the complete design of one or more rooms in private homes or commercial establishments (CX 101N, 104N).

117. Part of the success through LaSalle sales pitch used by LaSalle's sales representatives implied that upon graduation from LaSalle the student could successfully seek employment as an interior decorator. In accordance with the qualifying interview script the sales representative would emphasize LaSalle's "practical program for your career advancement" with a school that "has been a leader in home study for over 60 years" (CX 153NN). The representative was to state:

... LaSalle supplies everything you need to prepare for a successful career (CX 153NN).

118. LaSalle's sales force represented that the LaSalle graduate was qualified for a career as an interior decorator.

Q. Do you recall what, if anything, the salesman said about your prospects of finding a job upon completion of the course?

A. Well, he said that after I had completed the course, and when I got my diploma, that I, as an interior designer, when I went out and looked for a job, they are not asking for experience, they are asking for qualified interior designers.

Q. Did he state whether LaSalle—graduation from LaSalle interior decorating course made one a qualified interior designer?

A. Yes, he did.

Q. What did he say? [34]

A. He said exactly what I had said, that by having my diploma, I would be a qualified interior designer. (Muhar 450).

Q. Did she describe what career opportunities might be available to you in interior decorating?

A. Yes.

Q. What did she say?

A. That you could go into many areas, such as working for a furniture store, become a buyer for department stores, an interior decorator, whatever appealed to you (Haselden 2196).

119. Student testimony reveals that the impression conveyed by the sales representatives was that the LaSalle graduate could get a job.

Q. What did you think your chances were of obtaining a job after you completed the LaSalle interior decorating course?

* * * * *

A. I thought they'd be very good.

Q. What was the basis of your—that impression?

A. Well, I assumed that by taking this course and getting a diploma, that I would have a good chance to go out and get a job (Muhar 451-52)

4. Expert Opinion as to LaSalle's Training and the Employability of LaSalle Interior Decorating Graduates

120. In its advertisements, brochures and through its sales representatives, LaSalle represented that its interior [35]decorating graduates would be qualified for employment in the field.

121. An interior decorator has been defined as someone who does primarily cosmetic work on interiors as opposed to an interior designer who is concerned with designing or remodeling the functional architectural aspects of interiors. Some interior decorators do work with some basic functional aspects of interiors.³

122. Although these distinctions are made by some, others consider the difference between the two as merely a matter of semantics (Genis 3400-01; see also Walker 488-89). It is clear, however, that whether termed designers or decorators there are those who function at various levels of sophistication in the interior decorating field.⁴

123. Respondents represented through their advertisement, brochures, and sales representatives that a LaSalle graduate [36]would be qualified to enter the field of interior decorating with no further training (Findings 109-119). Advertisements stated that "the LaSalle course in Interior Decorating has been prepared to give you practical, complete and up-to-date preparation for this exciting modern career" (CX 29).

124. The course objectives outlined in the brochure and LaSalle's self-evaluative report for the NHSC indicated that the LaSalle graduate should, upon completion of the course, be able to do residential or commercial designing as a decorating consultant or in his own interior decorating service.

³ Professor Rankin has defined an interior decorator as:

(implying) coordination and completion of an interior space in terms of general visual and general functional aspects (Rankin 1304).

as opposed to:

The term interior designer (which) generally implies the establishment of the square footage or the definition of the space, the review and organization of the peculiarities or functions of a space, the selection of the specification, materials to complete that interior, and the selection of the components required to finish that interior space or the design, selection or specification of any components that cannot be purchased but must be custom made and supplied for that interior space (Rankin 1304).

⁴ Arline Genis' description of a decorator working at an advanced level seems to correlate with Nancy Walker's and Professor Richard Rankin's description of an interior designer (Genis 3402-03; Rankin 1304; Walker 488-92).

COURSE OBJECTIVE: The Interior Decorating course is designed to give the student practical knowledge and skills which may be applied commercially as a career as well as personally in his or her own home.

The course provides a basic knowledge in: the use of colors in decorating, planning room proportions, fabric selection and use, choosing the proper wall covering, the decorative aspects of lighting, the use of accessories for accent, identifying and selecting the proper periods of furniture as well as how to establish a decorating business as a career.

Upon successful completion of the 21-lesson course, the graduate will be able to apply sound decorating principles to problems ranging from simple furniture arrangement or window treatments to the complete design of one or more rooms in private homes or commercial establishments (CX 101N, 104N).

125. The report to the NHSC, while not a representation made to consumers, serves as a useful aid in construing the advertised course objectives. In much the same language used in the brochure it states:

3. Expected Outcome.

Upon successful completion of this course, the graduate will be able to apply sound decorating principles to problems [37]ranging from simple furniture arrangement or window treatment to the complete design of one or more rooms in private homes or commercial establishments. The graduate may begin a career as a decorating consultant advising on the purchase of carpeting, furniture or other home furnishings in department stores or specialty stores. Alternatively, graduates should be able to establish and operate their own interior decorating services, or, if they prefer, they can enrich their lives by the pleasure of decorating their own homes (CX 327V).

126. The course objectives as stated are ambiguous. At one point, the objectives state that "the course provides basic knowledge" at another point they maintain that "the graduate will be able to apply sound decorating principles . . . to the complete design of one or more rooms in private homes or commercial establishments," from the latter one can infer that the LaSalle graduate will be able to work at the advanced level (CX 101N, 104N).

127. The net impression created by LaSalle's representations to the public was that the interior decorating graduate could qualify for employment on the advanced level.

128. In contrast to LaSalle's representations, the experts agreed that while LaSalle offered training in the basics of interior decorating, it did not adequately prepare the ordinary and typical individual to be an advanced level interior decorator (CX 1032; Genis 3427-28, 3477; Walker 527-28; Rankin 1336-39). The ability to work on advanced levels depends on natural ability and experience, as well as formal training. Many of the skills received in the field cannot be learned from a book or in the classroom (CX 1032; Genis 3408, 3416, 3424-28; Rankin 1340). While some graduates of the LaSalle

program were able to accomplish the vocational objective of obtaining employment in the field of interior decorating with department stores, furniture or home furnishings stores, decorating studios and individual decorators, the ordinary and typical LaSalle could not perform in the field at more than a basic level (Rankin 1338-40; Brooks 2676; Murphy 2761; Wright 2878-80; Kohlmyer 3336; Genis 3407-08, 3437-39).

129. LaSalle also represented in its advertisements and in the course objectives outlined in its brochures and report to the NHSC that one of the options open to the LaSalle graduate would be to establish his own interior decorating business (Finding 124). In order to function as an independent interior [38]decorator an individual would have to perform on an advanced level (CX 1032; Genis 3401-07, 3437-39, 3445-82; Rankin 1335-40, 1345, 1347). Since LaSalle's course did not prepare its graduates to function beyond the basic level, it was false and misleading to represent that the ordinary graduate could open his own interior decorating business.

130. To the extent that LaSalle represented its typical and ordinary graduate was qualified for advanced level positions, LaSalle's representations were false and misleading.

131. Since the ordinary and typical interior decorating graduate would be unable to open his own decorating service or obtain employment beyond the basic level, representation made by LaSalle that there was a demand for LaSalle graduates and that they could expect a substantial increase in income were false and misleading.

B. Computer Programming

132. LaSalle represented that computer programming was an opportunity field—a high paying, rewarding career (CX 4A, 8A). They also represented that success in the field of computer programming could be attained by enrolling with LaSalle (CX 3, 4A, 5A).

1. LaSalle Represented That There Was a Need or Demand for LaSalle Graduates in the Field of Computer Programming

133. Respondents' advertising, through statements such as the following, had the tendency and capacity to create the impression that a substantial demand existed for computer programmers in general and for graduates of LaSalle's basic computer programming course in particular.

Grow with the future. Train at home for one of these

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6 technical fields

For over sixty years LaSalle has been helping ambitious men start new and profitable careers. We can help you too. [39]

* * * * *

For a prestige career why not get into computer programming (CX 3).

Which one of these 6 opportunity fields is right for you?

First pick a growth field where you can move ahead fast. Second prepare with the right training—LaSalle training.

* * * * *

For good pay and prestige why not get into computer programming (CX 4A; see also CX 5A).

COMPUTER PROGRAMMING

Prestige career in a field that offers big opportunities (CX 4A).

134. The impression created in LaSalle's advertising was reinforced in its course brochures. In addition to outlining the contents of the LaSalle Basic Computer Programming course, respondents' course brochure for computer programming contained the following statements about the need or demand for computer programmers:

Why Does the Computer Field Attract So Many Ambitious Men and Women?

As the economy grows, the opportunities for the trained computer operator continue to increase. . . .

* * * * *

It takes training and experience to handle the programming assignments the business world turns over to the [40]computer. LaSalle can provide you with basic computer programming training. If you combine this training with on-the-job experience, you will discover what interesting work computer programming can be (CX 103C).

* * * * *

Convenient and Practical Training For You

Now in your spare time at home, LaSalle teaches you the special techniques for developing and writing programs for business computer operations.

You'll find learning Basic Computer Programming with LaSalle an ideal way to prepare for the computer age (CX 103E).

The above representation (CX 103E) was used in conjunction with a graph citing U.S. Dept. of Labor Statistics and showing a rise in the number programmers employed from 80,000 in 1965 to 186,000 in

1972 (CX 103E; see also, CX 106E comparing employment figures of 80,000 for 1965 and 223,000 for 1975 in conjunction with the same textual representation).

135. Statements such as the foregoing had the tendency and capacity to create and reinforce the impression initiated in LaSalle's advertisements that there was a substantial need or demand for computer programmers in general and for graduates of LaSalle's computer programming course in particular.

136. The theme that there is a substantial demand for graduates of LaSalle's computer programming course was continued in the sales presentation with the visual supplied to salesmen (CX 157LL).

137. A LaSalle sales representative stated that "LaSalle's placement record was excellent and if [the student] did all the home work and like that and got good grades on it, [the student] should have no problem getting into the field" (Mull 337; see also Mull 333-34).

138. Sales representatives were instructed to repeat the employment claims made in the course brochures (RX 102G, 128B). [41]

139. The repetition in LaSalle's advertisements, brochures, and orally by its sales representatives had the tendency and capacity to create the impression that a substantial need or demand existed for graduates of LaSalle's basic computer programming course.

2. LaSalle Represented That Its Computer Programming Graduates Would Increase Their Earnings

140. LaSalle's advertisements used student testimonials and text written by LaSalle to convey the impression that LaSalle computer programming graduates could expect to receive high wages or salaries. Consistent with the success through LaSalle theme, the advertisements for computer programming posed questions such as:

What does it take to earn higher pay? (CX 5A)

What does it take to command a much larger salary than you now earn? (CX 4A)

HAVE YOU SEEN THIS COUPON BEFORE?

It has helped to start many men and women on the road to higher pay. Just looking at it won't get you anything . . . but putting it in the mail may change your whole future! (CX 11)

LaSalle training was presented as the answer to financial success.

141. LaSalle made affirmative statements about the ability of computer programmers to earn good salaries. In some instances, computer programming was presented as one of a number of fields which offered the opportunity for financial success.

Choose from 20 growth fields that offer opportunities to earn more money (CX 12A)

For good pay and prestige why not get into computer programming (CX 4A). [42]

142. LaSalle used student testimonials to drive home the success in computer programming through LaSalle theme. The testimonials featured in CX 4 and 5 showed two LaSalle graduates who succeeded in changing their lives and increasing their salaries after completing a LaSalle course. The advertisements encouraged the prospective student to send for a free booklet that might "change your future" (CX 4B, 5B); the implied representation was that taking the LaSalle course would change the prospective student's life like it had changed the lives of the individuals featured in the testimonials.

143. Statements such as:

More than 2,000,000 men and women have enrolled for success with LaSalle Extension University (in bold print)

in close conjunction with testimonials from successful LaSalle graduates stating:

My salary has quadrupled since starting the course.

Thanks to my LaSalle training . . . my salary has more than doubled.

I now earn three and a half times my former pay (CX 17; 19B).

had the tendency and capacity to create the impression that the typical and ordinary graduate of the LaSalle basic programming course would be likely to experience the vocational and financial success promised in the advertisement (CX 17).⁵

144. In a similar manner LaSalle's computer programming course brochures, which included the testimonial of Clifford H. Smith of Great Falls, Montana, conveyed the [43]impression that financial success was attainable with the LaSalle computer programming course.

As a result of taking the Computer Programming course, I was promoted from the parts department of my company to the computer department . . . salary up 35% (CX 103Q, 106Q).

145. The promise of monetary success was repeatedly reinforced in LaSalle's advertising, course brochures and in the standard sales presentation (Finding 106). The net impression created was that the LaSalle computer programming graduate would be entering a high paying field.

⁵ CX 17 is a combination advertisement featuring the computer programming course among others.

3. LaSalle Represented That Its Graduates Would Be Qualified To Enter the Field of Computer Programming with No Prior Experience or Further Training

146. LaSalle's advertisements implied that completion of their correspondence course without more qualified the student to enter the field of computer programming.

If you're determined to move ahead in your field of interest, LaSalle will give you the training you need for a good start (CX 4B).

What does it take to command a much larger salary. . . First pick a growth field where you can move ahead fast. Second prepare with the right training—LaSalle training (CX 6A).

LaSalle's advertisements stated that no prior experience or technical background was a prerequisite for the LaSalle course.

For a prestige career why not get into computer programming? All it takes to start training is a high [44]school education and a logical mind. No technical background is required (CX 3).

. . . All it takes to start training is a high school education and a logical mind. No technical background required. . . (CX 4A).

The combination of these representations had the tendency to create the impression that no prior experience or further training was required to enter field of computer programming.

147. The LaSalle computer programming brochure reiterated the theme that successful employment in computer programming was attainable with LaSalle alone.

The LaSalle diploma is a useful credential because it testifies that you have been *thoroughly prepared* for your work in basic computer programming (CX 103I; see also CX 106I) (emphasis added).

* * * * *

How Can You Prepare Yourself To Enter This Rewarding Field?

LaSalle may be the answer for you—it has been for countless others (CX 103F–G, 106F–G).

This training combined with the graduate's personal ability, prepares him to enter the field as a Computer Programming Trainee . . . (CX 103F, 106F).

148. The course objectives set forth in the brochures furnished to prospective students described the basic computer programming course as follows:

The Basic Computer Programming course is designed to provide the student with a

knowledge of the fundamental concepts [45] in computer programming and introduce him to the organization and function of a data processing department.

The successful graduate will have completed this 21 lesson course with instruction in the basic principles on which computers work; the use of flowcharts to divide a problem into its smallest parts; the use of flowchart information to write an actual computer program; the common programming languages with development of a working knowledge in the COBOL language; the use of program and system controls and how they relate to the "hardware" controls built into the equipment; the writing of actual programs for the latest model computers. This training, combined with the graduate's personal ability, prepares him to enter the field as a Computer Programming Trainee performing such functions as converting flowcharts from rough to finished form, coding the flowcharts into COBOL language, and making minor changes in existing programs. Of course, no reputable school can guarantee future employment to a prospective student. But once you complete the LaSalle program, you will have an advantage over the untrained people with similar educational backgrounds who are trying to get into this rewarding field (CX 103F, 106F)

149. Respondents course objectives, as set forth in the brochures, may be summarized as follows:

Students would learn to use a flowchart to divide a problem into its smallest parts.

Students would learn the use of flowchart information to write an actual computer program.

Students would develop a working knowledge of COBOL.

Students would learn the writing of actual computer programs for the latest model computers. [46]

Students would learn to convert flowcharts from rough to finished form.

Students would learn to code flowcharts into COBOL.

Students would learn to make minor changes in existing programs.

150. Respondents through their course brochures represented that graduates of its basic computer programming course would be qualified to enter the field as computer programming trainee through the acquisition of certain skills (CX 103F, 106F).

151. Phrases in the respondents' brochure's description of the course objective such as:

The successful graduate will have completed this 21 lesson course with instruction in . . . the use of flowchart information to write an actual computer program; . . . the writing of actual programs for the latest model computers . . . (CX 103F)

had the capacity and tendency to create the impression that the

graduate of LaSalle's course would be able to write "actual" computer programs without further training.⁶

152. LaSalle further represented that its students could achieve the course objectives without access to a computer, "YOU DON'T NEED A COMPUTER TO LEARN COMPUTER PROGRAMMING" (CX 103G, 106G).

153. LaSalle's representatives reinforced the impression created in the advertisements and course brochures that the LaSalle graduate would be qualified to enter the field as a computer programmer trainee without prior experience [47] or further training. In accordance with the qualifying interview script, the sales representative was to state:

... LaSalle supplies everything you need to prepare for a successful career (CX 153NN).

The sales visual supplied to representatives for use with prospective students during the sales presentation included the following statement:

LaSalle supplies the training to acquire new skills, earn a college degree or start a new career (CX 157G).

154. The impression created by the advertising, brochures, and sales presentations in connection with LaSalle's computer programming course was that LaSalle offered complete training which would qualify its graduates to enter the field as computer programmer trainees.

4. Expert Opinion As To LaSalle's Training And The Employability Of LaSalle Computer Programming Graduates

155. Computer programming is the art of writing a set of instructions for a computer to do a specific job (Hamblen 1192).

156. A computer programmer trainee is an individual, generally on a probationary appointment, who will work under the supervision of programmers and analysts, as part of a team, for the purpose of writing computer programs (Engel 927). It is the entry level position in computer programming.⁷ [48]

157. The LaSalle course did not adequately teach students the basic principles on which computers work since it gave insufficient details on how a computer handles instructions, stores data, etc. A

⁶ This impression was not dispelled by subsequent statements in connection with the title of Computer Programming trainee that the graduate would be capable of "making minor changes in existing programs." At best, the description of the course objectives was ambiguous on this point.

⁷ This is the equivalent of an "entry level programmer" who in the definition of respondents' expert would be trained and ready to take on his first assignment without further formalized training (Safford 3560).

student who did not understand how the computer handles instructions would not understand basic computer programming (Hamblen 1187-88). LaSalle's computer programming course did not meet this objective.

158. The course, although it gave some examples of Coding in COBOL, did not give the student an opportunity to create his own code for his own problems, nor did the LaSalle student submit his coding for review by running it on a computer. The LaSalle course accordingly gave the student a superficial rather than a "working knowledge" of COBOL (Engel 992-93). The course objective of a working knowledge of COBOL was not met (Findings 148-49).

159. A graduate of the LaSalle basic computer programming course would not be able to code a flowchart into COBOL language, because of his inadequate experience in writing programs and in running them on the computer for feedback on errors (Hamblen 1208).

160. The LaSalle materials presented sufficient information to permit a student to read, understand, and perhaps modify a flowchart. However, a LaSalle student after having completed the materials would have difficulty creating a flowchart given a problem statement because he had no experience in analyzing and developing problems on his own and looking for alternative solutions (Engel 988).

161. LaSalle's course description presented flowcharts as an indispensable element of programming (Finding 148).^{*}

162. Since LaSalle graduates would have difficulty in creating flowcharts, the course failed to adequately meet a major objective of the course teaching a student to "use flowchart information to write an actual computer program" (Findings 148-49, 160).

163. Nor, did the course fulfill its stated objective of teaching students to write actual programs for the latest model computers (CX 103F, 106F). The course was based exclusively on [49]the IBM 360 rather than the IBM 370 which had been introduced in 1970 as a replacement for the 360 (Engel 977; Hamblen 1203).

164. Graduates of the LaSalle basic computer programming course would not be able to change or modify existing computer programs, if computer logic were involved in such modification (Hamblen 1208). Accordingly, the course objective of learning to make minor changes in existing programs was not met.

^{*} In the computer programming industry, during the period 1973-1977, the more detailed type of flowcharting was replaced by structured COBOL which made detailed flowcharting unnecessary (Safford 3573). In that period, most companies were still using the type of flowcharting taught by LaSalle (Safford 3572).

165. The LaSalle materials did not require a student to run a program through a computer (Hamblen 1203).⁹ Giving students an opportunity to run programs is an essential element in the learning process of a computer programming course (Hamblen 1202; Engel 977, 993).¹⁰ Achievement of the course [50]objectives outlined by LaSalle was unlikely without access to a computer.

166. The typical LaSalle graduate with a high school education would not be able to enter the field as a computer programmer trainee¹¹ and perform functions such as conversion of flowcharts from rough to finished form and making minor changes in existing programs (Engel 1001-02).

Without further training, a graduate of LaSalle's computer programming course would be able to obtain various semi-clerical jobs, which would not be programming positions (Hamblen 1208-09, 1247-48).

167. The typical and ordinary LaSalle graduate would not be qualified to enter the computer field at the entry level as a computer programming trainee (Findings 157-66).¹² [51]

⁹ According to respondent's expert, it would be possible to learn programming "up to a point" without doing a compile (Safford 3591). He testified a desk check would enable a programmer to immediately find the majority of his errors through rechecking the manual and procedures (Safford 3594-95). Nevertheless, according to respondent's expert, a student might be unable to find an insubstantial error which would prevent a program from running (Safford 3604). A LaSalle graduate might desk check his program to the best of his ability and fail to discover errors which would prevent a program from compiling (Safford 3605). "You can't see a program debugged until it has been run through a computer" (Safford 3605). Moreover, respondent's expert considered it important for students in the training program under his supervision to run programs through a computer (Safford 3602).

In view of the foregoing testimony, more weight is given to the testimony of the Commission experts on the need for access to a computer for students of computer programming.

¹⁰ You write a program on paper and then the next step, you have to convert that to machine-readable form somehow to get it into the computer. . .

. . . [T]he computer is a deadly exacting device. Everything must be letter perfect and if you get the wrong character, you misspell a word or something like that. . . chances are it will reject the statement and print out some kind of error message which then you may have to go to a manual and look up. . .

You really don't know how well you've done in writing a program until you have tried to run it on a computer. There's just no other way (Hamblen 1202; see Engel 977, 993).

¹¹ "The student does not acquire a job skill at the level to be considered for a position as a computer programmer trainee" (Report of the Accrediting Commission of the National Home Study Council dated January 31, 1976) (CX 330D).

¹² Respondent's expert, Herbert Safford, testified that his employer, GTE Data Services, Inc. (GTE), had a separate "start from scratch" training program and a more technical program for those who had "limited experience but training." Although he might be able to skip half the COBOL training, a LaSalle graduate would begin in the start from scratch program (Safford 3600-01). A LaSalle graduate in the case of GTE would be considered an entry level *trainee* rather than an entry level programmer (Safford 3601). In short, in the case of GTE, a LaSalle graduate would not have qualified as an entry level programmer which is the equivalent of a Computer Programming Trainee (See p. 47, n. 7).

The Commission's experts and respondents' experts had sharp differences in matters of underlying detail. Nevertheless, the ultimate conclusions on the qualifications of LaSalle's graduate as entry level programmers are not far apart.

168. Major elements of the course objectives set forth in LaSalle's Brochures were not¹³ met (Findings 148-49, 157-66). Therefore, representations that the course would prepare graduates to meet the course objectives were misleading or deceptive.

169. Meeting the course objectives was prerequisite to LaSalle graduates qualifying as computer programming trainees which was the position respondents represented their graduates were trained to fill (Findings 150, 153-54).

170. The ordinary and typical graduate of LaSalle's computer programming course would not qualify as a computer programming trainee (Findings 157-69). Respondents' representation that the graduates of its computer programming course would qualify as computer programming trainees was accordingly deceptive.

171. Since LaSalle's basic computer programming graduates were not qualified for entry level jobs as computer programmer trainees, representations that there was a substantial demand for LaSalle computer programming graduates and that they could expect a substantial increase in income upon completion of the course (Findings 132-45) were false and misleading. [52]

C. Air Conditioning and Refrigeration

172. LaSalle represented that air conditioning and refrigeration was an opportunity field—a high paying rewarding career (CX 1, 4A, 5A; RX 20). By offering free booklets to start you on this rewarding career and through the representations made in its advertisements, brochures and by its sales representatives, LaSalle implied that a successful career in air conditioning and refrigeration could be achieved through study with LaSalle (CX 1, 2, 3; RX 20).

1. LaSalle Represented That There Was a Need or Demand for LaSalle Graduates in the Field of Air Conditioning and Refrigeration

173. In their advertisements, LaSalle stated that there was a big demand in the field even for newcomers.

Even the newcomer with the right training is going to be in demand. . . and *well paid* (RX 20).

Service and installation men are needed. . . Newcomers are welcomed because of the fast growth of the field and short supply of trained men to handle all the work (CX 3).

¹³ In view of this finding, further findings as to whether the course objectives in Respondents' Self-Evaluation Report submitted to the Accrediting Commission of the National Home Study Council (CX 3270) or the objectives in the "Curriculum Recommendations and Guidelines for the Community and Junior College Career Program in Computer Programming" (CX 815G) had been met would be superfluous.

AIR CONDITIONING & REFRIGERATION

Big demand for service and installation men in homes, commercial buildings, apartment houses, factories. Field welcomes trained beginners. Good pay, good future—with plenty of chances for a business of your own (CX 5A).

AIR CONDITIONING AND REFRIGERATION

Big futures in air conditioning—with plenty of chances to start a business of your own! Service and installation men are in urgent demand for homes, commercial buildings, apartment houses—[53]in food markets, industrial plants, ships and planes! Newcomers are welcomed because of the fast growth of the field and short supply of trained men to handle all the work. Send for the facts today (CX 4A).

174. When these general demand representations were read in conjunction with statements such as:

Why shouldn't you be one of the lucky ones? Right now, Wayne instruction will get you started toward a life time career (CX 2; RX 20).

For over sixty years LaSalle has been helping ambitious men start new and profitable careers (CX 3).

For a future in a growing service field that offers plenty of chances to start a business of your own someday—get into air conditioning and refrigeration. Wayne's free booklet tells you how (CX 1).

they created the impression that there was a need or demand for graduates of LaSalle's air conditioning and refrigeration course.

175. LaSalle's course brochures reinforced the demand impression created in the advertisements. The covers of CX 102 and CX 105 state:

America's becoming an air-conditioned nation (CX 102A, 105A).

176. The text of the brochures continue to inform the reader that there is a need or demand for air conditioning and refrigeration servicemen.

You're looking for a career in an industry that is growing, an industry that needs people.

ONE OF THE FAST-GROWING
INDUSTRIES IN AMERICA TODAY

I know of no other industry that offers a young man such a wide variety of opportunities. The alert young man who chooses the air conditioning and refrigeration industry as a career can look forward to a bright future in a prestige industry.

James B. Gray
E.I. du Pont de Nemours

The Air-Conditioning and Refrigeration Institute expects shipments of unitary air-

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conditioning equipment (the type of equipment used in most home central-cooling systems) to rise from 2,434,000 in 1972 to an estimated 2,800,000 this year—an increase of 15 percent.

Air Conditioning and
Refrigeration Institute

(CX 102C)

According to the U.S. Government: "Continued fast growth of home air conditioning will contribute to very rapid employment increase for air conditioning mechanics."

U.S. Department of Labor,
Occupational Outlook Handbook

(CX 102E)

177. The brochures also represented that LaSalle training would enable you to enter this growing field. "Training will help you succeed in this important, growing field" (CX 102E). "Wayne will teach you the fundamentals of air conditioning and refrigeration" (CX 105E). The inference to be drawn from such representations was that there was a need or demand for LaSalle air conditioning and refrigeration graduates (see also Findings 175-76).

178. The inclusion of testimonials from successful LaSalle graduates not only showed that some LaSalle graduates were employed in the field but it added to the general impression that there was a demand for LaSalle graduates (CX 102D, 105L). [55]

179. As with LaSalle's other courses, sales representatives were instructed to repeat the employment claims made in the brochures (RX 102G, 128B).

2. LaSalle Represented That Its Air Conditioning and Refrigeration Graduates Would Increase Their Earnings

180. LaSalle made claims that air conditioning and refrigeration was a high paying career (CX 5A; RX 20). In some instances, air conditioning and refrigeration was coupled with other "opportunity fields" about which general representations of higher wages were made (CX 4A, 5A).

181. Reiterating the success through LaSalle theme, LaSalle represented that its correspondence course would prepare the individual to enter the field of air conditioning and refrigeration and command a high salary.

What does it take to earn higher pay? First, pick an uncrowded field where you have the chance to move ahead fast. Second, prepare with the right training—LaSalle training.

LaSalle has been helping ambitious men start new and profitable careers, for over sixty years. We can help you too (CX 4A).

This free booklet may start you on a high pay career in AIR CONDITIONING AND REFRIGERATION . . . For a future with higher earnings and plenty of chances to start a business of your own—get into air [56]conditioning and refrigeration (CX 2; RX 20).

183. In addition to making these statements about its ability to train people for higher paying jobs, LaSalle used testimonials to carry the success through LaSalle theme.



"After five years working for a chemical company . . . I was at a dead end, so I enrolled with LaSalle. Now I am out of my rut and my salary's up over \$2,800 a year."
Charles B. Dunivan
Indianapolis, Indiana

"I am really grateful to LaSalle . . . In the past four years my income has increased over \$9,000. I now have twenty people under my supervision."
Norbert Kellan,
Ridgewood, New York



(CX 4A)

These testimonials appealed to the reader to take the LaSalle course and, like the individuals pictured and quoted, become a higher paid, successful individual. [57]

184. A combination ad, which included air conditioning and refrigeration, carried the following statements and testimonials.

WHO ELSE WANTS A BIG RAISE IN PAY?

Stuck in a rut? Tired of your dead-end job? Read how LaSalle spare-time training has helped others to move up to better paying positions with increased prestige.

Look at these pleased reports from LaSalle students. Many success stories of this kind come to us every year from people who began their career planning by mailing the LaSalle coupon for information.

LaSalle students have one ambition in common to get out of the ranks of the untrained and earn more money and respect in a better job. Isn't that your goal too?

Since enrolling with LaSalle my salary has doubled.

Robert Kubec
St. Cloud, Minnesota

In the past four years my income has jumped over \$9,000.

Initial Decision

96 F.T.C.

Norbert Kaltan
Ridgewood, N.Y.

My salary has quadrupled since starting the course.

George R. Kelly
W. Bridgewater, Mass.

Thanks to LaSalle training. . . my salary has doubled.

Mrs. Mary M. Myberg
Los Angeles, Calif.

(CX 21) [58]

185. In presenting LaSalle's courses, including Air Conditioning and Refrigeration, to the prospective student, sales representatives fostered a dissatisfaction with present earnings and held out the promise of higher earnings after the LaSalle course (Finding 106; CX 153Y-DD).

3. LaSalle Represented That Its Graduates Would Be Qualified To Enter the Field of Air Conditioning and Refrigeration with No Further Training

186. In its advertisements, brochures and through its sales staff, LaSalle created the impression that its graduates would be completely qualified to enter the field of air conditioning and refrigeration. LaSalle represented that a graduate of the course would acquire the knowledge and skills necessary to perform the duties required of servicemen.¹⁴ LaSalle's advertisements stated:

Build a future in air conditioning—with plenty of chances to start a business of your own. Learn how to service equipment for homes, commercial buildings, apartment houses—food markets, industrial plants (CX 16B). [59]

187. The following text about the air conditioning and refrigeration course was part of a combination ad with the headline—

Grow with the future. Train at home for one of these

6 TECHNICAL FIELDS

¹⁴ It is disputed whether LaSalle represented it trained its graduates to enter the field as "mechanics" trained to diagnose and repair all problems found in air conditioning and refrigeration systems without supervision or whether LaSalle represented it trained students to enter the field as apprentices or trainees. Although the term "mechanic" was not included in text written by LaSalle in its course brochures, the term was used in testimonials and other quoted materials which were adopted by LaSalle for advertising purposes and should be considered as part of the representations made by LaSalle (CX 102E, N, 105L, N). In addition, LaSalle represented that its ordinary and typical graduate would be able to open his own business (CX 4A). Clearly, a LaSalle graduate operating his own business would not be viewed as an apprentice/trainee. Someone operating his own business would not receive further training or supervision.

Build a future in air conditioning—with plenty of chances to start a business of your own! . . . Newcomers are welcomed because of the fast growth of the field and short supply of trained men to handle all the work (CX 3).

188. Taken as a whole, CX 3 encourages the reader to train with LaSalle, enter the field of air conditioning and even start his own business based on his LaSalle training.

189. Some advertisements, such as CX 1, did qualify statements about the ability of LaSalle graduates to be employed in the field with words like "start a business of your own *someday*" and "Trained people can look forward to a rewarding career *once they gain on-the-job experience*" (emphasis added). However, the overall impression conveyed by respondents' advertisements was that the LaSalle air conditioning and refrigeration graduate would be qualified to enter the field and service equipment without further training or experience.

190. In its course brochures, LaSalle continued the theme that success in the field of air conditioning and refrigeration was attainable through LaSalle.

TRAINING WILL HELP YOU
SUCCEED IN THIS IMPORTANT,
GROWING FIELD

In this world, nothing comes just by wishing for it, and the opportunities in the refrigeration and air conditioning industry are no exception. You have to want them badly enough to work for them. [60]

Training is the very best way for you to start. The solid kind of training you can receive from Wayne School—if you qualify (CX 102E).

Step up to a bright
future

Wayne
Basic
Training

Your
ambition

Your
natural
ability

(CX 105D)

191. The following statement prefaced the outline of the course in air conditioning and refrigeration:

This 37-lesson course has been especially designed to prepare you to enter the growing field of air conditioning and refrigeration and to give you the *basic technical knowledge that will help you move up faster on the job*. It is a practical course which will teach you the actual procedures used in servicing the most widely used kinds of cooling equipment (CX 102J).

The outline concluded with:

YOU NOW UNDERSTAND THE PROCEDURE INVOLVED IN SERVICING AIR CONDITIONING AND REFRIGERATION SYSTEMS. YOU ARE READY TO START OUT IN THE FIELD (CX 102M). [61]

192. The closing statement unequivocally represented that the LaSalle graduate would be ready to service air conditioning and refrigeration equipment.

193. Respondent's course brochures also contained testimonials from successful graduates (CX 102D, 105L). These testimonials gave the impression that LaSalle graduates were employed in the field as a result of their LaSalle training.

My training has helped me get a job with a Frigidaire dealer in my town. Now I repair refrigerators and freezers, with chances for advancement.

John A. Kemp
Truth or Consequences, New Mexico
2/27/74

The Wayne course gave me enough insight into air conditioning to start my own sales and service business.

James D. Hanger
Baraboo, Wisconsin
1/5/75

The course has opened doors to a brand new life and I love it. When I was only half-way through the course, I was hired as a serviceman and mechanic. Now they depend on me for most of their refrigeration work.

Vincent Palmer
Bronx, New York
3/3/74

(CX 102D, 105L)

The fact that some graduates in their endorsements stated that they started their own business made the promises of LaSalle's advertisements come alive. Such testimonials tended to confirm the representation that the LaSalle graduates were qualified to enter the field of

air conditioning and refrigeration as servicemen without further training or experience. [62]

4. Expert Opinion as to LaSalle's Training and the Employability of LaSalle Air Conditioning and Refrigeration Graduates

194. LaSalle represented that its air conditioning and refrigeration graduates would be qualified to enter the field as servicemen without further training or experience (Findings 186-93). Although the advertisements and brochures referred to "entering" the field or of "starting" a career in air conditioning and refrigeration, the overall representation referred to the skills level of a mechanic rather than that of an entry level position as an apprentice or trainee (CX 1, 2, 3, 102, 105). In addition, references to starting one's own business reinforced the impression that success as an air conditioning and refrigeration serviceman was to be expected with LaSalle alone.

195. A mechanic or serviceman is an individual who has the expertise, training and knowledge to make all necessary repairs without supervision (Laham 733; Lupson 3999). Hands-on experience is a necessary prerequisite to becoming a qualified serviceman (Ritchie 1084; Wintersdorf 1525-26, 1581-82; Lupson 3999, 4089-90, 4096). It is apparent that a correspondence course with no laboratory experience cannot provide the hands on training necessary to become a serviceman. In proposed Finding 45, respondents agree with the experts that LaSalle's course did not prepare the ordinary and typical graduate for employment as a serviceman. Respondents state:

45. The Basic Air Conditioning and Refrigeration Service Course is designed to provide knowledge of the fundamental principles of air conditioning and refrigeration and to provide basic instruction in the service and repair of most types of air conditioning and refrigeration equipment, in order to prepare a student with some mechanical aptitude or interest for entry-level employment opportunities in the field (CX 102N, 105N). The course is not intended to qualify students, with no additional training or experience, to diagnose and repair all problems found in air conditioning and refrigeration systems without supervision, i.e., to be a "mechanic" as that term is defined by some, but not all, those familiar with the industry (see Laham 733; Wintersdorf 1525; Lupson 3999; *but cf.* [63]McCarty 594, defining an "entry-level service mechanic" as a "rookie" with "very little experience in the field").

196. LaSalle's course does indeed provide knowledge of the fundamental principles of air conditioning and refrigeration (Laham 732; Wintersdorf 1522, 1525; Lupson 3998-99); however, the training was not sufficient to qualify the graduate for employment as a mechanic.

197. While some LaSalle graduates may have found employment as servicemen, the ordinary and typical LaSalle graduate was not qualified to be employed as a serviceman without further training or supervision. Nor, would the ordinary and typical graduate be able to open his own business in air conditioning and refrigeration service and repair since such an operation would require the skills of a mechanic with hands-on experience (Findings 195-96). To the extent that LaSalle represented in its advertisements, brochures and through its sales representatives that the ordinary and typical LaSalle air conditioning and refrigeration would be qualified to enter the field as a serviceman, such representations were false and misleading.

198. LaSalle also represented that there was a demand for LaSalle graduates (Findings 173-79). The demand representation made by LaSalle was in connection with an increased demand for air conditioning and refrigeration servicemen (CX 102). LaSalle graduates were not qualified to be servicemen (Finding 196).

199. Therefore, the demand and earnings representations made in conjunction with the representation that LaSalle graduates would be qualified for employment as air conditioning and refrigeration servicemen were false and misleading.

V. Course Structure And Refund Policy

A. Front End Loading

1. Course Structure

200. Respondents' correspondence course materials consisted of volumes of textual material, examinations which were submitted to the school for evaluation and return, self-test exercises which were evaluated by the students at home and, for some courses, additional technical materials (RX 151; Marshall 1969). In LaSalle's correspondence courses, [64]the amount of reading for each submitted examination increased as the course progressed (Marshall 1973-74). In many of respondent's courses, including computer programming and interior decorating, there were more chapters of text than examinations. This was consistent with the practice in a number of other correspondence schools and was considered by some to be educationally beneficial (Marshall 1969, 1984-86).

The result of this course structure was that LaSalle students were often required to submit examinations more frequently at the beginning of the course than at the end (RA 45-48; Marshall 1973-74).

201. The term "front-end loading" has been applied to LaSalle's course structure, a structure which places most of the lesson assignments to be submitted at the beginning of the course. When used in this decision front-end loading shall be defined solely as the uneven distribution within LaSalle's course materials of lesson assignments to be submitted.

202. LaSalle did not send its students an entire set of course materials at one time. Rather, LaSalle mailed the course materials in segments with the submission of a key examination triggering the next shipment (CX 151UU, XX; RX 101F, 102F, 103F, 133F).

203. In some courses, LaSalle did include course outlines with the first shipment of course materials. The outlines described at what points in the course lesson assignments were required to be submitted (RX 151S, 153-61). LaSalle did not have a uniform policy about furnishing outlines, but left it to the judgment of the course supervisor to make the decision for each course based on pedagogical reasons (Marshall 1971-72).

2. LaSalle's Quartile Tuition Policy

204. LaSalle's course structure was related to its tuition refund policy. Since 1973, all refund policies applied have been based on a fraction—the number of lesson assignments submitted by the student over the total number of lesson assignments in the course (CX 425BB).

205. The most widely applied refund policy was that of the National Home Study Council (hereinafter cited as NHSC). Under that policy, a student owed a registration fee plus 25 percent of the total tuition obligation if he submitted less than 25 percent of the lesson assignments to LaSalle for review; 50 percent of the tuition was owed if the student [65]submitted more than 25 percent but less than 50 percent of the lesson assignments and the total tuition was owed when the student submitted more than 50 percent of the lesson assignments (CX 200-01; RX 856 (Federal Contract)).

206. Various state laws and regulations, changing from time to time, required different refund policies for students residing in those states. In those states, LaSalle applied the state policy and incorporated it in the enrollment contract form (CX 217, 225, 238, 248, 261, 271, 273). The "Federal" form of the enrollment contract was the most widely used form (Martins 2668).

207. As of 1978, respondents modified their quartile tuition policy. According to LaSalle's most recent contracts, students were obligated to pay, in addition to a registration fee, 10 percent of their tuition if they submitted less than 10 percent of their lesson

assignments, 25 percent of their tuition if they submitted more than 10 percent but less than 25 percent of their lesson assignments, 50 percent of their tuition if they submitted more than 25 percent but less than 50 percent of their lesson assignments, and 100 percent of their tuition if they submitted more than 50 percent of their lesson assignments (CX 199 (Federal Contract)).

208. The refund policy applicable to a particular student was governed by his enrollment contract. The refund policy on that contract depended on the date of enrollment and the student's state of residence at the time of enrollment (Findings 204-07).

209. LaSalle's enrollment contracts generally stated the applicable refund policy in terms of percentages of "assignments completed" between 1973 and 1975. Beginning in 1976, LaSalle revised this language to percentage of "lesson assignments submitted" to LaSalle (Before 1976 CX 201; after 1976 CX 199, 200, 202; RX 856). The contracts did not state that the readings between "lesson assignments" increased as the course progressed, nor did other materials furnished to students before enrollment (CX 176-275; RX 851-52, 856). Prior to 1979, LaSalle's contracts did not state the total number of lesson assignments to be submitted in a given course, except where required by state law (CX 199, 200, 201, 202; RX 856). The total number of lessons was listed in the course brochure; however, the cancellation and refund policy was not stated in the brochure (CX 101N, 102J, 103F, 104N, 105H, 106F).

210. Since a student's tuition obligation was derived from a percentage based on the number of lesson assignments submitted, the total number of lesson assignments to be submitted in a given course was a material fact which the student needed to know in order to be able to calculate his tuition obligation. [66]

3. LaSalle's Knowledge of Student Confusion concerning the Refund Policy

211. Respondents were placed on notice by students, attorneys general, consumer organizations, and others that students were confused as a result of LaSalle's failure to disclose the existence of front-end loading and its interaction with the quartile tuition policy (see for example; Mastrangelo 758-74, 780-84; Mseitif 1609-17; Moore 1638-46; Deet 1689-1709; CX 720-30, 787-88).

212. LaSalle's officials were aware of the confusion among students regarding the interaction between front-end loading and LaSalle's quartile tuition policy (Israel 1979-80; CX 327LLLLLL). In the Self-Evaluation Report submitted to the NHSC, LaSalle stated:

8. Proper balance of the examination schedule: . . . we have come to realize that many of our courses require revision in the pattern of examination submissions. . . . we have followed the classic tenet of the home study field, which generally calls for more frequent submissions during the early portions of home study courses, with less frequent submissions required after the student is off to a sound start.

However, this type of structure can create a problem under a refund policy based on the number of assignments or lessons submitted. In 1974 it became apparent that in many of our courses the difference in the scope of materials covered by submissions in the early and later portions of several courses had created just such problems. In January 1975, therefore, we began revisions of the submission patterns in several courses. Courses affecting a majority of our students already have been revised. The remainder of the courses in which such problems exist will be amended in the near future. We intend to continue with revisions of the remaining courses in which such problems exist. [67]

213. Although LaSalle did make some changes in the examination distribution scheme of its courses, at least two courses (interior decorating and computer programming) continued to be front-end loaded after August 1975 (RA 45-48).

B. Terminology Confusion

1. Respondents Failed To Uniformly Define Contract Terms

214. Respondents' course materials consisted of reading materials, self-tests, lesson assignments to be submitted to LaSalle, and, for some courses, additional technical materials (Finding 200).

215. The course materials and course brochures used several different terms for lesson assignments to be submitted to LaSalle. These lesson assignments, on the basis of which the student's tuition obligation was calculated, were called: "lessons," "assignments," "projects," "examinations," "submissions" and "lesson assignments" (CX 106H, I, R, 115J, 119Q; Hetzel 3121-22).

216. In some instances, different terms were used in the same brochures to describe lesson assignments to be submitted to LaSalle:

2. LaSalle is as near as the closest mailbox. You simply drop each completed *lesson* into the mail. You set your own hours for the completion of each *assignment*.

3. Your *assignment* arrives at LaSalle. It is immediately forwarded to a faculty specialist in your area of training (CX 101I, 104I, 106H) (emphasis added).

1. You receive your student materials and *lesson assignments* a group at a time, so you can work at your own speed. [68]

2. When you have studied a *lesson*, you do the *assignment* and send it to Wayne.

3. An instructor goes over your *exam*, checks the answers, adds helpful comments, and mails it back to you (CX 102G) (emphasis added).

217. Not only were a number of terms used interchangeably to describe the lesson assignments to be submitted to LaSalle, but the term "lesson" was also used to describe both the textual reading material and the lesson assignments to be submitted (CX 101I, 104I, 106H; RX 151F).

218. LaSalle's progress charts, which were included with some courses, used the terms "exams" or "examinations" to refer to lesson assignments submitted to LaSalle (RX 151, 153-61).

219. Prior to May 1976, a student's tuition obligation, pursuant to LaSalle's contract, was based on the number of "assignments completed" (Finding 209; CX 201, 204, 207, 210, 213, 216, 218, 221, 228-29, 232-33, 236, 239-40, 243, 245-46, 250, 252, 255-57, 260, 262-63, 269). Thereafter, a student's contractual obligation was defined in terms of "lesson assignments submitted" (Finding 209; CX 199-200, 202-03, 205-06, 208-09, 211-12, 214-15, 219-20, 222, 226-27, 230-31, 235, 241-42, 251, 253-54, 258-59, 266-68; RX 851, 856).

220. Prior to February 1979 (RX 852D), respondents' contracts did not define either "assignments" or "lesson assignments", the operative language used in the contracts to calculate a student's tuition obligation. In addition, LaSalle did not define the contract terms in the course materials nor did LaSalle consistently use the same term in its materials for lesson assignments submitted (Findings 215-18; CX 276-78, 932-34).

221. The inconsistent use of terms to define and distinguish respondent's course materials, which consisted of reading materials, self-tests, lesson assignments to be submitted to LaSalle and, for some courses, technical materials, resulted in confusion as to the meaning of the contract terms "lesson assignments submitted" and "lessons completed." Because students did not know what constituted "lessons completed" or "lesson assignments submitted", they were unable to calculate their tuition obligation. [69]

2. LaSalle's Knowledge of Student Confusion regarding Terminology

222. Respondents had notice from students, attorneys general, consumer organizations, and others that students were confused and deceived by the use of different terminology in the course materials, brochures and contracts (see, for example, CX 731-37, 751-52, 769-76).

223. Although in 1976 LaSalle did change the terminology used in the refund clause of its contracts from "lessons completed" to "lesson assignments submitted", it did not make the language used in its course materials, brochures, progress charts, and contracts

uniform (Findings 209, 215-19). Because different terms were used to refer to lesson assignments submitted to LaSalle, the confusion continued and students were unable to calculate their tuition obligations.

**C. Respondents Failed To Disclose Material Facts respecting
Students' Tuition Obligations**

224. Respondents did not disclose all of the information needed to calculate the tuition obligation at the time of cancellation (Findings 210, 221). Information about the nature and extent of a student's tuition obligation and about the ability to cancel his contract with LaSalle and receive a refund was material to a student's decision to enroll and to his decision to terminate enrollment.

225. The cancellation and refund policy was separately set out in the contract. Representatives were instructed to read the cancellation and refund policy clause to prospective students prior to their executing the contract (CX 153XX; RX 131A-C). In addition, prospective students were admonished in the contract itself not to sign the contract before reading it (for example, CX 200-02). Such actions on the part of LaSalle, apart from any actions or concerns personal to the prospective student, imbued the contract's cancellation and refund clause with an importance that would make it a material part of any decision to enroll.

226. LaSalle's failure to disclose the number of lesson assignments in the contract and to use a uniform term for "lesson assignments to be submitted to LaSalle" were also material, after commencement of the course, to a student's decision to terminate his studies with LaSalle. No matter what reason a student had for terminating his enrollment with LaSalle, the cancellation policy had the capacity and the tendency to affect the timing of that decision. [70]

For example: once a student submitted 50 percent of the lesson assignments, early termination due to lack of funds would be futile since the student would already be obligated for the total tuition. Obviously, the percentage of lesson assignments he had submitted would be a material fact in his decision to terminate.

227. Both the number of lessons in a particular course and the meaning of the contract terms "lessons completed" and "lesson assignments submitted" were material facts in calculating a student's tuition obligation which were not disclosed. The non-disclosure of these facts had the tendency and capacity to deceive students as to the extent of their tuition obligation.

228. It is a violation of Section 5 of the Federal Trade Commission Act for a seller not to disclose a material fact.

VI. The Selectivity Allegations

A. LaSalle's Enrollment Standards and Policy

229. Sales representatives were instructed that:

The qualified student is one who has the mental ability, the desire for improvement, the necessary time and desire to study and the ability to meet tuition payments (CX 151T).

230. The following educational prerequisites for enrollment in LaSalle's courses were in force:

The basic educational requirement observed by LaSalle is that a prospective student has had sufficient education to enable him or her to benefit from the course of instruction. No applicant can be enrolled unless, at a minimum, he or she is able to:

1. Read standard 9-10th grade English; [71]
2. Follow instructions as to lesson submission procedures.

All of our courses are in English only. Someone who does not speak English well would probably have difficulty reading and comprehending the material, and should not be recommended for enrollment.

For specific courses there are additional minimum educational requirements as indicated below. The Life experience of certain mature applicants may be accepted in lieu of formal education requirements. Such exceptions must be individually approved by the Director of Education (CX 151T-U; see also CX 327WWW).

231. The minimum educational level for the Air Conditioning, Computer Programming, and Interior Decorating courses was four years of high school. However, in the case of the Air Conditioning and Interior Decorating courses, students over 21 could be enrolled if they had two years of high school (CX 151U).

232. LaSalle required no prior employment or experience in the field of training for which a prospective student applied (CX 327XXXX).

233. LaSalle sales representatives rejected students because they could not meet respondents' minimum education requirements, inability to read English, and physical handicaps (Werner 2799-2802; Martins 2643-44; Terrana 3860-62).

234. For at least one sales representative the prime consideration in determining whether to recommend enrollment was whether the prospective student could afford the tuition (Shulock 379).

235. In 1975, LaSalle conducted a lead control program from the

latter part of March to the latter part of August for the purpose of determining why prospective students did not enroll or why no sale was made (Pierce 2968-69, 2985; RX 227A-H). The lead control form contained nine reasons for no enrollment or no sale¹⁵ including "not interested," "under age," "not [72]qualified", etc. (RX 224A-B, 227B). "Not qualified" meant persons who did not meet the educational requirements established by LaSalle, persons with inadequate ability to read English, and in a few cases, the physically handicapped (Pierce 2982-83). During the course of the lead control program, representatives were required to retain every lead for a prospective student whom they did not enroll. They were to check on the lead form the reason the prospective student was not enrolled (RX 227B, H). The lead control program accounted for approximately 58 percent of the leads issued in that period (n. 16).

236. A tabulation covering the national totals for the last 12 weeks of lead issuance in the lead control program showed that of the total number of sales made the percentage of those "not qualified" was 68 percent. Of the total number of leads issued 2.7 percent were rejected as not qualified (Chakmakjian 3804-18; RX 226).¹⁶

237. After contracts were received by LaSalle's Home Office from the field, they were reviewed for educational requirements by the Enrollment Department and in a questionable case, the contracts were referred to the Education Department (Hetzel 3093; Marshall 1910-11, 1917-18).

B. Representations That LaSalle Screened Students

1. Representations That Prospective Students Had To Qualify To Be Admitted or Accepted by LaSalle

238. The cover letter sent by LaSalle to prospective students stated:

He [the local LaSalle representative] will talk to you about your needs and [73] qualifications for training, and give you any further information you may require. He does this as part of his job, and there is no obligation of any kind (CX 151X) (emphasis added).

¹⁵ A "no sale" was a lead called on but not sold (RX 227D).

¹⁶ Total number of leads issued for the 12-week period was 127,652; 5,077 leads were converted into sales; and 3,439 leads were rejected as not qualified (RX 226A-B).

Not all leads issued in the period were accounted for by the lead control program or the tabulation. The dispositions received tabulated in RX 226 accounted for 57.9 percent of the leads issued (Chakmakjian 3810; RX 226A).

239. Respondents' course brochures repeated the theme that prospective students had to qualify for admission, *e.g.*:

The LaSalle Admissions Policy

LaSalle is open to all qualified students. In accepting applicants for admission, a primary concern is their willingness to do the work involved. This means a minimum of five or six hours a week devoted to study (CX 103M, 106M; Computer Programming Brochures) (emphasis added).

* * * * *

Wayne School is open to all *qualified students*. In *accepting applicants for admission*, a primary concern is their willingness to do the work involved. . .

If you *apply for admission* to Wayne, you will be asked to state the sincerity of your purpose (CX 102 O, 105 O) (emphasis added).

* * * * *

IF YOU ARE ACCEPTED, WE WILL TRAIN YOU IN THE FUNDAMENTALS OF AIR CONDITIONING/REFRIGERATION SERVICE (CX 102F, 105E) (emphasis added).

Training is the very best way for you to start. The solid kind of training you can receive from Wayne School—if you *qualify* (CX 102E; see also CX 105D) (emphasis added).

If your answer to any of these questions is “yes,” and *if you think you are qualified* I personally urge you to *apply for admission* now (CX 102P) (emphasis added). [74]

240. Sales representatives during their training for the standard sales presentation were instructed that:

The heart and core of this procedure is the qualifying interview. *This technique requires the prospect to tell you why he's qualified* for the course he's inquired about (CX 153D) (emphasis added).

* * * * *

. . . [The prospective student] has to convince himself and you that he qualifies. . . . (CX 153I).

they were further instructed to create the impression that:

the prospect. . . has to qualify for entry into LaSalle. Acceptance is not automatic (CX 153L).

. . . with the term qualification questionnaire, we've reemphasized the fact that he must qualify—acceptance is not automatic. . . . (CX 153P).

acceptance is not automatic. That he must show that he qualifies and that this will depend on the outcome of your questioning. . . . (CX 153P, Q).

... the fact that he must measure up to LaSalle's requirements, that he must convince you of his merits. . . . (CX 153Q).

241. In line with the foregoing instructions, LaSalle sales representatives were instructed to say the following to prospective enrollees when met with objections at the door:

I'm here to help you find out if you have what it takes to qualify. . . . (CX 155I).

We want only high quality students. I can see if you qualify then recommend [75]your acceptance. May I step in? (CX 155I; see also CX 167G-H).

242. Respondents represented that prospective students must qualify for admission. Moreover, the Standard Sales Presentation which LaSalle sales representatives were trained to use had the tendency and capacity to create the impression that the burden was on the prospective student to show that he was qualified (Findings 240-41).

243. The use of the "Confidential Qualification Questionnaire" (CX 154H) during the "intensive qualification" portion of the sales presentation (CX 154D) had the capacity and tendency to reinforce the impression that prospective students had to qualify for admission to respondents' courses.

2. Representations That Certain Aptitudes Were Helpful or Required in the Case of Particular Courses

244. In their advertisements for the interior decorating course and in their interior decorating course brochures, respondents made the following statements:

You'll be able to put your natural talents and creative urge to use in designing beautiful and exciting rooms for clients (CX 6A; Advertisement).

You may be one of those with natural talent for this fascinating field—a talent that could be developed through LaSalle instruction (CX 6B).

... Step by step, you are shown how to make the most of your creative ability. . . . (CX 7B, 30B).

You'll be able to put your natural talents and creative urge to use in designing beautiful and exciting rooms for clients (CX 8A).

Even if you've done no decorating, you may be one of many women with unsuspected talent in this direction—talent just waiting to be discovered (CX 9A). [76]

Decorators can put their natural talents and creative urge to use in designing beautiful and exciting rooms for clients (CX 30A, 31).

Do you have a
decorating talent
other women envy



Make a career of it!

(CX 32)

Interior Decorating

A fascinating field where you can put your creative talents to practical use. . . . (CX 45).

But even if you've done no decorating and have no business experience, you may be one of many people with talent in this direction—talent waiting to be discovered (CX 101C).

245. The foregoing representations had the capacity and tendency to create the impression that a talent for decorating was prerequisite to or helpful in benefitting from or successfully assimilating the Interior Decorating course materials.

246. In their advertisements for the basic computer programming course, respondents advertised that: [77]

. . . All that it takes to start training is a high school education and a logical mind no technical background required. . . . (CX 3, 4A, 5A, 12C, 16C).

247. Such representations had the capacity and tendency to create the impression that a logical mind was a necessary aptitude to benefit from or to successfully assimilate the course materials.

248. Respondents, in the Air Conditioning and Refrigeration course brochures, stated:

Step up to a bright
future

Wayne
Basic
Training

Your
ambition

Your
natural
ability

(CX 105D)

Certain courses have special requirements. To enroll in the Wayne course in Basic Air Conditioning and Refrigeration, you should have mechanical aptitude and at least two years of high school (CX 102 O, '74 Brochure) (emphasis added).

Education Requirements: To enroll in this program, you must have completed two years of high school if over 21 years of age, and four years of high school if under 21 years. *A mechanical aptitude is also helpful (CX 105 O, '76 Brochure) (emphasis added).*

249. The foregoing representations had the capacity and tendency to create the impression that mechanical aptitude, [78]interests or ability were prerequisite to or helpful in benefitting from or in successfully assimilating the Air Conditioning and Refrigeration course materials.

250. The courses were written with characteristics such as a logical or mechanical aptitude in mind (Marshall 1906).¹⁷ [79]

¹⁷ Q. And it's possible to test mathematical aptitude in certain instances, isn't it?

A. Yes.

Q. How does one test a prospective student's ability to use their hands?

A. Manual dexterity.

Q. How do you test for that?

A. That, I do not know.

Q. The ability—the prospective student having a logical mind is one of the standards that has been set for the computer programming course, is it not?

A. That's not only the enrollment standard, no.

Q. The brochures indicate that you should have, however?

A. Yes, that helps.

Q. Does LaSalle test for that, do you know?

A. No, sir.

Q. Does LaSalle test manual dexterity?

A. No, sir.

Q. Would you say that the courses are written with those backgrounds in mind?

A. Yes, sir (Marshall 1906).

3. Representations That LaSalle Screened Prospective Students To Ensure That They Would Benefit From The Course

251. Salesmen were instructed to say, as part of the pre-screening talk in the Sales Presentation:

. . . I want to be sure that we have a program that is right for you, Mr. Miller, and that you are right for the program. As a leading correspondence school, LaSalle will only accept students who can benefit from its program of study. To determine whether you can benefit Mr. Miller, we'll be discussing your reasons for wanting more education and your desire and ability to study and succeed (CX 168D) (emphasis added).

* * * * *

. . . I must be sure that we have a program that is right for you, Mr. Miller and that you are right for the program. After all, no school wants to accept unqualified applicants. . . . (CX 153I) (emphasis added).

252. The theme that prospective students were screened to select those who would benefit from a particular course was continued in respondents' Retail Installment Contracts.

Carefully screens students for admission and has demonstrated ample student success and satisfaction (CX 199D, 200D, 202D).

* * * * *

LASALLE WANTS TO ENROLL ANY PERSON WHO:

- 1) HAS ENOUGH FACTS FROM SCHOOL BROCHURES TO FEEL HE OR SHE CAN BENEFIT FROM ANY PARTICULAR COURSE (CX 199E, 200E, 202E). [80]

253. Representations that LaSalle's salesmen wanted to be sure that a course was "right" for a prospective student or that it was respondents' policy to enroll those prospective students who would "benefit" from a course had the capacity and tendency to create the impression that respondents' screened prospective students prior to enrollment for the specific aptitudes requisite or helpful to particular courses over and above the standard age and educational requirements applicable to LaSalle's courses generally. Furthermore, such representations had the tendency and capacity to create the impression that LaSalle accepted only those students who could benefit from particular courses and assimilate their contents.

254. The impression that respondents screened prospective students prior to enrollment for the aptitudes helpful or necessary to benefit from and assimilate specific course materials (Findings 238-43, 251-53) was reinforced by other representations that specific aptitudes such as talent for decorating, a logical mind and mechani-

cal ability were required for or helpful in the case of particular courses (Findings 244-49).

255. In fact, LaSalle, because of its open enrollment policy, instructed its instructors to report students who *after commencing the course* appeared unable to benefit from such instruction (CX 327XXXX).¹⁸ [81]

256. LaSalle did not in fact screen prospective students with respect to the specific aptitudes necessary or helpful to assimilating or benefitting from the particular course (Marshall 1906; RA 49, 51, 53, 59).

257. The combined effect of respondents' representations that prospective students had to qualify for admission (Findings 238-43), that it was LaSalle's policy to enroll prospective students who could "benefit" from or were "right" for particular courses (Findings 251-53), and that certain aptitudes were helpful in certain courses (Findings 244-49), had the tendency to create the impression that over and above the standard minimum age and educational requirements generally applicable, respondents were selective in enrolling those students who had been screened to determine that they would benefit from particular courses.

258. Such representations were false, misleading or deceptive since respondents did not screen prospective students for specific aptitudes helpful to successful completion or assimilation of specific courses.

VII. The Vocational Value of LaSalle's Correspondence Courses

A. The Commission Survey To Measure Success of Vocationally Motivated Graduates of LaSalle Correspondence Courses

1. The RPC Survey

259. Resource Planning Corporation (hereinafter cited as RPC), at the request of the Federal Trade Commission, conducted a survey to evaluate the experience of persons enrolled in three LaSalle Extension University courses, computer programming, interior decorating, and basic air conditioning and refrigeration. Two primary areas were to be investigated: first, what motivated the students to take their course and how, if at all, LaSalle or its

¹⁸ [Because LaSalle has] an enrollment philosophy somewhat akin to today's open enrollment policy of many American colleges and universities, LaSalle . . . tries to monitor early lessons carefully. [LaSalle's] instructors are asked to report students who appear unable to benefit from the course instruction. In this way, such students may be advised of the need to improve. If no improvement occurs, the student is terminated and his contract obligations rescinded (Self-Evaluation Report submitted by LaSalle to Accrediting Commission of NHSC August 7, 1975; CX 327XXXX) (emphasis added).

representatives influenced that motivation, and second, what was the vocational and financial experience of the individuals taking such courses (CX 279C).

260. Prior to conducting the survey of former LaSalle students, RPC had conducted similar surveys of other correspondence schools for the Federal Trade Commission (Chambers 156; RX 271RR). RPC drew on its experience in [82]conducting the prior surveys when it conducted the LaSalle survey (Chambers 160).

261. RPC, when it drafted survey instruments for another correspondence school survey for the FTC, used the most recent survey instrument as a model and drafted the new instrument by modifying the one used in the preceding survey (Chambers 206-07). RPC interviewed no LaSalle student or graduate before drawing up the questionnaire used in the RPC survey of LaSalle (Chambers 207-08).¹⁹ The model for the LaSalle survey instrument was the questionnaire used in the International Correspondence Schools survey (Chambers 206-07, 211).

262. The RPC survey was conducted sometime after September 1976 (RX 264B).

263. RPC's analysis was limited to vocationally motivated students and findings herein are limited to that part of the RPC survey relating to vocationally motivated graduates of its courses.

264. The graduate group represented all graduates of LaSalle between the period January 1974 and December 1975 (CX 279D).

265. The RPC survey instrument with a cover letter was mailed to the sample groups. Two weeks later a second mailing went to those who did not respond to the first mailing. After the two mailings, RPC conducted a telephone survey in order to complete the survey (CX 279D). [83]

266. After completion of the data gathering portion of the survey, the final sample and response rate of the RPC survey were as follows:

<i>Courses</i>	<i>Final Sample</i>	<i>Response Rate</i>
Computer Programming Graduates	276	57%
Interior Decorating Graduates	260	62%
Basic Air Conditioning and Refrigeration Graduates	273	61%
Computer Programming Nongraduates	296	27%
Interior Decorating Nongraduates	298	28%
Basic Air Conditioning and Refrigeration Nongraduates	296	31%

¹⁹ The best way to develop questions and precoded answers to a survey is to interview a panel of individuals from the pool of survey respondents (Linden 4177-79). However, it was RPC's judgment, because of experience with the preceding surveys in several of which pilot tests were done, that there was no need for such a procedure (Chambers 208).

Of the nonrespondents, the vast majority had moved, leaving no forwarding address.

(CX 279E)

267. RPC attempted to determine whether a discernible difference existed between respondents and nonrespondents to its survey; it selected region of residence for this comparison. No statistically significant differences were found after performance of a Chi-square test.²⁰ On that basis, RPC assumed that there was no reason to believe that the nonrespondents would have responded differently, had they replied to the survey (CX 279E-F; Chambers 178-79). However, the Chi-square test on the basis of region would not disprove bias in the form of self-selection resulting from a grievance against LaSalle if this factor were present in all regions (Zeisel 2605-06). A bias founded on grievance is psychological and there is no real way to measure it (Linden 4209-10).

268. RPC defined a vocationally successful individual as one who obtained a job *or* salary he expected and who could not have obtained *either* without taking the LaSalle course (CX 279F).

269. RPC defined a vocationally unsuccessful individual as one who sought employment but who was unable to obtain any job in the field of his correspondence course since graduation (CX 279F). [84]

270. The RPC survey found that the breakdown of those taking the course for vocational reasons was as follows:

	<i>Total</i>	<i>Comp.</i>	<i>Dec.</i>	<i>Air</i>
Number	258	94	74	90
Percent	53%	59%	46%	54%

(CX 279G)

271. Two-thirds of the respondents to the RPC survey indicated that LaSalle, either through its advertising materials or its representatives, led them to believe that new or better jobs would be available in the field of their correspondence course and that completion of the course would fully qualify them for new or better jobs in the field (CX 279H).

272. Broken down by course, the RPC survey found that LaSalle through its advertising or representatives had led LaSalle graduates to the following beliefs in the percentages indicated:

²⁰ The Chi-square test is a test which tests the likelihood that one distribution differs from another distribution as a matter of chance or because of a real difference in the populations involved (Zeisel 2589-90).

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a) New or better jobs would be available to the graduate in the field of his correspondence course upon completion of the course for which he enrolled?

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
67%	67%	64%	69%

b) Higher salaries would be available to the graduate upon completion of the correspondence course for which he enrolled?

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
44%	45%	38%	48%

c) Completion of the graduate's correspondence course would fully qualify him for a new or better job in the field?

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
64%	62%	70%	61%

(CX 279H) [85]

273. Twenty-five percent of the vocationally motivated graduate respondents to the RPC survey indicated that the possibility of higher salaries was a primary reason for taking the course; 42 percent indicated that the belief that the course would qualify them for a new or better job was a primary motivation; 54 percent indicated that their belief that new or better jobs would be available after completion of the course was a primary reason for taking it (CX 279H-I). The pertinent breakdown of the responses on this point was as follows:

What was the graduate's primary reason or reasons for taking the course?

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
New or better job would be available after completing course	54%	53%	53%	56%
Higher salaries would be available after completing course	25%	28%	18%	29%
Completion of course would qualify me for a new or better job in the field	42%	39%	54%	36%
None of the above	8%	13%	7%	4%

(CX 279I)

274. Eighty-three percent of the graduate respondents to the

RPC survey indicated that they reached those beliefs because of the LaSalle representative or advertising or both (CX 279I).

275. The RPC survey findings on vocational experience may be summarized as follows:

(a) Those vocationally motivated graduates who never worked in the field of their course.

276. Almost two-thirds of all LaSalle Extension University graduates with vocational motivation indicated that they had never worked in the field of their course. Of that group, 64 percent indicated that [86]they did try to find a job in the field, but were unsuccessful. Of those who were unsuccessful in their job pursuit, 64 percent reported that the course they took was not recognized as adequate experience for the job they sought while an additional 30 percent indicated that a lack of jobs prevented them from securing employment in the field (CX 279I).

The breakdown by course of such responses is as follows:

Survey respondents who stated they never worked in the field of course

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	162	63	45	54
%	63%	67%	61%	60%

Survey respondents who stated they tried to find a job in the field of their course.

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
64%	42	28	34

Survey respondents who stated they did not try to find job in field of their course.

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
36%	21	17	20

Of those that tried to find a job, what they believe prevented them from securing the job they wanted or expected.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Course not recognized as	(104)			
adequate experience	64%	25	20	22
Lack of jobs	30%	12	11	8
Inadequate salaries	7%	2	2	3
State of the economy	12%	4	2	6
Other	14%	8	3	4

(CX 279J) [87]

(b) Those RPC survey respondents who were vocationally motivated and were working in the field of their correspondence course at the time of enrollment.

277. Fifty-five (of the RPC respondents) indicated that they were working in the field at the time of their employment. Twenty-three of that group of 55 indicated that they had a new or better job or a higher salary. Fourteen of the 23 reported that the course did help them get a new or better job or a higher salary. Eleven respondents in the group indicated that they would not have gotten a new or better job or higher salary without having taken their correspondence course (CX 279J). Under RPC's definition of success, only the success of these 11 respondents was attributable to LaSalle (CX 279J).

The breakdown by course was as follows:

Those working in field at time of enrollment.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	55	20	10	25
%	21%	21%	14%	28%

Those working in the field at time of enrollment and also working in the field at time of the survey.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	32	14	5	13

Those working in the field at time of enrollment and at time of survey who stated they had a new or better job than when they enrolled.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	17	7	4	6

Those working in the field at time of enrollment and at time of survey who stated they were earning a higher salary since completing course.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	21	10	3	8

[88]Those working in field at time of enrollment and at time of survey who stated the course helped them get a new or better job or higher salary.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	14	5	3	6

Those working in field at time of enrollment and at time of survey who stated they would not have gotten the new or better job or higher salary without the LaSalle course.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	11	3	3	5

(CX 279K)

(c) Vocationally motivated RPC respondents graduating from LaSalle course not

working in the field of their course at the time of enrollment but working in field at time of survey.

278. New entrants into the field of their correspondence course comprise 12 percent of the total vocationally motivated graduate sample. This represents 32 [of the RPC] respondents.

Twenty-three of the 32 indicated that the job they now have is as good as the job they expected to get when they enrolled. Eighteen indicated that the salary that they are earning was what they expected to earn when they first enrolled for the course. Of those 24 individuals who indicated that their job or salary was what they expected when they first enrolled, 16 indicated that their course helped them to get their job or salary. Twelve respondents indicated they could not have gotten their job or salary without having taken the course. Based on the earlier definitions, RPC credited LaSalle Extension University with the success achieved by these 12 individuals (CX 279K-L).

The breakdown of responses on which this conclusion rests is the following: [89]

Those survey respondents who reported they were not working in field at time of enrollment but were working in field at time of survey.

	<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Number	32	7	14	11
%	12%	7%	19%	12%

Those survey respondents stating the job they now have as good as the job they expected to get when they enrolled.

23	5	11	7
----	---	----	---

Those survey respondents stating the salary they are currently earning was what they expected to earn when they first enrolled.

18	3	10	5
----	---	----	---

Of those whose job or salary was what they expected when they enrolled:

Those survey respondents who stated that what they learned in their course helped them get their current job or salary:

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
16	1	10	5

Those survey respondents who stated they would have gotten the current job or salary without having taken the course:

<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
9	4	2	3

Those survey respondents who stated they would not have gotten the current job or salary without having taken the course:

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<i>Total</i>	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
12	0	8	4

(CX 279L)

279. On the basis of its definitions of success, RPC calculated the success rate of vocationally motivated graduates [90] in terms of the ratio of successful graduates to those entitled to expect success. This can be expressed as a fraction where the successful graduates are the numerator and those entitled to expect success, as a result of the LaSalle course, the denominator.

280. With respect to the vocationally motivated graduates in groups a, b, c (above) RPC found:

... 197 of the 258 vocationally motivated graduates in the sample were identified as having pursued a vocational goal after completing their course. Of those who obtained a new or better job or a higher salary, and indicated that they could not have gotten either without having taken the course, the number is 23, or approximately 12%. On a course-by-course basis, the following matrix defines the success rate (CX 279L).

	<i>Comp.</i>	<i>Deco.</i>	<i>Air</i>
Total sample size of vocationally motivated graduates	94	74	90
Tried to find a new or better job or higher salary	71	56	70
Attained new or better job or higher salary	16	15	16
Could not have gotten new or better job or higher salary without having taken the correspondence course	3	11	9
Percentage of success attributed to LaSalle Extension University	4%	15%	10%

(CX 279M)²¹ [91]

2. The CSI Analysis of the RPC Survey Data

281. Consulting Statisticians, Inc. (hereinafter cited as CSI) conducted an independent study of the data collected by RPC. The purpose of the study was to provide the FTC with an analysis of the success of vocationally motivated graduates of the LaSalle computer

²¹ Complaint counsel does not propose that the finding be based on RPC's computation of the success rate. Rather they urge that the Commission adopt the recomputation of the RPC data on this point by Consulting Statisticians Inc. (CB p. 37).

programming, interior decorating and basic air conditioning and refrigeration courses (CX 1081C).

282. The computations by CSI made no attempt to compensate for possible bias in the underlying data (Atkinson 4361-62).

283. Critical to CSI's analysis was the formulation of a definition of success for LaSalle graduates who were vocationally motivated (CX 1081I-J).

CSI formulated three definitions of success:

The broad definition on the basis of the RPC data is that students responding that after graduation they obtained a new or better job or a higher salary are successful.

The narrow definition adds to the requirements for success that the student responded that the LaSalle course was instrumental in their vocational achievement.

A definition based on expectations was formulated by restricting the candidates for success to those responding that they believed upon completion of their course that new or better jobs or higher salaries would be available to them (CX 1081J).

CSI made no judgment as to which was the best definition (CX 1081K).²²

284. CSI judged separately those who were in the field at the time of enrollment and those who were not; this distinction was maintained because members of the two groups were likely to [92] encounter differences in job opportunities and success by virtue of their experience (CX 1081K). There were fewer cases of those working in the field at the time of enrollment than those who were not (CX 1081R-W).

According to the CSI computation, the success rate for graduates working in the field of the course at the time of enrollment was higher than for those not working in the field at the time of enrollment (CX 1081P).

285. In all courses, the broad definition yielded the highest success rate. The narrow and expectation based definitions tended to yield comparable rates and show no consistent pattern among their relative magnitudes (CX 1081P).

286. Overall, the key factor that differentiated the success rates of the three definitions was the requirement, in the narrow and expectation-based definitions, of a statement that the course helped in finding a new or better job or a higher salary. This requirement reduced the narrow and expectation-based rates relative to the broad definition rate (CX 1081P-Q). [93]

287. CSI computed the following success rates under the three definitions:

²² Complaint counsel argues that the narrow definition should be adopted (CBp. 37; CRB p. 40).

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Broad Definition of Success

	<i>Computer Programming</i>	<i>Interior Decorating</i>	<i>Air Conditioning/ Refrigeration</i>
Student working in field at time of enrollment	76.9%	80%	69.2%
Student not working in field at time of enrollment	15.1%	33.3%	24.3%
Aggregate	27.3%	37.7%	36%

(CX 1081R-T) [94]

Narrow Definition of Success

	<i>Computer Programming</i>	<i>Interior Decorating</i>	<i>Air Conditioning/ Refrigeration</i>
Student working in field of course at time of enrollment	38.5%	50%	50%
Student not working in field of course at time of enrollment	1.8%	21.6%	13.2%
Aggregate	8.9%	24.6%	23.1%

(CX 1081U, V, W) [95]

Definition of Success Based on Expectations

	<i>Computer Programming</i>	<i>Interior Decorating</i>	<i>Air Conditioning/ Refrigeration</i>
Student working in field at time of enrollment	33.3%	50%	50%
Student not working in field at time of enrollment	2.5%	26.5%	3.4%
Aggregate	6.5%	27.8%	13.5%

(CX 1081X-Z)

288. The extent to which the different definitions yielded numerically different success rates provides an indication of the inherent ambiguity in defining success (CX 1081 O). In the case of the narrow

definition, the ambiguities were resolved against LaSalle by CSI (Atkinson 4354).

289. The computer programming, interior decorating, and air conditioning courses do not represent a random sample of all the LaSalle courses and, therefore, it is improper to draw any inferences from such findings as to the success of LaSalle graduates in general (CX 1081 O-P).

3. Weight To Be Attributed to RPC Survey Data

290. Bias results in error in survey findings. Bias can be introduced through factors such as a faulty universe or sample, deficient analysis of the data, or the manner in which questions are asked in a survey (Chambers 145-48). Anything which suggests one answer as opposed to another has the potential for creating bias (*Id.* at 201). Put another way, bias relates to lack of reliability, validity and lack of accuracy (Atkinson 4256-57). There is some bias in all research (Chambers 148, 201); however, it is imperative to make the effort to avoid it (Zeisel 2580). [96]

291. As a general rule, covering letters for survey questionnaires should be as innocuous as possible so as not to bias those responding to the survey (Linden 4165; see also Chambers 203-04). Generally, the sponsor of a survey should not be noted where such indication could affect the nature of the responses (Linden 4166).

292. The original draft of the cover letter, utilized in the RPC survey of LaSalle, was submitted by RPC to the Federal Trade Commission and rejected. RPC was told by the Federal Trade Commission that it had to use the cover letter in evidence as CX 279CC. The initial sentence of that letter was drafted by the Federal Trade Commission (Chambers 204-05).

293. The cover letter of the RPC survey had a letterhead stating "Federal Trade Commission, Chicago Regional Office." The first sentence of the letter stated "The Bureau of Consumer Protection is gathering information from people who enrolled in LaSalle Extension University correspondence courses to determine if any action is warranted" (CX 279CC). The survey questionnaire itself was headed with the legend "Bureau of Consumer Protection Questionnaire LaSalle Extension University Graduates" (CX 279DD). The signatory of the cover letter was identified as a Federal Trade Commission attorney (CX 279CC).

294. The cover letter introduced bias on a number of counts. It was on Federal Trade Commission stationery and thus signaled that the survey was an inquiry under the auspices of the Federal government. The references to the Bureau of Consumer Protection

implied that LaSalle's students would require protection. This implication was reinforced by the statement in the letter that the survey was being conducted to determine if any action was warranted. The letter as a whole suggested that LaSalle was under investigation for illegal practices injurious to the consumer (Linden 4165-66; Zeisel 2455-56, 2508).²³

295. The legend "Bureau of Consumer Protection Questionnaire" at the top of the questionnaire reinforced the suggestion inherent in the cover letter that LaSalle students might need protection (Zeisel 2457). [97]

296. The cover letter used in the RPC survey of North American Schools for the Federal Trade Commission did not contain such biasing elements. It was on the letterhead of RPC, mentioned the FTC only once in the body of the letter, and had no reference to an FTC attorney or to a determination of whether action would be warranted. There was no reference to the Bureau of Consumer Protection (RX 271RR; Zeisel 2457).

297. If the objective is to avoid bias, it is not good survey practice to use a cover letter and questionnaire indicating that the purpose of the survey is a law enforcement investigation.

RPC's failure to attempt to ascertain the direction of the bias inherent in the first sentence of the cover letter and the telephone interview (Finding 294, n. 23) did not constitute good survey practice.

298. The cover letter created an atmosphere which increased the likelihood of response from dissatisfied students rather than from those students who had had a positive experience with LaSalle (Linden 4167; Zeisel 2455-56; see also Zeisel 2494-95). The increased likelihood of one group, as opposed to another, responding to a survey may be defined as self-selection (Zeisel 2456).

299. Persons with a grievance or a latent dissatisfaction are more likely to respond to a mail survey and thus select themselves (See Zeisel 2455-56, 2494-95). In a telephone survey, self-selection is for the most part obviated by the nature of the medium. The mail responses were generally less favorable to LaSalle than the telephone responses (Zeisel 2494-99, 2576-78; RX 257N-Q, 257HH).²⁴

²³ "[T]he leading sentence to that [in the cover letter] which was also the leading phrase during the telephone interview, does have a potential for bias" (Chambers 172). (RPC was told that this was required by law (Chambers 172).) The Commission's expert Dr. Chambers while acknowledging this potential for bias stated he did not know which way the bias goes and made no attempt to measure it (Chambers 172).

²⁴ Consider for example question 4 of the survey reading in pertinent part as follows:

4. Did LaSalle Extension University, either through its advertising material or its representative, lead you to believe that

Yes No

a. New or better jobs would be available to you in the field of your correspondence course upon completion of the course for which

(Continued)

The pattern of the mail-[98]telephone responses (RX 257) corroborates the opinion of respondents' expert that the cover letter had the potential for introducing bias by self-selection. [99]

300. Over and above the question of self-selection, the cover letter's suggestion that LaSalle was the subject of a law enforcement investigation and the implied suggestion of wrong doing contained therein was likely to bias, in a manner adverse to LaSalle, the responses to the survey (Zeisel 2456).

301. The decisive bias in the RPC survey was the psychological attitude or emotional feeling of students or ex students toward the school. There was no objective test which would measure this type of bias (Linden 4169-70, 4210).

302. The effect of the bias inherent in the cover letter and the legend "Bureau of Consumer Protection" on the questionnaire of the RPC survey was compounded by the fact that questions concerning subjective issues, such as the students' motives in enrolling and their

you enrolled	[]	[]
b. Higher salaries would be available to you upon completion of the correspondence course for which you enrolled	[]	[]
c. Completion of your correspondence course would fully qualify you for a new or better job in that field	[]	[]

In the context of this survey "yes" answers to question 4a, b, and c were adverse to respondents; conversely "no" responses were favorable to LaSalle.

The record shows the following differences in the rate of "yes" and "no" responses between mail and telephone respondents.

Non-graduates				Graduates			
		Mail	Telephone		Mail	Telephone	
4(a)	Yes	68.2%	70.5%		57.7%	50.6%	
	No	13.6	23.1		29.0	44.4	
	N/R	18.2	6.4		13.4	4.9	
		(RX 257D)			(RX 257P)		
4(b)	Yes	51.7	60.3		34.9	35.8	
	No	19.3	32.1		41.1	59.3	
	N/R	29.0	7.7		24.0	4.9	
		(RX 257E)			(RX 257Q)		
4(c)	Yes	69.9	70.5		56.2	58.0	
	No	13.6	25.6		31.7	42.0	
	N/R	16.5	3.8		12.1	0.0	
		(RX 257F)			(RX 257R)		

The tabulation shows that the percentage of "yes" answers by telephone respondents exceeded the percentage of "yes" answers given by the mail respondents to a number of questions. It is, nevertheless, clear that in the case of each question the percentage of "no" answers given by telephone respondents is significantly larger than the percentage of "no" answers of mail respondents to the same question. Moreover, in the case of every question, the percentage of respondents listed as giving no response is substantially higher in the mail than the telephone category. In the case of every question, the percentage increase of "no" answers by telephone over "no" mail responses significantly exceeds any similar increase in the case of "yes" responses. Accordingly, the inference may be drawn that answers to the questions by those mail respondents, in the no response category would be likely to be more favorable to LaSalle. The overall pattern of respondents to Question 4 therefore supports expert opinion that the survey had the potential for increasing self-selection; respondents hostile to LaSalle would be more likely to respond.

impressions of representations made to them at the time of enrollment, in the case of a third or more of the graduates, related to events three to four years or more prior to the time of the survey (Colloquy Tr. 115, 125; see Linden 4176).

303. A number of key questions in the survey were leading in a manner adverse to LaSalle. For example:

Did LaSalle Extension University, either through its advertising material or its representative, lead you to believe that: [100]

(a) New or better jobs would be available to you in the field of your correspondence course upon completion of the course for which you enrolled? . . . (CX 279DD)

As phrased the question suggested the survey respondents were "led. . . to believe" that the following benefits would be derived from the correspondence course (a) a new or better job, (b) a higher salary, or (c) completion of the course would "fully qualify" the graduate for a new or better job in the field." The suggestion inherent in questions 4a, b, and c was augmented by the fact that no alternative was offered to a, b, or c.²⁵ The question was weighted against respondent.

Moreover, the suggestion inherent in the question was compounded by the effect of the cover letter (Findings 298-300).

304. Because of the interval between the events surveyed and the date of the survey, RPC's failure to include alternative answers of "I don't know" or "I don't remember" may have biased the results. The lack of alternatives forced respondents to the survey to check one of the precoded answers (Zeisel 2461-62, 2483).

305. RPC's precoding²⁶ of certain questions had the potential for introducing bias. The first question concerning the crucial issue of motivation provided three choices as follows:

People take a correspondence course for a variety of reasons. Which statement [101] below best explains your personal reason for taking the correspondence course you did?

- a. To improve my vocational opportunity by getting a new or better job or a higher salary
- b. To learn something new or useful, but not to get a new or better job or a higher salary
- c. Other, please specify (CX 279DD).

²⁵ Question 4(d) asked: "Which of the above, if any, was the primary reason or reasons you enrolled for the course? (answer as many as apply)" As a practical matter, the choice "none of the above" in subpart (d) is really not a choice at all since the survey respondent is only instructed to fill out that subpart to Question 4 if he has already answered "yes" to a, b, or c (CX 279DD).

²⁶ Precoding is the list of multiple choice answers provided for a given question (Zeisel 2509).

A respondent choosing response (a) would be classified as a vocationally motivated student (Chambers 214).

306. The formulation of choices "a" and "b" in question 1 tended to maximize the number checking "a" indicating vocational motivation alone in enrolling in the LaSalle courses. A respondent to the survey with any vocational motive, although slight in comparison to other reasons, was in effect forced to choose "a" over "b" (Linden 4183-84; Zeisel 2458-60). The precoding in this question had the potential for bias since write in answers such as "c" as a general rule receive little response (Zeisel 2458).

307. The list of reasons provided for enrolling by question 1 is unusually lean (Zeisel 2460). Generally, a number of elements go into such a decision and had more options been provided it is likely that there would have been fewer occupationally oriented responses (Linden 4184).

308. In a previous survey of Bell and Howell conducted for the FTC, RPC had distinguished between primary and secondary reasons for enrolling in a correspondence course (Zeisel 2460). In the case of the Bell and Howell questionnaire, the question designed to elicit the reasons for enrollment was formulated with a wider range of choices. The first category was "to get a job in a new or different field;" the second was "to get a better job in the same field;" the third was "to do my job better and to upgrade my skills;" the fourth was "to learn something new or useful but not to get a better job" and the fifth was "if other please specify" (Chambers 215-16).

The two largest responses received to this question in the Bell and Howell survey were "to do my job better to upgrade my skills" and "to learn something new or useful, but not to get a new or better job" (Chambers 216). [102]

309. The phrasing of the question concerning the motivation for enrollment in the LaSalle survey in effect eliminated the choice "to do my job better, to upgrade my skills" (Chambers 219;²⁷ CX 279DD).

The result of eliminating this alternative was to force survey respondents to choose between saying that their primary motive was to get a job or salary increase, and indicating that they did not intend to get a new job or salary increase (Chambers 220-22).

310. The precoding in question 1 of the RPC survey, accomplished by narrowing or "collapsing" the choices in question 1 of the Bell and Howell questionnaire, had the potential to bias the survey results by affecting the success ratio adversely to LaSalle. The precoding in the

²⁷ Q . . . How did you find either doing my job better or upgrading my skills, where is that found in 1-A of the LaSalle questionnaire?

A. Well, its an interpretative point for us. We felt it was a logical collapse (Chambers 219).

LaSalle questionnaire by narrowing the range of choices and "forcing" a choice on the survey respondents had the tendency to maximize those respondents classified as having a vocational motivation (Findings 305-09; Zeisel 2458-60; Linden 4183-84). As a result, the denominator of the success ratio may have been unduly expanded (See Linden 4183-85).²⁸

311. Questions 5-13 of the questionnaire, designed to measure the success of LaSalle graduates, limited the definition of success to "the field of your correspondence course" (CX 279EE; Zeisel 2477-80, 2508). The exclusion of "in a closely related field" from the measure of success precluded, for example, consideration of the benefit of a salary increase [103] attributed to a LaSalle course in a field closely related to the field of training (*E.g.*, Krider 2836-42, 2845, 2849-55).

312. In the Universal survey, conducted for the FTC by RPC, the measure of success was defined in terms of "in the field of your correspondence course or in a closely related field" (Zeisel 2477-78).

313. Excluding consideration of vocational benefit in a closely related field tends to decrease the number of graduates in the numerator of the success ratio and thus diminishes the measure of success calculated from that fraction.

314. The arrangement of precoded answers so that the answer least favorable to LaSalle was frequently placed first had the potential to bias the results of the survey. There is a tendency by survey respondents to check the first alternative in the case of multiple choice answers (Zeisel 2461-64). To avoid such bias, it is good practice to rotate the precoded answers on the questionnaires sent out (Zeisel 2462, 2464).

315. The RPC questionnaire did not measure degree of dedication in seeking a job, *i.e.*, number of employer contacts made in seeking employment (Linden 4194). For that reason, it is difficult to determine, on the basis of this survey, how much credence to give to reasons given by respondents for not getting a job after taking the course (See Question 14, CX 279EE).

316. Question 4 in the RPC survey questionnaire was an attempt to determine the vocational expectations raised by LaSalle's advertising and/or its representatives.²⁹ [104]

²⁸ "... we have this number of people here who may not have had as a prime reason an occupational aspiration, and hence in the subsequent questions will reflect a kind of behavior which accrues to the school negatively. In other words, they would not have been able to find a job if, in fact, they were not really, really occupationally interested or oriented since they were not going to pursue it that diligently" (Linden 4185).

²⁹ 4. Did LaSalle Extension University, either through its advertising material or its representative, lead you to believe that

a. New or better jobs would be available to you in the field of your correspondence course upon completion of the course for which you enrolled

Yes No

[] []

(Continued)

317. The phrase in that question "lead you to believe" in the context of the impression created by the cover letter that LaSalle was the subject of a law enforcement inquiry (Findings 292-95) had the tendency to bias the response to that question (See Zeisel 2465; Linden 4172-73).

318. The effect of leading questions in the survey adverse to LaSalle was compounded by the biasing effect of the cover letter and heading of the questionnaire.

319. A number of changes which distinguish the RPC survey of LaSalle from preceding surveys of other correspondence schools conducted for the FTC by the same survey organization tended to diminish LaSalle's success ratio as computed on the basis of the instant survey (Findings 296, 308-13).

320. The CSI retabulations are affected by the bias inherent in the RPC survey instruments (Finding 282).

321. Neither firm conclusions or confident findings can be based on the RPC survey.

B. The Veterans Administration Surveys

322. Public Law 93-508 requires, for continued Veterans Administration (hereinafter cited as VA) approval, a showing that 50 percent of the persons completing a vocational course were placed in employment in the field for which the course was designed or in a closely related occupation (RX 206). Such surveys were a requirement for all courses certified by the VA for reimbursement to veterans (Hetzel 3131). LaSalle conducted VA surveys of its graduates in 1975 and 1977 (RX 201, 205; Hetzel 3130-31). [105]

323. The VA procedures required schools to survey all graduates or a random sample of graduates (if there were more than 300 graduates in a particular course in the two year period). The questionnaire form which was prescribed by the VA asked graduates whether they had, since completing the course, worked in an occupation "directly related" or "closely related" to the course. If both questions were answered in the negative, the graduates were further asked if they had been available for employment in the field for which training was taken (RX 201K, 205P).

324. The final figure on the survey was an employment percentage or "employment rate" for each course which was calculated by

-
- b. Higher salaries would be available to you upon completion of the correspondence course for which you enrolled ☐ ☐
- c. Completion of your correspondence course would fully qualify you for a new or better job in that field ☐ ☐

adding the graduates who responded that they had worked in positions "directly related" or "closely related" to their training, and dividing by the number of graduates who responded less those stating they had not been available for employment (RX 201M, 205Q). A minimum employment percentage of 50 percent based on this figure was required to obtain or maintain VA approval for purposes of reimbursement (RX 201B, 205B).

325. LaSalle first determined the number of graduates in each of the courses involved for the period under consideration, and selected by sample the number of graduates in each course to meet the VA requirements as to count. LaSalle then mailed to each individual in the sample group the required questionnaire form. It did a follow-up mailing as required by the VA, and where that failed to produce a response, LaSalle made at least three telephone attempts pursuant to the VA instructions to secure the data required to fill in the form (Hetzel 3132).

326. The VA surveys asked students to respond whether since completing the course they had worked in an occupation directly related to this training or whether the respondents to the survey since completing the course had "worked in a closely related job, comparable in level to the type of work for which this course provided training" (RX 201K). The determination of what was a closely related job was left to the students (Hetzel 3134-35).

327. The VA surveys did not take into account whether or not a person was working in the field of his training prior to the time he enrolled in the course (Hetzel 3179).

328. The 1975 VA survey conducted by LaSalle was subject to a government audit which lasted two weeks (Hetzel 3147-48; RX 253). Among the courses audited were basic computer programming, interior decorating, and basic air conditioning and refrigeration (RX 253).

329. LaSalle had submitted forms to the Veterans Administration for 18 courses showing at least a 50 percent employment rate in the same or closely related type of work. The audit for three of the courses showed that they did [106]not meet the 50 percent employment criterion (RX 253L). The courses in which enrollments were suspended as a result of the audit were Complete Law Training, Hotel/Motel Executive Training, and Interior Decorating (RX 253K).

The audit report concluded as follows:

This audit revealed that the school had made some mathematical errors in computing the results of their surveys and that their procedures could be improved; but, the discrepancies found do not appear to be willful attempts to alter the results of the surveys (RX 253L).

330. The final percentages from the VA 1975 and 1977 surveys, for the computer programming, interior decorating, and air conditioning courses, after downward revision by VA auditors and by counsel³⁰ were as follows:

<i>Course</i>	<i>1975 (Survey)</i>	<i>1977 (Survey)</i>
Computer Programming (CX 282J, 288)	58.5%	43.8%
Interior Decorating (RX 253H, 279)	47.5%	49.5%
Air Conditioning and Refrigeration (CX 282R; RX 277) [107]	56.6%	52.7%

1. LaSalle's Adjustment of 1975 VA Survey Figures

331. In the 1975 VA survey, LaSalle asked an additional question of those respondents who were not employed in their field of training but who had stated they were available for employment. Such graduates were asked whether they had contacted employers in an effort to secure jobs (RX 202).

332. Respondent adjusted the success rate by eliminating from the candidates for success those who had not looked for employment.

The following is a comparison of the adjusted and unadjusted figures for three of the courses:

	<i>Unadjusted (CX 282)</i>	<i>Adjusted (RX 203)</i>
Basic Computer Programming	58.5%	69.6%
Interior Decorating	50.6% ³¹	54.4%
Air Conditioning and Refrigeration	56.6%	66.7%

C. LaSalle's 1974 Graduate Survey

333. LaSalle conducted a mail survey of its graduates in November and December 1974. A questionnaire was mailed once to every student who had graduated in the first six months of 1974 (Hetzl

³⁰ The adjustments involved a review of the responses concerning jobs in a field "closely related" to the field of training. Where job titles and description of jobs indicated that jobs were not so related in the reviewers' opinion, the responses were reclassified. The 1975 audit figure in the case of the interior decorating course was revised by VA auditors (RX 253). The 1977 VA survey figures were reviewed and revised separately by complaint counsel and respondents' counsel. Set forth here are respondents' revisions which are somewhat lower than those of complaint counsel (Stipulation October 23, 1979; RX 277, 279).

³¹ The VA audit (Findings 328-30) reduced the unadjusted figure for interior decorating from 50.6 percent to 47.5 percent (RX 253H) applying the same correction to adjusted figure the latter becomes 51.3 percent.

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3142-43; RX 214A-B). The combined response rate for all [108] courses, excluding the high school program was approximately 37 percent (Zeisel 4130, 4149; RX 215, 254B).³²

334. Over 90 percent of those who responded said they were satisfied with their course. Eighty-eight percent responded they would recommend the LaSalle course to others (RX 215B). These figures relate to all courses except the high school course.

The figures for the computer programming, air conditioning and the interior decorating course were as follows:

	<i>General Satisfaction</i>	<i>Willingness to Recommend Course</i>
Computer Programming	79.1%	66.7%
Air Conditioning	79.1%	71.9%
Interior Decorating	94.5%	90.1%

(CX 285-87)

D. Active Student Surveys

335. LaSalle made several mail surveys of its active students at irregular intervals. Such surveys were conducted in September and October 1974; a second survey was made in 1977 (Marshall 3215-16, 3220-21; RX 217).

336. In the 1974 survey of all courses, except the high school program, 96 percent of the respondents stated that up to that point, the course delivered what they expected; in the 1977 survey, the corresponding figure was 95 percent (RX 218C, 222H). [109]

E. Student Testimony concerning the Vocational Value of LaSalle's Correspondence Courses

337. In addition to the surveys, student testimony was offered into evidence concerning the vocational value of LaSalle's courses. The LaSalle students who testified with respect to the interior decorating, computer programming, and air conditioning courses had varied vocational success; their testimony will be reviewed on the issue of little or no worth.

1. Student Testimony about the Vocational Value of LaSalle's Interior Decorating Course

³² LaSalle received 1581 responses and sent questionnaires to 4224 graduates (Zeisel 4130).

338. Of those students in the field of interior decorating who had had no prior education or experience in the field a number were successful in obtaining employment as interior decorators or in related fields or, in applying the skills they learned from LaSalle in the positions they held at the time of enrollment with LaSalle, or in starting their own business (Schaefer 2150-52, 2158; Haselden 2190, 2192, 2199; Perekovich 2392-94, 2403-18; Niemeyer 2718, 2727-29; Murphy 2761-62; Tuma 2781, 2783; Wright 2865-67, 2873, 2878-80; Miller 2925, 2932; Visser 2940-41; Sellers 3256-57, 3262; Ostland 3488, 3495, 3497, 3504; Kuster 3671-73, 3680; Corey 3777-78, 3783-84).

339. The majority of the LaSalle interior decorating graduates who testified had no prior education or experience in the field. Some students, for example, Charles Kohlmyer, had acquired knowledge in related fields prior to enrolling with LaSalle. Although Mr. Kohlmyer had no interior decorating education or experience as such, his prior education in architectural engineering must be considered as related to interior decorating. Mr. Kohlmyer's background, not typical of the ordinary LaSalle student, was no doubt an advantage in his career as an interior decorator (Kohlmyer 3336, 3357-58).

340. Some students, with no prior experience or education in decorating, directly attributed their vocational success in interior decorating to the LaSalle course (Murphy 2776; Wright 2873; Miller 2932). Other students acknowledged that the LaSalle course had been helpful in their work as decorators (Brooks 2698; Tuma 2787-90).

341. Not all of the students testifying with respect to the interior decorating course had been successful in obtaining employment in the field (Muhar 441, Seliga 1251, 1268-71; [110]Templin 1454-55, 1476-78); some students dropped out because they believed they would not be able to achieve their vocational goals with the LaSalle interior decorating course (Patrone 1759-61, 1785). Of those LaSalle interior decorating graduates who testified they were successful in obtaining employment, a number were not involved in a full-line decorating business but were employed in related fields (Schaefer 2154, 2158, 2176 [husband's carpeting business expanded to include wall coverings and draperies]; Haselden 2190 [Gloria's Bath Boutique]; Visser 2940-41 [husband's business in major appliances, hardware, paint and wall paper]; Kuster 3671 [furniture sales]).

2. Student Testimony about the Vocational Value of LaSalle's Computer Programming Course

342. Students enrolled in LaSalle's computer programming course reported varying degrees of success in obtaining employment

as programmers or programmer trainees (Compare Mull 340-47; Pichauffe 1657-58, 1669; with, Wilson 3273-74; Bashista 3529).

343. The two student witnesses who did succeed in obtaining programmer jobs had had some exposure to computers; they had not had any experience in writing programs (Wilson 3269-70, 3273-74, 3278-79; Bashista 3510-13, 3523-24). Ronald Douglas Wilson believed that he received a promotion from operator to computer programmer as a result of the LaSalle course (Wilson 3273-74).

344. Other students did not reap the benefits they anticipated from LaSalle's computer programming course. Neither Bruce Mull nor Lynn P. Pichauffe was able to obtain employment as a computer programmer or computer programmer trainee after graduating from LaSalle (Mull 340-46; Pichauffe 1669). Charles Edward Cline found that LaSalle's computer programming course was not acceptable as continued education for United States Army personnel purposes (Cline 1053-55, 1058-59, 1062-63).

3. Student Testimony about the Vocational Value of LaSalle's Air Conditioning and Refrigeration Course

345. Students with diverse backgrounds enrolled in the LaSalle air conditioning and refrigeration course. Some [111]students had no prior experience or training in the field (for example, Smith 3263-66; Palmer 3895-96; Martin 3941-42); others had some exposure to the servicing of air conditioners and refrigerators or experience in a related field (Diller 1103-04; Potter 2292-94; Sprout 2359), and others had previous training in the field (Waller 652-53, 655; Hanger 2620-23).

346. The previous experience or training of some students had no correlation to their success in obtaining employment in the air conditioning and refrigeration field after completing the LaSalle course. David Diller, who had had some prior experience in the field with the Coast Guard before enrolling in the LaSalle course and who after completing LaSalle's course received an AA degree as an Appliance and Refrigeration Technician, could not find a job as an air conditioning serviceman (Diller 1113-17). In addition, David Waller, John M. Kammer and Robert Dovenbarger testified that they did not secure employment as air conditioning and refrigeration servicemen after taking the LaSalle course (Waller 651, 668-75; Kammer 885, 894-96, 901; Dovenbarger 1481, 1487-92, 1497-99).

347. In contrast, a number of LaSalle graduates reported that they were successfully employed in the field of air conditioning and refrigeration repair after taking LaSalle's course (Hanger 2617; Potter 2298-99; Smith 3287; Palmer 3895-3903; Martin 3939). Some

graduates had opened their own repair shops (Hanger 2617; Potter 2298-99; Smith 3287).

F. Expert Testimony as to the Vocational Value of LaSalle's
Correspondence Courses

348. Educators and employers testified about the vocational value of LaSalle's interior decorating, computer programming and air conditioning and refrigeration course.

1. Expert Testimony concerning the Vocational Value of LaSalle's Interior Decorating Course

349. Expert opinion in the record indicates that the materials in the LaSalle course covered the basics of interior [112]decorating on a fundamental level (Genis 3401-02, 3427-28).³³ The LaSalle course provided "basic knowledge—essential and fundamental, but no more" and the course while "it offers exposure" would not "make one an Interior Designer" (Letter Arline Genis to Respondents' Counsel May 1, 1979; CX 1032). According to expert opinion, experience in the field was essential or desirable in the training of interior decorators for more advanced or sophisticated levels (Walker 530; Genis 3438-39, 3445; Rankin 1340). In the words of respondents' expert, those LaSalle graduates who "would pursue [interior decorating] careers would find it necessary to have continuing education in the field" (CX 1032).

350. The ordinary and typical LaSalle graduate without some practical experience would not be qualified to open his own full line decorating service (Walker 527-28, 530; Rankin 1339-40; see also CX 1032).

351. Most experts or employers agreed that the LaSalle interior decorating graduates without further training or experience would be best qualified for a retail sales position (Lewis 429; Walker 535; Rankin 1344-45; Wimbush 3034-35).

2. Expert Testimony concerning the Vocational Value of LaSalle's Computer Programming Course

352. The LaSalle computer programming course was reviewed by several experts in the field of computer programming education. One expert found the course to adequately serve as an introduction to data processing with COBOL (Hamblen 1189, 1192, 1235-36). Another

³³ Respondents expert Arline Genis stated in this connection "And when I say basic and fundamental, I mean just that. It opens up the curiosity. . . It does not in any way prepare for a total career. But it is a good introduction I think" (Genis 3428).

expert was of the view that the LaSalle course gave a good representation of the basic principles on which computers work (Safford 3567). The course's primary problem in achieving the course objectives was the lack of opportunity for a student to run a program through a computer and then to check for errors (Engel 977, 993; Hamblen 1202, 1236).[113]

353. Graduates of the LaSalle course would have an advantage in securing various semi-clerical positions in the data processing field because of familiarity with the terminology (Hamblen 1208-09) or in gaining acceptance into a training program for computer programming (Safford 3601); they would not qualify as beginning programmers (Hamblen 1208-09, 1247-48; Engel 1001-02).

3. Expert Testimony concerning the Vocational Value of LaSalle's Air Conditioning and Refrigeration Course

354. Although the LaSalle course would not qualify the ordinary graduate as a mechanic, the course did provide knowledge of the fundamental principles of air conditioning and refrigeration (Laham 732;³⁴ Wintersdorf 1522, 1525; Lupson 3998-99).

355. The major drawback to LaSalle's course was the lack of hands-on experience (Laham 735-36; Ritchie 1084; Wintersdorf 1525-26, 1551-52). A student, with no training or experience other than LaSalle would be qualified to enter the field as an apprentice³⁵ (Laham 735; Lupson 4090; Wintersdorf 1525). Although such a graduate would be qualified to handle simple problems he would need supervision (Laham 715, 718-19, 726-27; Lupson 3998-99) and would therefore not qualify as a mechanic or fully qualified serviceman (Lupson 3999; Laham 733). Moreover, hands-on experience may play an important role in choosing apprentices or trainees in a field which may be overcrowded (McCarty 625-26, 630-31; Ritchie 1090-91; Lupson 4089-90). [114]

VIII. Respondents Had Notice That Certain of Their Representations May Have Been Misleading and Unfair

A. Demand Representations

356. In August 1975, respondents submitted their self-evaluation report to the NHSC (CX 327). In that report, respondents included

³⁴ "From an introductory point of view, as far as basic knowledge goes it [LaSalle's treatment of air conditioning and liquid chilling systems] was handled very well. As far as teaching a man to go in and become a mechanic, I don't feel it was in depth enough" (Laham 732).

³⁵ "An apprentice will always be supervised by a mechanic or shopman or somebody to insure that what they are doing is proper and what we have requested of them" (Lupson 3999).

an outline of the course objectives for the computer programming course.

357. In December 1975, the report of the Chairman of the NHSC Accrediting Commission found that "the educational objective for Basic Computer Programming, i.e., to provide the student with a basic coding skill at the level to be considered for a position as a computer programmer trainee, is not met by completing the course" (CX 328A, H, K).

358. On January 31, 1976, the NHSC Accrediting Commission, with the notice of reaccreditation, transmitted the following specific criticisms of the LaSalle Computer Programming Course:

I. 2 Appropriate Objectives—The student does not acquire a job skill at the level to be considered for a position as a computer programmer trainee.

II. 1 Comprehensive Instructional Materials—The programming language (COBOL, RPG, FORTRAN IV) instructional materials do not provide the in depth coverage required to train a student to code and/or modify a program.

III. 1 Examination Service—The COBOL language exams (Volumes III and IV) and the optional RPG and FORTRAN IV exams are unsatisfactory. The majority of questions are multiple choice, and do not test the student's ability to code and test the coded problems on the computer. Separate exams should be given for all lessons in Volumes III and IV.

I have never taken, or taught, or heard of a programming course that does not have the student write at least one program. The examinations in [115]this course are entirely multiple choice and do not provide the student with the coding experience that he needs. Grading coded programs are (sic) considerably more difficult than grading multiple choice questions but nevertheless the student at least needs to know if his coding would work if it were placed in a computer. This would also eliminate the chance of the student scanning the textbooks for the "key answer," since there are no "key answers" in coding a program.

The course objectives are also vague. The booklet states that "this training, combined with the graduates personal ability, prepares him to enter the field as a Computer Programmer Trainee. . ." Yet it also states that "It takes training and experience to handle the programming assignments. . ." The brochure generally implies that the student should be able to acquire a job as a Computer Programmer Trainee upon completion of the course. In today's economy, this seems overly optimistic.

Recommendations—if the technical material were toned down, this would be an excellent course for non-EDP personnel who either come in contact with computer reports on peripheral basis or must discuss problems with EDP personnel and desire a better working knowledge of computer terminology and programming. Under this format, there would not be a requirement, as I believe currently exists under the present format, for a computer in order to meet the proposed course objectives (CX 330A-B, D-E).

359. In the same period, respondents were on notice, as a result of the accreditation process of NHSC, that the LaSalle interior

decorating graduate with no further training might not be able to achieve the objectives for that course (CX 328H) and that the respondents' course objectives for that course did "not reflect an awareness of nor state the necessity for actual on-the-job mastery" (CX 328K).

360. In the same period, respondents were put on notice, through the NHSC accrediting process, that graduates of the air conditioning and refrigeration course might not be able to fulfill the vocational objectives of that course. LaSalle was advised that although the course is basic, "it seems necessary to provide hands-on training kits to novices who enter a [116]technical field where maintenance and servicing of equipment, to some extent, must be practical vocational objectives" (CX 328L).

361. Respondents as a result of the comments of the NHSC accrediting committee were put on notice that, absent further training, the course objectives of the interior decorating, computer programming, and air conditioning courses might not be met, and that as a result their representations regarding the vocational qualifications of graduates in those courses may have been misleading.

362. The notice to respondents that their representations as to the qualifications of graduates of those courses may have been misleading also put respondents on notice that their representations as to the demand for and earnings potential of such graduates may have been deceptive.

B. Selectivity

363. Respondents' advertising and promotional claims had the tendency to create the impression that, over and above standard minimum age and educational requirements, students were screened for aptitudes necessary or helpful to successful completion or assimilation of particular courses (Findings 275). Since respondent did not screen for such aptitudes (Finding 256), it should have known such representations were misleading.

C. Cancellation and Tuition Refund

364. Respondents knew or should have known that the failure to disclose material facts concerning their cancellation and refund policy was misleading and unfair (Findings 211-13, 222-23). [117]

DISCUSSION

The complaint charges Macmillan, Inc. and its wholly-owned subsidiary, LaSalle Extension University, with violation of Section 5 of the Federal Trade Commission Act. Respondents, it is alleged, have committed unfair acts and practices in connection with the offering for sale and sale of correspondence courses in commerce.

The violations charged are not novel. They involve allegations that the demand for and earnings potential of graduates of LaSalle's courses have been misrepresented. The complaint further alleges that respondents misrepresented that their graduates would be qualified to secure employment in the fields for which they trained without further training and experience, and that prospective students would be screened to determine that they had the qualifications and ability to successfully assimilate and complete respondents' courses.

Other charges allege that respondent had no reasonable basis to support the representations concerning the demand for their graduates in the fields for which they trained.

The complaint also charges that respondents have disparaged the potential career opportunities, education and self-image of prospective students in conjunction with representations that LaSalle's correspondence courses could improve their personal characteristics. Such disparagement, it is alleged, aggravates the deceptive and unfair effect of other representations and is therefore unfair.

Other allegations charge that respondents misrepresented or failed to disclose the true nature of the financial obligation incurred when the contract was signed and that they induced prospective students to execute enrollment contracts without affording sufficient time to consider such purchase.

Finally, respondents are charged with unfairness in failing to refund tuition when payment was induced by unfair or deceptive acts and the courses were of little value in fulfilling the expectations raised by respondents' representations.

The issues to be resolved after trial run the gamut of the charges in the complaint. Without repeating the details of the charges, it is evident that the basic issue is the proper construction of respondents' advertising and promotional materials as well as statements made in the course of the sales presentation. In that connection, it must be determined whether respondents have failed to disclose material facts in their promotion of the courses. [118]

Most of the litigation effort herein was expended on the issue of restitution. Respondents challenge the Commission's authority to

order restitution in an administrative proceeding pursuant to Section 5 of the Federal Trade Commission Act. In addition, respondents claim that complaint counsel have not met their burden of proving that the courses were of little or token value for the purposes for which they were taken.

I. Construing Respondents' Promotional and Advertising Claims To Ascertain the Representations Made

The proper construction of respondents' advertising and promotional claims is a major issue. The following general principles apply to the interpretation of the advertisements under consideration.

Proof of actual deception or intent to deceive is not prerequisite to establishing a violation of Section 5 of the Federal Trade Commission Act. Misrepresentations are condemned if they possess a tendency to deceive. *Trans World Accounts Inc. v. FTC*, 594 F.2d 212, 214 (9th Cir. 1979); *Resort Car Rental System Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied, sub nom. MacKenzie v. United States*, 423 U.S. 827 (1975); *Montgomery Ward & Co. v. FTC*, 379 F.2d 666, 670 (7th Cir. 1967).

Consumer testimony is not required to establish a violation.³⁶ "[T]he Commission may draw its own inferences from the advertisement and need not depend on testimony or exhibits (aside from the advertisements themselves) introduced into the record" *Carter Products Inc. v. FTC*, 323 F.2d 523, 528 (5th Cir. 1963). *Resort Car Rental Systems v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975); *Royal Oil Corp. v. FTC*, 262 F.2d 741, 745 (4th Cir. 1959).

The test of whether promotional materials and advertisements are false and misleading is the overall impression they are likely to make on the buying public. *Carter Products Inc. v. FTC*, 323 F.2d 523, 528 (5th Cir. [119]1963); *Murray Space Shoe Corporation v. FTC*, 304 F.2d 270, 272 (2nd Cir. 1962); *Charles of the Ritz Distr. Corp. v. FTC*, 143 F.2d 676, 679 (2nd Cir. 1944).

In its review of advertising, "[t]he Commission is concerned with protecting the trusting as well as the suspicious, the casual as well as the vigilant, the naive as well as the sophisticated." *Colgate-Palmolive Co.*, 59 F.T.C. 1452, 1464 (1961), *vacated and remanded*, 310 F.2d 89 (1st Cir. 1962), on remand from First Circuit 62 F.T.C. 1269 (1963), *vacated*, 326 F.2d 517 (1st Cir. 1963), *rev'd*, 380 U.S. 374 (1965).

³⁶ Although some student witnesses did testify about their impressions of LaSalle's promotional scheme, the deception issue has been resolved primarily on the basis of LaSalle's advertisements, course brochures, and standard sales presentation. In addition, the opinions of experts have been considered in evaluating the qualifications of graduates for employment.

A. Respondents' Representations As to the Demand for,
Qualifications of and Earnings Potential of Their Graduates

Respondents' advertising and promotional materials were part of a total scheme to market LaSalle's courses in which the pervasive theme was success through LaSalle. In connection with that theme, respondents represented that there was a need or demand for LaSalle graduates, that LaSalle graduates could expect to earn high salaries, and that typical and ordinary LaSalle graduates would be qualified to enter the field for which they were trained with no prior education or further experience or training (Findings 88, 91, 92-119, 132-54, 172-93). The ordinary and typical LaSalle graduate did not have the qualifications represented and such claims had the capacity to deceive (Findings 120-31, 155-71, 194-99).

The above mentioned representations were conveyed at successive stages of respondents' contact with prospective students beginning with the advertisements, continuing with a brochure mailed to the prospect, and concluding with a LaSalle representative's sales presentation (Finding 88). The evidence pertaining to these representations and the allegations that such representations were false and misleading related to LaSalle's computer programming, interior decorating and air conditioning and refrigeration courses.

In a number of instances (CX 4A, 5A, 6A, 8A; RX 20), respondents affirmatively represented that LaSalle graduates would be able to earn higher salaries and meet the qualifications required for certain positions. For example:

What does it take to earn higher pay? First, pick an uncrowded field where you have the chance to move ahead fast. Second, prepare with the right training—LaSalle training (CX 5A). [120]

In other instances, the point was made indirectly through use of testimonials which implied that the success portrayed therein was ordinary and typical for LaSalle graduates (Finding 89).

A deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact. *Baker Franchise Corporation v. FTC*, 302 F.2d 258, 261 (3d Cir. 1962); *Feil v. FTC*, 285 F.2d 879, 896 (9th Cir. 1960); *Aronberg v. FTC*, 132 F.2d 165, 167 (7th Cir. 1942). Respondents use of testimonials had the capacity to deceive.

Once a misleading overall impression has been created, as in this case by LaSalle's repeated reinforcement of the success through LaSalle theme in numerous advertisements, course brochures and through its sales representatives, explanations, disclaimers, or caveats are not likely to save the consumer from being misled.

Waltham Precision Instrument Co., Inc., 61 F.T.C. 1027, 1047 (1962), *aff'd*, 327 F.2d 427 (7th Cir.); *cert. denied*, 377 U.S. 992; *rehearing denied*, 379 U.S. 872 (1964). Even though LaSalle did use terms such as “exceptional” and “most successful” when referring to the success of graduates featured in the testimonials, the net impression created was that such success was ordinary and typical of LaSalle graduates. The terms “exceptional” and “most successful” did not serve to mitigate nor to correct the false impressions created by the promotional materials.

Nor did subsequent qualifications in the brochures cure the initial deception of the advertisements. For example, in the computer programming brochure the text states:

LaSalle can provide you with basic computer programming training. *If you combine this training with on-the-job experience*, you will discover what interesting work computer programming can be (CX 103C, 106C) (emphasis added).

Such a statement, indicating additional experience or training would be necessary to be a computer programmer trainee, is overshadowed by repeated representations that LaSalle's graduates would be qualified without further training or experience (Findings 146-47). Furthermore, the courts have found that when the initial contact with the consumer is procured by misrepresentation, as in LaSalle's advertisements, subsequent events or representations do not expunge the original [121]wrong. *Exposition Press Inc. v. FTC*, 295 F.2d 869, 873 (2nd Cir. 1961), *cert. denied*, 370 U.S. 917 (1962); *Carter Products v. FTC*, 186 F.2d 821, 824 (7th Cir. 1951).

In some instances, LaSalle's promotional materials contained conflicting or ambiguous statements about the anticipated level of entry of respondents' graduates in their career field (Findings 124, 126).³⁷ Ambiguous statements “susceptible of both a misleading and a truthful interpretation will be construed against the advertiser.” *Murray Space Shoe Corporation v. FTC*, 304 F.2d 270, 272 (2nd Cir. 1962); *Rhodes Pharmacal Co. v. FTC*, 208 F.2d 382, 387 (7th Cir. 1953), *modified by restoring Commission's order in toto*, 348 U.S. 940 (1955).

LaSalle's advertisements, in the case of the interior decorating and air conditioning courses, represented that its graduates would be able to open their own businesses a career choice which implies an

³⁷ Consider, for example, the statement of objectives for the interior decorating course (see Finding 124). The statement that the course provides “basic knowledge” of various phases of interior decorating including procedures for establishing a decorating business is succeeded by the statement that upon completion graduates would be able “to apply sound decorating principles . . . to the complete design of one or more rooms in private homes or commercial establishments.” The latter statement implies that the ordinary graduate will be able to function at an advanced level. Such a claim is ambiguous in light of the statement that the knowledge provided is “basic”. In accordance with precedent, the ambiguity is to be resolved against respondents.

ability to perform at an advanced level in the chosen field without further training or supervision. In one advertisement, respondents equated LaSalle graduates with “trained beginners” and linked that term to “plenty of chances for a business of your own” (CX 5A).³⁸ To the extent that this and other representations were ambiguous, they are to be resolved against respondents. The claim had the capacity to create the impression that their graduates could function as fully qualified air conditioning service and installation men [122] without further training and supervision. Certain other representations concerning the ability of graduates to start their own businesses were essentially unambiguous.³⁹

Finally, respondents typical interior decorating, computer programming, and air conditioning graduates were not qualified, without further training or supervision, to enter the job market at the levels represented in respondents’ advertising and promotional materials (Findings 120–30, 155–71, 194–99). As a result such materials had the capacity to mislead.

Since respondents’ typical graduates of the courses in question did not have the qualifications represented, the related earnings and employment representations for graduates in those fields of necessity also had the capacity to deceive (Findings 130–31, 170–71, 198–99).

B. Respondents Did Not Disclose Material Facts about the Cancellation and Refund Policy

Although no false facts are stated, the failure to disclose material information may cause advertisements or promotional [123]materials to be false and deceptive. *Simeon Management Corp. v. FTC*, 579 F.2d 1137, 1145 (9th Cir. 1978).

In the course of marketing their courses, respondents failed to adequately disclose the number of lesson assignments to be submit-

³⁸ Air Conditioning & Refrigeration

Field welcomes trained beginners. Good pay, good future—with plenty of chances for a business of your own (CX 5A).

³⁹ You can now train for a decorating career at home . . . You can prepare for a variety of positions leading to fine salaries—or plan to go into a profitable business for yourself . . . (CX 6B).

They turned their love for decorating into a dream career

• • • • •

I have formed my own company . . . also have an associate to work with me. We are doing offices, private homes and model home complexes (CX 9B).

Air Conditioning and Refrigeration

Big futures in air conditioning—with plenty of chances to start a business of your own! . . . (CX 4A).

ted in a course and the fact that lesson assignments were in some cases unevenly distributed throughout the course.⁴⁰ These were material facts necessary for the student to calculate his tuition obligation which was based on the number of lesson assignments he submitted for grading (Findings 200-28; see also pp. 144-45). The non-disclosure of these material facts combined with the confusion arising from LaSalle's inconsistent use of terminology had the tendency and capacity to mislead students about the nature and extent of their tuition obligation.

II. Restitution

Complaint counsel seeks restitution for graduates of LaSalle's computer programming, interior decorating, and air conditioning and refrigeration courses (CB 31). Respondents, citing *Heater v. FTC*, 503 F.2d 321 (9th Cir. 1974), assert that the Commission has no authority to order restitution in a Section 5 administrative proceeding; however, the Commission has not acquiesced in that decision. *Genesco, Inc.*, 89 F.T.C. 451, 478 (1977); *Lafayette United Corp.*, 86 F.T.C. 1093, 1095 (1975); *Holiday Magic, Inc.*, 85 F.T.C. 90 (1975). A restitution order in the administrative proceeding cannot be foreclosed on the basis of *Heater*.

Restitution is sought pursuant to the allegations of Paragraph 14 of the complaint. Those charges allege unfairness on the ground of respondents' failure to refund tuition when payment was induced by unfair and deceptive acts and where the courses were of little value in fulfilling the expectations raised by LaSalle's representations or contracts.

Different standards apply in determining when restitution is appropriate in the case of an administrative order to cease and [124] desist issued under Section 5 and when it is appropriate in the case of a proceeding under Section 19 of the FTC Act, in a Federal District Court. Section 19 is a consumer redress statute. In comparison, cease and desist orders of the Commission are intended to prevent illegal practices in the future not to exact compensatory damages for past acts. *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952). The Commission has ruled "that an [administrative] order directing restitutionary relief in such situations would not be for the purpose of redressing private injuries even though it may have the incidental effect of benefitting private individuals." *Curtis Publishing Co.*, 78 F.T.C. 1472, 1516 (1971).

⁴⁰ For example, if more than half of the lesson assignments to be submitted were included in the first volume of text, a student could become obligated for all the tuition at the end of that volume even though there were two additional volumes of text remaining in the course.

The critical question, in a Section 5 administrative proceeding seeking restitution, is the particular relief required to cure the unfair or deceptive acts documented in the individual case. It is necessary to "look beyond the challenged deceptive practices (they, after all, can be effectively remedied by proscribing specifically-described representations and by requiring affirmative disclosures)" to determine whether *retention* of funds obtained as a result of misrepresentation is in and of itself unfair. Where the retention of funds is unfair, restitution is the only appropriate remedy. *Credit Card Service Corp.*, 82 F.T.C. 191, 207 (1973); *Curtis Publishing Co.*, 78 F.T.C. at 1516.

A seller's retention of customer's funds has been defined as unfair "where the consumer, as a result of deception or fraud on the part of the seller, pays for a product or service but receives nothing of value in return or receives something that is either worthless or of only token value." *Universal Credit Acceptance Corp.*, 82 F.T.C. 570, 647-48, 650 (1973), *aff'd sub nom.*, *Heater v. FTC*, 503 F.2d 321 (9th Cir. 1974) (reversed solely as to the authority of the Commission to order restitution);⁴¹ *Curtis Publishing Co.*, 78 F.T.C. at 1516; *Credit Card Service Corp.*, 82 F.T.C. at 207-08.

In determining whether retention of funds is in and of itself unfair, two situations must be distinguished. The first is where the seller has exaggerated the value of a product or service which does have value, although its value is not as represented, *Credit Card Service*, 82 F.T.C. at 208. The second is where the disparity between the representations and the [125]ability of the product or service to fulfill those representations is so great that it has little or no worth for the purpose for which it was purchased, *Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 631-37 (1978). *Credit Card Service*, in explaining the criteria of worthlessness, distinguished between products or services having no value and instances where value has been misrepresented.⁴² In that case, restitution was denied where the protection given by a credit card service of \$50 possible liability per card was considered of more than token value even though the service did not protect respondents' cardholders "from the crushing liability described by respondents." 82 F.T.C. 208.⁴³

The criteria for a finding of worthlessness were further defined in *Raymond Lee Organization*, 92 F.T.C. 489 (1978). In that case, the

⁴¹ It is clear, in view of the Commission's non-acquiescence in *Heater*, that the Commission still adheres to the principles enunciated in *Universal Credit Acceptance Corp. Genesco, Inc.*, 89 F.T.C. 451, 478 (1977); *Holiday Magic, Inc.*, 85 F.T.C. 90 (1975).

⁴² "... demonstrating that the value of respondent's service is grossly exaggerated is not the same as showing that it is of no value." *Credit Card Service*, 82 F.T.C. at 208.

⁴³ In addition, the service resolved billing errors with credit card issuers and obtained new cards for persons whose cards had been lost or stolen, *Credit Card Service*, 82 F.T.C. at 208-09.

Commission for the first time expressly adopted what has been termed a relative standard of value. In accordance with that standard, the value of a product or service is not determined in a vacuum, but is decided relative to the claims made for it. Based on a relative standard, RLO, a patent and license promoting company, was found to offer a service of little or no worth. Not only did RLO generally fail to obtain patents or licenses thereby enabling customers to achieve the represented monetary rewards, they also failed to perform any service of value monetary or otherwise.

Therefore, if the sale of a product or service is secured by misrepresentation, retention of the purchase money is unfair where the product or service are worthless. However, where the product or service has more than token value, in relation to the claims made, the appropriate remedy is an order prohibiting the misrepresentations in issue as well as affirmative disclosure. *Raymond Lee Organization*, 92 F.T.C. at 631-37; *Credit Card Service*, 82 F.T.C. at 208-09.

The value of LaSalle's courses must be judged in light of the representations made about the courses. The question remains whether complaint counsel has met the burden of proof under the relative standard. [126]

The evidence concerning the value of respondents' courses consists primarily of surveys of LaSalle's students. In addition to the surveys, student testimony and expert opinion as to the value of the courses bears on any determination that the courses in question were of little or no worth.

At the heart of complaint counsel's case is a survey by the Research Planning Corporation (hereinafter designated as RPC) designed to measure the success of LaSalle's vocationally motivated graduates of the computer programming, interior decorating, and air conditioning and refrigeration courses.

The RPC survey of LaSalle graduates was designed essentially to measure the occupational success of those graduates whose vocational motivation prompted them to enroll in respondents' courses. In order to measure the success of LaSalle's vocationally motivated graduates, the RPC survey analyzed two areas. First, what motivated the students to take their course and how, if at all, LaSalle or its representatives influenced that motivation and second, what was the vocational and financial experience of the individuals taking such courses (CX 279C; Finding 259).

The results of the RPC survey were recomputed by Consulting Statisticians Inc. (hereinafter cited as CSI) on the basis of a narrow definition of success. Under this narrow definition, a vocationally

motivated LaSalle graduate, who responded that after graduation he obtained a new or better job or a higher salary, was considered successful if he also responded that the LaSalle course was instrumental in that achievement (Finding 281-87).⁴⁴

Complaint counsel maintains that the success rate, as recomputed by CSI under the narrow definition, demonstrates that the three courses in question were of little or no value in fulfilling the course objectives which LaSalle had represented could be achieved on graduation. On that basis, complaint counsel contend that it was unfair for LaSalle to accept and fail to refund money obtained from students who were unable to accomplish the vocational goals which respondents had represented to be attainable by the ordinary and typical LaSalle graduate (CB 28-31). [127]

According to the survey results, as computed by CSI, 1.8 percent of all vocationally motivated LaSalle computer programming graduates not working in the field at the time of their enrollment had obtained a new or better job upon completion of the course and had indicated that the course helped them to do so. The comparable figure was 21.6 percent for interior decorating graduates and 13.2 percent for air conditioning graduates (Finding 287).

The aggregate figures for students achieving vocational objectives, including both those graduates working in the field and those not working in the field of the course at the time of enrollment, were substantially higher—8.9 percent in the case of computer programming, 24.6 percent in the case of interior decorating, and 23.1 percent in the case of air conditioning and refrigeration (CX 1081U, V, W)—than the figures based solely on those graduates who were not working in the field at the time of enrollment (Finding 287).

However, the threshold question is the validity of the survey. Respondents maintain that the RPC survey suffers from a number of defects in methodology which irreparably bias the results and, that because of such bias the survey should be given no weight. The RPC survey, in fact, suffered from a number of critical flaws.

One the most serious defects in the RPC survey instrument was the cover letter addressed to survey respondents. Under the letterhead of the "Federal Trade Commission, Chicago Regional Office," the letter began "The Bureau of Consumer Protection is gathering information from people who enrolled in LaSalle Extension University correspondence courses to determine if any action is warranted." The cover letter was signed by an individual identified as a Federal

⁴⁴ CSI also recomputed success rates under a broad and expectation based definition of success (Findings 283, 287). Since complaint counsel urges adoption of the narrow definition, the discussion will be confined to the recomputation under that definition.

Trade Commission attorney. In addition, the accompanying survey questionnaire was headed with the legend "Bureau of Consumer Protection Questionnaire, LaSalle Extension University Graduates" (Finding 293).

The cover letter introduced bias into the survey on a number of levels. Use of Federal Trade Commission stationery signaled that the survey was an inquiry under the auspices of the Federal government, references to the Bureau of Consumer Protection implied that LaSalle's students required protection, and statements in the letter that the survey was being conducted to determine if any action was warranted implied that LaSalle's conduct was questionable. As a whole, the letter suggested that LaSalle was under investigation for illegal practices injurious to the consumer (Finding 294).

As a general rule, covering letters for survey questionnaires should be as innocuous as possible so as not to bias those responding to the survey. The sponsor of a survey should not be noted where such indication could affect the [128]nature of the responses. The use of a cover letter and questionnaire indicating that the purpose of the RPC survey was a law enforcement investigation was not consistent with good survey practice (Findings 291, 297).

The cover letter created an atmosphere in which dissatisfied students would be more likely to respond than those who had had a positive experience with LaSalle. In general, persons with a grievance are more likely to respond to a mail survey. The effect of the cover letter was to induce self-selection by those graduates hostile to LaSalle (Findings 298-99).

The question of self-selection aside, the cover letter, by stating that LaSalle might be the subject of a law enforcement investigation and by implying wrong doing on the part of LaSalle by the fact of an FTC investigation, was likely to bias the responses to the survey questions in a manner adverse to LaSalle (Finding 300).

The effect of the bias inherent in the cover letter and the legend "Bureau of Consumer Protection" on the questionnaire was compounded by the fact that questions concerning subjective issues such as the students' motives in enrolling and their impressions of the representations made to them at the time of enrollment related, in a substantial number of cases, to events four or more years prior to the time of the survey (Finding 302).⁴⁵

Certain key questions in the survey were phrased in a leading manner adverse to LaSalle (Finding 303). The effect of such leading

⁴⁵ Complaint counsel urges that the VA surveys also suffer by virtue of a time lag between the events surveyed and the survey itself. The critical difference is that the VA surveys were not subject to a number of sources of bias, as was the RPC survey, which compounded the problem of age.

questions was compounded by the biasing effect of the cover letter and the heading on the questionnaire (Finding 303).

In addition, the precoding (multiple choice answers) in certain questions in the survey instrument had the potential for introducing bias adverse to LaSalle (Findings 305-10). For example, in question 1, the narrow list of reasons provided for enrolling may have raised the percentage of vocationally oriented responses in a manner adverse to respondents. Since the number of vocationally oriented responses formed the denominator of the success ratio, the answers to question 1 materially affected the survey results (Finding 310). [129]

Questions 5-13 of the questionnaire excluded from success those students who got a new or better job in a field closely related to the field of training. These questions were adverse to LaSalle as they narrowed the number of responses classified as successful. In this connection, a salary increase attributed to a LaSalle course in a field closely related to the field of training would also be excluded (Finding 311).

Significantly, the RPC questionnaire did not ascertain or measure the degree of effort expended in seeking a job after graduation. The survey did not inquire about the number of interviews students obtained when seeking employment. Therefore, it is difficult to determine, on the basis of the RPC survey, how much credence to give to reasons of survey respondents for not getting a job after taking the course (Finding 315).

There is a tendency by survey respondents to check the first alternative in the case of multiple choice answers. The arrangement of precoded answers in some key questions so that the answer least favorable to LaSalle was placed first had the potential to bias the survey results. To avoid such bias, it would have been good practice to rotate the order of the precoded answers on the questionnaires (Finding 314).

The RPC survey questionnaire and the accompanying cover letter had the tendency to bias the survey results. Since surveys involve hearsay, proper safeguards must be observed to insure their reliability and accuracy when they are used as evidence. *Pittsburgh Press Club v. United States*, 579 F.2d 751, 758 (3d Cir. 1978). As the Seventh Circuit has noted in a Federal Trade Commission case, "the value of a survey depends upon the manner in which it was conducted—whether the techniques used were slanted or fair." *Rhodes Pharmaceutical Co. v. FTC*, 208 F.2d 322, 387 (7th Cir. 1953), *rev'd in part on other grounds*, 348 U.S. 940 (1955).

The factors to be considered in determining whether a poll or a

survey meets generally accepted survey principles may be summed up as follows:

. . . A proper universe must be examined and a *representative* sample must be chosen; the persons conducting the survey must be experts; the data must be properly gathered and accurately reported. It is essential that the sample design, the questionnaires and the manner of interviewing meet the standards of objective surveying and statistical techniques. Just as important, the survey must be conducted independently of the attorneys involved in the litigation. The interviewers or sample designers should, of course, be trained, and ideally should be unaware [130] of the purposes of the survey or the litigation. *A fortiori*, the *respondents* should be similarly unaware. . . . *Pittsburgh Press Club v. United States*, 579 F.2d at 758.

The cover letter which accompanied the RPC survey was re-phrased in response to the Federal Trade Commission's request (Finding 292 and n. 23). Such action evidences involvement by the Commission in the manner in which the survey was conducted.

The danger of faulty memory on the part of survey respondents affects the weight to be given to a survey. In the case of some questions, particularly subjective questions, this is a greater danger than in the case of others. *Pittsburgh Press Club v. United States*, 579 F.2d at 758. In the instant case responses to subjective questions such as those concerning vocational motivation may have been affected by the number of years between the date of the student's enrollment and the date of the survey (Finding 302).

In addition, a survey may well be inadmissible or should be given no weight if the questions are "unfairly worded so as to suggest answers favorable to the party sponsoring the survey." In such a case, the required circumstantial guarantees of trustworthiness would be lacking, *Pittsburgh Press Club*, 579 F.2d at 758. Certain of the leading questions in the RPC survey and precoding of certain responses had the tendency to bias the survey results in a manner adverse to LaSalle (Findings 303, 305-10).

The RPC survey does not meet the requirements of circumstantial guarantees of trustworthiness, prerequisite to reliability. In addition to the above stated factors, the cover letter signaled the purpose of the survey and thus violated the principle that respondents should be unaware of the objective of the poll. That alone is sufficient reason to give the survey no weight.

The danger of informing respondents of the purpose of a survey in terms of self-selection as well as in terms of influencing the responses to the questions asked have been judicially summarized as follows:

. . . The respondents who were all club members and thus interested in the litigation, were told the precise nature of the litigation and the purpose of the survey. They consequently knew which responses would be helpful to PPC, and conversely which

would be harmful. Moreover, it was possible that a recipient of the questionnaire would fail to respond because he [131]knew an honest response would be harmful to the club's position. Thus, respondents might have contained a higher percentage of those who could answer in a way helpful to the club. *Pittsburgh Press Club*, 579 F.2d at 759.

In this case, the cover letter alone, with its potential for multiple bias in the form of possible self-selection by respondents and with the additional potential for influencing the answers of those who did respond, requires that the survey be given no weight. Furthermore, the cover letter was likely to compound the effect of the leading questions in the survey as well as unduly influence those with a faulty memory concerning events preceding the survey, particularly where subjective questions were involved.

CSI computations made no effort to compensate for possible bias in the underlying data (Finding 282). The expert testimony that the survey suffered from inadmissible bias is persuasive. The fact that there was no statistical evidence concerning the effects of the potential bias is irrelevant. The proponent of survey evidence has the burden of establishing that it meets the requirement of circumstantial guarantees of trustworthiness. *Pittsburgh Press Club v. United States*, 579 F.2d at 758. In this instance, the burden has not been met. The survey is entitled to no weight.

Absent the RPC survey, the record evidence concerning the value of LaSalle's courses consists of expert and student testimony, and the surveys required by the Veterans Administration in 1975 and 1977.

Complaint counsel do not attack the methodology of the VA surveys as conducted by respondents (CRB 33). They contend, however, that these surveys are irrelevant for two reasons: first, the VA surveys do not ask respondents whether the LaSalle course contributed to a graduate's employment or a higher salary in the field of training (CRB 34); second, since the surveys do not segregate those graduates employed in the field at the time of enrollment and those who obtained employment in the field after graduation, the VA results do not support the contention that LaSalle graduates would be qualified without further training to obtain employment in the field (CRB 34).

The VA surveys do not focus specifically on the accuracy of respondents' representations. Accordingly, they are not relevant to the issue of misrepresentation. They are however germane to the restitution issue. The failure of the VA surveys to distinguish between those working in the field of training at the time of enrollment and those who only obtained employment after graduation does not preclude consideration of these surveys in connection

with the restitution issue. A course may [132] have value for students already in the field by making possible a promotion or a raise in pay. More importantly, absent the RPC survey (to which no weight has been given), the VA surveys provide the most comprehensive picture of vocational value available in the record. The VA surveys were mandated by Congress and are required by the VA pursuant to statute as a measure of vocational worth (Finding 322).⁴⁶ As such, the surveys were designed to give at least a rough measure of the vocational value of the courses. They should not be ignored in connection with the issue of whether respondents' courses were worthless or of token value.

The testimony of the Commission's experts established that the three courses in question would not qualify the ordinary and typical graduate, without further training, for entry into the fields of computer programming, interior decorating, and air conditioning at the levels represented in respondents' advertisements and promotional materials. However, the expert testimony did indicate that the courses were of some value in introducing the subject matter and teaching relevant principles at a basic level (Findings 349, 352, 354). The expert testimony also indicated that the courses may have some vocational value although the courses did not prepare the ordinary and typical graduate for the employment levels represented (Findings 351, 353, 355). The fact that the courses have some vocational value was corroborated by the testimony of respondents' graduate student witnesses who found the three courses helpful in their fields of training or related fields as well as by the statistics of the VA surveys (Findings 338, 342-43, 347). The findings on the extent to which the ordinary and typical graduate could benefit from the courses were based on the testimony of the experts. The extent to which the ordinary and typical graduate could benefit from the courses could not be determined on the basis of student testimony, absent a showing that such student witnesses were representative of the student populations of the three courses.

For the same reason, the student testimony could not support conclusive findings as to the influence of prior training or experience on the vocational success of LaSalle graduates. [133]

The relative value standard, as a prerequisite to restitution, is not self-defining. The degree of exaggeration at which a product or service becomes of little value, in the context of expectations arising from deception, must be defined on a case-by-case basis. However, it

⁴⁶ In one consent order pertaining to a correspondence school, the FTC required disclosure by respondents of VA survey figures *National Systems Corp., et al.*, 93 F.T.C. 58, 70 (1979). The fact that this provision may in the future be replaced by provisions of the TRR, 93 F.T.C. at 75 does not detract from the Commission's recognition of the VA surveys as a measure of vocational value.

is clear that restitution cannot be required in any case where mere exaggeration has been proven, a result the Commission disavowed in *Credit Card Service*, 82 F.T.C. at 208-09. To order restitution, there must be proof that the product or service claims so outstripped the actual value of the product or service that it was of little or no value for the purpose for which it was purchased.

The record indicates that the courses may have some vocational value. While the evidence is insufficient to rebut the finding that the qualifications of and demand for LaSalle graduates have been exaggerated to the point of misrepresentation, resolution of the restitution question requires an assessment of the evidence pertaining to vocational value in context of the representations made.

The question of little or no worth is necessarily intertwined with the subjective motivation of the students, the numbers that were in fact vocationally motivated, and of that group the number, if any, who achieved occupational success, and a measure of how close such success was to the expectations raised. Therefore, expert testimony or testimony from a limited number of students alone cannot be determinative as to whether the courses were of little or token value in fulfilling the expectations raised by respondents. Accordingly, survey or statistical evidence applicable to the populations enrolled in the three courses is required to resolve the issue of whether the courses were of little or no value. Absent such evidence, no finding can be made that restitution is the only effective remedy. The burden on this point has not been met by the government. The remedy should be limited to proscribing the misleading representations and requiring appropriate affirmative disclosure. Compare *Credit Card Service Corp.*, 82 F.T.C. at 207-09.

III. Remedy

A. Liability of Macmillan

The first question is whether Macmillan should be subjected to an order in this proceeding. Respondents urge that Macmillan is not responsible for the alleged law violations by its wholly-owned subsidiary LaSalle. They contend that LaSalle has at all times conducted its business as a separate corporation. Macmillan's relationship to LaSalle, respondents assert, was merely the incident of its ownership of LaSalle's stock and its [134]role as an investment banker attempting to manage financial assets (RB 78). In fact, the record demonstrates that Macmillan exercised more than incidental control over the affairs of LaSalle.

There has been extensive overlap between the officers and

directors of LaSalle and Macmillan (Finding 24). Macmillan executives received activity and financial reports from LaSalle (Findings 36-38). Macmillan reviewed and approved LaSalle's long range plans (Finding 39). Macmillan's approval was required for the following actions by LaSalle: the purchase of any capital asset costing more than \$100; a significant revision in an existing course; funding for development of new courses; salaries for LaSalle personnel in excess of \$20,000; the borrowing of money by LaSalle; expenditures for advertising in excess of budgeted amounts; personnel changes involving high-level LaSalle executives; and the execution of consent agreements with state or federal agencies when such agreements concerned LaSalle's operations. Macmillan's approval was required before LaSalle could discontinue marketing its courses through sales representatives and make a major investment in a mail order marketing program (Findings 43, 54).

Macmillan guaranteed the financial stability and performance of LaSalle to various accrediting agencies (Finding 44). LaSalle, when applying for accreditation renewal to NHSC, held itself out as a subsidiary of Macmillan and asserted the latter's financial support was its greatest asset (Finding 45). LaSalle participated in a common checking system established for its subsidiaries by Macmillan (Finding 48); Macmillan loaned money to LaSalle which did not have authority to borrow on its own behalf (Finding 49). Employees of Macmillan and LaSalle have participated in the same benefit programs such as a pension plan (Finding 50).

Macmillan's President sent a letter to the Indiana Private School Accrediting Commission conveying Macmillan's guarantee that LaSalle would furnish the educational services contracted. This assurance was ratified by Macmillan's Board of Directors (Finding 56).

Common law principles do not determine the liability of a parent company for the actions of its subsidiary in an enforcement proceeding under Section 5 of the FTC Act. Nor is complete control by the parent over the subsidiary so that the latter is "a mere tool and its corporate identity a mere fiction" prerequisite to piercing the corporate veil. *Beneficial Corp.*, 86 F.T.C. 119, 159 (1975), *aff'd in part and rev'd in part on other grounds*, 542 F.2d 611 (3d Cir. 1976), *cert. denied*, 430 U.S. 983 (1977). *P.F. Collier & Son Corp. v. FTC*, 427 F.2d 261 (6th Cir. 1970), *cert. denied*, 400 U.S. 926 (1970); *Jim Walter Corp.*, 90 F.T.C. 671, 735 (1977). [135]

Ultimately the parent company's liability is to be determined on the basis of the "pattern and framework of the whole enterprise." *Art National Mfgs. Dist. Co. v. FTC*, 298 F.2d 476, 477 (2nd Cir. 1962),

cert. denied, 370 U.S. 939 (1962); *Providence Washington Insurance Co.*, 89 F.T.C. 345, 387 (1977); *Beneficial Corp.*, 86 F.T.C. at 159.

A parent corporation may be held for the acts of its subsidiary where the challenged conduct was performed directly by the subsidiary and where the parent corporation must be subject to vicarious liability or none at all. *Beneficial Corp.*, 86 F.T.C. at 159. Even, latent power to control the policy of its subsidiary is sufficient to hold the parent company vicariously responsible for the acts of its subsidiary *Beneficial Corporation*, 86 F.T.C. at 159.⁴⁷ If that standard is met, then there is no need to show that the parent company participated in or had knowledge of the challenged practices. See, *USLIFE Credit Corp.*, 91 F.T.C. 984, 1034 (1978).

The overall pattern of the interrelationship between Macmillan and LaSalle establishes Macmillan's vicarious liability for the acts of its subsidiary. *Providence Washington Insurance Company*, 89 F.T.C. at 387. The record shows that Macmillan reserved the right to control the business decisions of LaSalle and in a number of areas such control was actually exercised. At a minimum, the test of latent control has been satisfied, and Macmillan is subject to an order in this proceeding. [136]

B. Scope of the Order and Applicability of the Vocational Schools Trade Regulation Rule As Precedent

Complaint counsel propose an order requiring respondent to cease and desist from various misrepresentations primarily with respect to the qualifications of, demand for, and earnings potential of LaSalle graduates. In addition, complaint counsel propose provisions requiring extensive disclosure of the graduation, dropout, success and earning rates of LaSalle students and graduates, as well as of facts pertinent to students' financial obligations and cancellation of the courses. Respondents, who insist that no order is justified, have prepared a number of alternative provisions.

Certain provisions in the proposed order are patterned after the Commission's "Proprietary, Vocational and Home Study Schools" Trade Regulation Rule Trade Reg. Rep. ¶ 38,039 (1979) (hereinafter cited as TRR). The TRR is not presently in effect, *Katharine Gibbs School, Inc. v. FTC*, 1980-1 Trade Cases ¶ 63077, at 77348-49 (2nd Cir. 1979), rehearing denied March 17, 1980. Since the provisions of the

⁴⁷ [W]here a parent possesses latent power, through interlocking directorates, for example, to direct the policy of its subsidiary, where it knows of and tacitly approves the use by its subsidiary of deceptive practices in commerce, and where it fails to exercise its influence to curb illegal trade practices, active participation by it in the affairs of the subsidiary need not be proved to hold the parent vicariously responsible. Under these circumstances, complicity will be presumed. *P.F. Collier & Son Corp. v. FTC*, 427 F.2d 261, 270 (6th Cir.), *cert. denied*, 400 U.S. 926 (1970) cited in *Beneficial Corporation*, 86 F.T.C. at 159.

TRR are not controlling at this time, the question of remedy in this case must be confined to the record of this proceeding.

The purposes of rulemaking and adjudication are clearly distinguishable. Rulemaking, the Commission's legislative function, is appropriate where the objective is to establish standards by which an entire industry may be governed. Adjudication, by comparison, addresses itself to the factual and legal issues presented by the specific case. If the TRR is reinstituted, respondents will be bound by it as will other members of the industry.

The first question is the scope of the order. Respondents urge that the proposed order's coverage of "home study courses, home study training, self-study, self-improvement or other home study courses of instruction" is over broad (RRB 71-72). They contend that the term "self-study" could be construed as covering textbooks, Berlitz cassette language courses etc. (RRB 72). As respondents note, inclusion in the order of courses of this nature would cause difficult problems of construction. For example, do such courses have "graduates"? In addition, on the basis of this record, it would be difficult to determine whether it would be even possible to calculate placement data in the case of such courses. The provisions of the order directed to refunds would also be inapplicable.

Expenditures not reasonably related to or required for prevention of unfair acts and practices should not be imposed. *Katharine Gibbs School, Inc.*, 1980-1 Trade Cases at 77,349. The record in this instance contains sufficient information for a determination as to the impact of the order if its coverage is [137]broadened beyond home study correspondence courses. Under the circumstances, the order's coverage should be limited to home study correspondence courses, the subject of this proceeding.

C. Representations concerning Demand for, Qualifications of and Earnings Potential of LaSalle Graduates

Paragraph 1 of complaint counsel's proposed order is directed to misrepresentations concerning the demand for or earnings potential of LaSalle's graduates and their qualifications. These provisions are appropriate (See Findings 92-119, 132-54, 173-93) and will be adopted.

Directly related to the prohibitions against misrepresentations concerning demand for, qualifications of and earnings potential of respondents' graduates are the provisions of paragraph 2 directed to respondents' use of testimonials.

Respondents' use of testimonials implied that the experiences

portrayed were ordinary and typical of LaSalle graduates (Findings 95-105, 111-14, 140-43, 183-84, 193). Respondents should be permitted to make use of truthful testimonials, although the experience depicted was atypical, as long as the fact that such experience was not the ordinary is disclosed. *Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 646 (1978).

The term "more successful" graduate does not dispel the overall impression that the testimonials were the ordinary and typical experience. An explicit disclosure that a testimonial is not the ordinary and typical experience will be required when that is the case. It is evident that the use of testimonials in advertisements devoted to a number of courses may be misleading, if the course taken by the endorser is not disclosed. A provision requiring such disclosure will also be adopted.

The proposed order would also require that the date testimonials were executed and the time period to which they apply be disclosed, that permission to use testimonials be obtained from the endorser every three months, and that the gifts or remuneration given to the endorsers be disclosed. The complaint does not allege that respondent's use of testimonials was misleading for the foregoing reasons and the evidence to support such provisions is at best minimal. In short, respondents were not put on notice either through the complaint or the manner in which the case was tried that these points were in issue and therefore did not have an adequate opportunity to defend with respect thereto. These provisions will not be adopted. [138]

Paragraph 3 of the proposed order would prohibit:

3. Failing to clearly and conspicuously disclose for any job or earnings representation made in any advertisement, the following disclaimer in print as large as the representation and in close proximity thereto:

Graduation from this course does not mean you will get a job.

Respondents object to the required disclosure on the ground that it could be construed as meaning that "Graduation from this course means you will not get a job." They suggest as an alternative that the disclaimer read "Graduation does not guarantee that you will get a job" (RRB 73). Respondent's proposal appears adequate to prevent deception and will be adopted.

The order prohibits specific misrepresentations concerning the demand for, as well as the qualifications of and earnings potential of LaSalle graduates. In addition to prohibitions against specific misrepresentations, affirmative disclosures, may be required where it is necessary to prevent deception through what is implied or

omitted rather than by outright misstatements. *Raymond Lee Organization, Inc.*, 92 F.T.C. at 648; *Manco Watch Strap Co., Inc.*, 60 F.T.C. 495, 510 (1962). Respondents' advertising and promotional materials were pervaded by the success through LaSalle theme. The advertising and promotional claims relating to the demand for LaSalle graduates, their qualifications and earnings potential had the capacity to deceive by virtue of ambiguity, and the failure to state material facts. The placement rates and the earnings of LaSalle graduates were material to the decision to enroll in light of such advertising and promotional claims. The order will accordingly require disclosure of the placement rates and earnings of LaSalle graduates from courses in connection with which employment demand and earnings representations are made.

The provisions in complaint counsel's proposed order requiring disclosure of placement and earnings rates are patterned after the disclosure requirement of the TRR. Complaint counsel urge that the proposal meets the Second Circuit's criticism in *Katharine Gibbs*, 1980-1 Trade Cases ¶ 630,077, of the Rule's requirement for placement disclosure; the proposed order, to meet those objections, permits respondents to disclose the number of graduates who could not be contacted, did not respond to inquiries or did not seek jobs within six months of graduation and the reasons why such individuals did not look for jobs (CB 15-16). [139]

Complaint counsel propose the following base period for calculating placement, earnings, dropout and graduation statistics for purposes of disclosure under the order:

The First Base Period shall be the two (2) year period ending three (3) months prior to the effective date of this Order. Subsequent base periods shall be of two (2) year duration commencing on the next day following the termination of the prior base period. Base periods shall be numbered consecutively beginning with the first base period (*i.e.*, Base Period #1) as defined above.

The three (3) month period immediately following the close of a base period shall be used by respondents to record and compile the information required by Part I, Paragraph 4 and Appendix A. In addition, respondents may not include in the computation of students for the base period any person whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period (Appendix B, Proposed Order).

Job placements and earnings within six months of graduation are to be recorded under the provisions of the proposed order (Appendix A, Proposed Order). Complaint counsel urges that the record supports the use of placement figures based on a six month period because testimony from vocationally motivated graduates demonstrates they sought employment within that time (CB 16).

Respondents object to complaint counsel's disclosure provisions on a number of grounds (RRB 76, *et seq.*). They first object that such disclosure should be required only when LaSalle represents there is an employment demand for the graduates of a particular course. This objection is valid. Requiring disclosure of this nature will impose requirements that LaSalle graduates be surveyed and necessitate extensive record keeping requirements in connection therewith. Under the circumstances, such a requirement should only be imposed in the case of those courses where vocational claims are made.

A number of other objections to complaint counsel's proposal concerning placement rate disclosure are pertinent: those who make no or only an inadequate effort to find employment should [140]not be counted as failures, and placement success should include not only jobs in the field of the course, but also those in a closely related field requiring substantial use of the skills learned in the course. Respondents also claim that the proposed base period for placement rates would understate LaSalle's success in this area. The proposed base period covers employment obtained within six months after graduation. However, such data is to be obtained by a survey within the three months succeeding the conclusion of the base period. As a result, those graduating at the end of the base period who did not obtain almost immediate employment would not be counted and respondent would be disadvantaged at least on the basis of the calculations for the first base period. Respondents' proposal designed to minimize such problems will be adopted.

The decision to require disclosure of the graduates' placement and earnings rates as facts material to the decision to enroll obviates the need for additional provisions in the order to assure the advertisements have a reasonable basis. Accordingly, no findings with respect to the issue of reasonable basis for respondents' advertisements are made.

D. The Selectivity Allegations

1. Representations That Students Were Screened To Determine Whether They Would Benefit from the Course

Respondents represented that LaSalle was open to qualified students (Findings 238-39), and sales representatives were instructed that the "qualifying interview" was the heart and core of the standard sales presentation. This technique, according to respondents, put the burden on the prospective student to tell the LaSalle representative why he was qualified (Finding 240).

Respondents' advertising and promotional claims as well as the sales presentation had the tendency and capacity to create the impression that, over and above the standard minimum age and educational requirements generally applicable, respondents were selective in enrolling students. They created the impression that students had been screened to determine that the students would benefit from particular courses. Such representations were false or misleading since respondents' students were not screened for the specific aptitudes helpful to successful completion or assimilation of particular courses (Findings 244-49, 256-58). [141]

A school's misrepresentation of its selectivity in accepting prospective students is deceptive and unfair within the meaning of Section 5 of the Federal Trade Commission Act. *Arthur Murray Studio of Washington Inc.*, 78 F.T.C. 401, 440 (1971), *aff'd*, 458 F.2d 622 (5th Cir. 1972); *Tractor Training Service*, 50 F.T.C. 762, 769, 776 (1954), *aff'd*, 227 F.2d 420 (9th Cir. 1955), *cert. denied*, 350 U.S. 1005 (1956). Respondents' representations that they screened prospective students to be sure they were "right" for or would benefit from a course (Finding 251) support imposition of a requirement that graduation and dropout rates be disclosed. In the light of such representations, the dropout and graduation rates are material factors for the prospective student in his enrollment decision. This data will facilitate the evaluation of claims that LaSalle's students are screened prior to acceptance.

Disclosure of dropout and graduation rates will be required for the three calendar years preceding contact with the prospective student. The requirement is not burdensome. Such information is already in respondents' files. A three year period is adopted to meet the objection that the base period selected by complaint counsel would unduly overstate dropout and understate graduation rates.

2. Negative Sell

Respondents' sales representatives were instructed that the Confidential Qualifications Questionnaire was a powerful sales tool for someone "who has learned to use it for all it's worth" and that it could be used to meet objections and stalls by prospective students when the time came to close the sale (CX 153 O). LaSalle's sales representatives were instructed to use the Qualifications Questionnaire to elicit information helpful in making a sale such as the prospect's "inner feelings" and "his hopes and feelings about his future" (CX 153M-N). LaSalle's sales representatives, in the case of the "complacent" prospect, were instructed to create dissatisfaction with respect to present earnings and to "help him identify his inner

discontent." In the case of an already dissatisfied prospect, sales representatives were to "encourage him to give you the details" (CX 153BB-CC). The LaSalle representations concerning demand for and earnings potential of its graduates (Findings 93-108, 133-45, 173-85) held out LaSalle as the answer to such feelings of dissatisfaction.

Paragraph 11 of the complaint alleges that respondents have unfairly disparaged the present or potential career opportunities, training, education or other personal characteristics of prospective students, and represented [142]directly or indirectly that respondents' correspondence courses could alter such characteristics for the better.

This technique is referred to by complaint counsel as the "negative sell". According to Commission counsel, the negative sell is a more egregious form of the selectivity representations by virtue of the emphasis on creating "dissatisfaction in the prospective student and the offering of LaSalle as the salvation for that discontent" (CB 20).

The relationship of the negative sell to the selectivity misrepresentations is not readily apparent. Complaint counsel urge that subtle manipulation of the Qualifications Questionnaire was used to stimulate the prospect's discontent and thus make him more amenable to the sales pitch for LaSalle as the hope for improvement (CB 20). They argue further that after feelings of dissatisfaction have been created, the prospect becomes more vulnerable to that part of the sales presentation designed to convince him that he must persuade the sales representative that he should be allowed to enroll.⁴⁸ It would be equally logical to link the charges under Paragraph 11 of the complaint to the allegations concerning misrepresentation of demand for and earnings potential of LaSalle graduates.

Creating discontent or dissatisfaction in order to stimulate the sale of a product or service is not *per se* unfair. However, it may become unfair when it results from deception or other unfair practices. Here, sales representatives were instructed to arouse discontent in the course of a sales presentation designed to give the overall impression that prospective students had to prove they were qualified to take the course. At the heart of that procedure was the Qualifications Questionnaire which salesmen were told was a sales tool which [143]

⁴⁸ Complaint counsel argue:

The prospective LaSalle student, a victim of these artificially created feelings of dejection and dissatisfaction and a potential recipient of the benefits that can be achieved from LaSalle, feels more compelled, than if LaSalle had only misrepresented its selectivity, to convince the sales representative to allow him to enroll in a LaSalle course and thereby increase his earnings, train for a new or better career and thereby gain admission to a new and better life (CB 20).

they should use "for all it's worth." There is an element of unfairness here.

Practices such as the negative sell technique present difficult problems in fashioning a remedy. Prohibitions designed to prohibit practices such as undue sales pressure are apt either to be so narrowly drawn as to be ineffective or so overbroad as to be unenforceable. *Arthur Murray*, 78 F.T.C. 401, 441 (1971); *aff'd*, 458 F.2d 622 (5th Cir. 1972).

The requirement, entered in response to the general selectivity allegation, that respondents disclose dropout and graduation rates will enable prospective students to evaluate respondents' claims, if any, with respect to selectivity. There does not seem to be an additional need for rejection rates to afford a further basis of evaluation. The provisions of the order, entered pursuant to other charges, requiring disclosure of placement and earnings rates and prohibiting misrepresentations with respect to demand for, earnings potential and qualifications of LaSalle graduates should also effectively preclude the violations alleged under Paragraph 11 which were the result of the negative sell technique. No additional provision is required.

3. Contract Terminology

Paragraphs 11, 12, and 13 of the proposed order would prohibit representations that a contract for sale is anything other than a retail installment contract, prohibit the use of such terms as "Applicant's Copy" on an enrollment contract, and require that the student's copy of a contract be labeled "Purchaser's Copy". Complaint counsel urge that these provisions are designed to prohibit use of terminology with the tendency and capacity to create the impression that LaSalle was selective in enrolling applicants (CB 22).

The bulk of the contracts received as evidence in this proceeding and in use during the relevant period do not give the overall impression that they are "applications" rather than retail installment contracts. Most are labelled "retail installments contracts" and the overall appearance of these documents indicate that they are in fact contracts and binding upon the prospect if accepted (*e.g.*, CX 200).

The provisions of Paragraphs 11, 12, and 13 will not be adopted. The violations with respect to misrepresentation of selectivity can be adequately remedied by requiring disclosure of dropout and graduation rates, as well as requiring respondents to cease and desist from representing that prospective students are screened for aptitudes

helpful in assimilating the subject matter of specific courses unless such is the fact. [144]

The provisions proposed in paragraphs 11-13 appear more germane to an allegation that respondents misrepresented the nature of their contracts or that students were misled into believing the transactions were not sales. In *Eastern Detective Academy*, 78 F.T.C. 1428, 1465, 1471 (1971), on which complaint counsel rely in connection with this point, there was an express allegation that the nature of the instruments had been falsely represented. Such charges are not contained in this complaint,⁴⁹ therefore, the suggested provisions are not justified.

E. Failure To Disclose Material Facts in Connection with the Student's Financial Obligation

Since 1973 LaSalle's refunds to students withdrawing from or cancelling a course were based on a percentage calculated from the number of lesson assignments submitted for grading over the total number of lesson assignments in the course (Finding 204).⁵⁰ Under the quartile tuition policy the number of [145]lesson assignments to be submitted in a course was therefore a material fact which the student needed to know to calculate his tuition obligation at any point in the course.

In many of LaSalle's courses, the lesson assignments to be submitted for grading were not distributed evenly throughout the course in relation to the text to be covered (Finding 201). In many courses, the greater number of lesson assignments on which the tuition obligation depended were placed at the beginning of the course, a practice known as front-end loading (Finding 200-01).

LaSalle's contracts, which generally stated the applicable refund policy, prior to 1979 did not, with some exceptions, state the total number of lesson assignments to be submitted in the given course. Other LaSalle materials, such as the course brochure, which did give

⁴⁹ Some of the contracts labeled "Retail Installment Contracts" had a space for "applicants" signature on the Enrollment and Credit Information page which was an application for credit (e.g., CX 199B). The contracts themselves had a space for "buyers signature" (e.g., CX 199A). One salesman testified that he referred to the contracts as "agreements" because it sounded "softer" (Wilmot 817).

If the complaint contained the appropriate allegations, RX 851 and 852 entitled "Enrollment Application and Agreement," which were in fact retail installment contracts, might justify an order prohibiting misrepresentations as to the nature or significance of respondents' installment contracts. These, it may be noted, are mail order contracts and would not have been used in connection with a representative's sales presentation or the Qualifications Questionnaire.

⁵⁰ In most instances, the following tuition refund policy applied: a student owed a registration fee plus 25 percent of the total tuition obligation if he submitted less than 25 percent of the lesson assignments to LaSalle for review; 50 percent of the tuition was owed if the student submitted more than 25 percent but less than 50 percent of the lesson assignments and the total tuition was owed when the student submitted more than 50 percent of the lesson assignments (Finding 205).

such information did not state the cancellation or refund policy and frequently used terms for lesson assignments inconsistent with the terminology in the contract. Finally, neither the enrollment contract or other materials furnished to students before enrollment advised prospective students that readings between lesson assignments increased as the course progressed (Findings 200-03, 214-20).

The record demonstrates that the interaction of the front-end loading of LaSalle's courses with the quartile refund policy confused respondents' students as to their financial obligations and their right to a refund on cancellation or withdrawal from the course (Finding 227). The failure to clearly disclose the number of lesson assignments in the particular course constituted the failure to disclose a material fact. The practices of front-end loading and inconsistent use of contract terms coupled with the failure to disclose material facts had the tendency to mislead and was unfair.

The confusion arising out of the interaction of respondents' quartile tuition policy and front-end loading justifies a general prohibition against misrepresenting in any manner a student's financial obligations or failure to disclose material facts concerning his tuition obligations or right to a refund. A provision prohibiting respondents from failing to make the correct refund payment is also needed to prevent future unfair practices related to violations shown.

In addition, consumers must be furnished the following information: [146]

1. That their tuition obligation is based upon the percentage of the lesson assignments which they have submitted to LaSalle, compared to the total number in the course;
2. That a lesson assignment means those examinations, assignments, projects, etc., which they are required to submit to LaSalle for grading or evaluation;
3. The total number of lesson assignments in the course;
4. The lesson assignment which mark the various increments in the tuition obligation and the amount of tuition owed at each point; and
5. Detailed instructions to cancel the contract and how to apply for a refund including all conditions pertinent thereto.

To preclude further confusion respondents will be required to use only the term "lesson assignment" to refer to lesson assignments to be submitted to LaSalle and to use the term "lesson assignment" consistently in all their contracts, advertisements and promotional materials.

With this information in hand, the consumer can calculate his tuition obligation and his right to a refund at any point in the course. No further information is needed. The extensive data as to the structure of the LaSalle courses such as number of volumes of text, etc. required by paragraphs 5 and 9 of the proposed order is unnecessary. Nor would a requirement that all course materials be mailed at once serve any significant remedial function.

Paragraph 8 of the proposed order would in effect require respondent to abandon the quartile tuition policy and adopt pro rata refunds. This provision will not be adopted. The quartile tuition policy, as such is not inherently unfair. To the extent that respondent's refund and cancellation policies were unfair in practice, those violations will be cured by the disclosure requirements of the order to be issued herein.

F. Cooling Off Period

Complaint counsel assert, in support of their argument for a 14-day cooling-off period, that their proposed affirmative [147]disclosure requirements, necessitate that the consumer be given additional time for reflection (CB 18). There is insufficient evidence in this proceeding to support a finding that consumers have too little time to consider their purchase. Under LaSalle's contracts, in effect in the relevant period, consumers had six days to cancel without penalty or obligation (*e.g.*, CX 200E, 201E). There is no showing on the basis of this record that six days was insufficient time for reflection. If the period is to be extended, as a matter of policy, to 14 days, it should be done in the context of an industry wide rulemaking proceeding.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents.
2. The complaint herein states a cause of action and the proceeding is in the public interest.
3. The aforesaid acts and practices of the respondents as found in the foregoing Findings of Fact were and are to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. [148]

ORDER

I.

It is ordered, That respondents Macmillan, Inc., a corporation, and LaSalle Extension University, a corporation, their successors and assigns and their agents, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the advertising, promoting, offering for sale, sale or distribution of home study correspondence courses, in any subject, field, trade or vocation in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Misrepresenting, orally, visually, in writing or in any other manner, directly or by implication:

(a) The need or demand for persons completing any of respondents' courses or otherwise misrepresenting the opportunities for employment, or opportunities of any other type, which are available to such persons, or that persons completing said courses will or may earn a specified amount of money, or otherwise misrepresenting by any means the prospective earnings of such persons;

(b) The employment prospects of respondents' graduates or the ease with which respondents' graduates will be able to obtain employment;

(c) The type of jobs available to respondents' graduates, or that there will be job security or steady employment for respondents' graduates in positions for which respondents train such persons;

(d) The qualifications or requirements necessary to obtain employment in the fields for which respondents offer correspondence training, [149]including whether experience or additional education is required or advantageous for employment in any field or for any position;

(e) The types of jobs for which respondents' graduates will be qualified upon completion of respondents' courses;

(f) A student's financial obligations upon enrollment or failing to disclose material facts concerning a student's right to cancel, his tuition obligations, or right to a refund.

2. The use of testimonials in any advertisements unless:

(a) the testimonial reflects the experience of the typical and ordinary LaSalle student; *provided, however,* that if the testimonial does not reflect the typical or ordinary experience of a LaSalle

student, a disclaimer stating that "this testimonial does not reflect the typical or ordinary experience of LaSalle students" shall be displayed in print as large as that of the testimonial itself, adjacent to or integrated with the testimonial;

(b) The testimonial states the LaSalle course or courses from which the endorser graduated and upon which his/her alleged success is based.

3. Failing to clearly and conspicuously disclose for any job or earnings representation made in any advertisement, the following disclaimer in print as large as the representation and in close proximity thereto:

Graduation from this course does not guarantee you will get a job. [150]

4. Failing to provide to any prospective enrollee prior to the signing of any contract or other agreement for enrollment in any course of instruction offered by respondents, a written disclosure form in 10 point bold face type containing the following information, under the heading "Notice to Prospective Students" with appropriate subheadings in 16 point boldface type, the information required by paragraphs II-1 through II-7 of this order.

5. Failing to disclose, in close proximity to the cancellation and refund clause in respondents' contracts, the information required by paragraph II-7 of this order.

6. Failing to provide the student with the correct refund payment, if any, or to cancel that portion of the student's indebtedness that exceeds the amount due the school and return any negotiable instrument executed by the prospective student in connection with the contract or sale within twenty-one (21) days of the receipt of notice of cancellation from the student.

7. Representing in any manner that prospective students are screened for the aptitudes helpful in or necessary to assimilating the subject matter of specific courses, unless such is the fact.

II.

It is further ordered, That:

1. If respondents represent to any prospective student of a LaSalle course that there is an employment demand for graduates of that course, LaSalle shall clearly and conspicuously disclose to such

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prospective student the vocational success rate of graduates of that course defined by the following fraction (expressed as a percentage):

Numerator

Those graduates who obtained jobs or self-employment in the field of their [151]correspondence course or in a closely related field,⁵¹ plus those graduates whom the course helped to obtain a promotion or earnings increase.

Denominator

All graduates who took the course in order to obtain new or improved jobs or to increase their earnings, less those who have not worked in the field of their course or in a related field, and who have not made a serious effort to find such a position.

A serious effort to find such a position shall be defined as interviewing three or more potential employers in the field of the course or a related field, or being advised by reliable sources that such efforts would be futile.

Such data shall be collected at least once every two years by a statistically valid survey of all LaSalle graduates who graduated within a period which is not less than twelve months, and which begins not more than three years before the questioning of graduates in each survey. Data obtained from any such survey shall not be published to prospective students more than twenty-four (24) months after the commencement of such survey questioning.

Such disclosure shall be made before the prospective student signs any enrollment application or agreement or otherwise commits himself to enrollment with LaSalle.

2. If respondents make representations to prospective students of a LaSalle course concerning the earnings potential of graduates of that course, they shall disclose the following information collected by a statistically valid survey conducted pursuant to the provisions of Paragraph II-1 of this order:

(a) on the basis of gross yearly earnings, the percentage of graduates in each [152]income bracket broken down by \$2,000 increments, *e.g.*,

\$4,000 - 6,000 — 30%

⁵¹ For the purposes of this order, a closely related field means one which requires substantial usage of the skills learned in the course.

(b) the number and percentage of graduates who refused to provide salary information.

3. In connection with the disclosure of the vocational success rate or earnings rate required by Paragraphs II-1 and II-2 of this order, respondents shall also disclose the total number of graduates of the course in the period covered by the survey, the sample size of the survey, and the total number of responses received to the survey.

4. If respondents make claims as to the demand for and earnings potential of LaSalle graduates within the scope of Paragraphs II-1 and II-2 concerning a new course whose duration did not trigger the surveys required by these paragraphs then respondents shall clearly and conspicuously disclose that fact as follows:

THIS COURSE HAS NOT BEEN IN OPERATION LONG ENOUGH TO INDICATE WHAT, IF ANY, ACTUAL EMPLOYMENT OR SALARY MAY RESULT UPON GRADUATION FROM THIS COURSE.

5. If respondents make claims that they screen students for admission or that they are selective in enrolling prospective students for any course they shall disclose the dropout and graduation rates of students enrolled in that course for the three calendar years immediately preceding contact with the prospective student. Such disclosure shall specify the years to which such disclosure pertains.

6. In the case of a new course where respondents do not have the data required by Paragraphs II-5, they shall disclose dropout and graduation rates for those calendar years for which such data is available. If no dropout or graduation rate data is available for any calendar year that fact is to be disclosed.

7. If respondents utilize a quartile refund policy as defined by Findings 204-05 herein or a similar policy or plan, they shall disclose the following information to prospective students in the contract in close proximity to the cancellation and refund clause (This information is to be included both in the contract and in the "Notice to Prospective Students"): [153]

1. That their tuition obligation is based upon the percentage of the lesson assignments which they have submitted to LaSalle, compared to the total number in the course;

2. That a lesson assignment means those examinations, assignments, projects, etc., which they are required to submit to LaSalle for grading or evaluation;

3. The total number of lesson assignments in the course;

4. The lesson assignments which mark the various increments in

the tuition obligation and the amount of tuition owed at each point; and

5. Detailed instructions to cancel the contract and how to apply for a refund including all conditions pertinent thereto.

III.

It is further ordered, That "lesson assignment(s)" is the only term which may be used to refer to lesson assignments to be submitted to LaSalle and that the term "lesson assignment" must be used consistently in respondents' contracts, advertising and promotional materials. All respondents' contracts and "Notices to Prospective Students" must contain the following clause:

Lesson assignments are examinations and other exercises which are submitted to the school for grading; they do not include self-tests. The amounts of reading and other work for different lesson assignments vary in length, and generally become longer as the course progresses.

IV.

It is further ordered, That respondents maintain for a period of three (3) years, records which shall show the manner and form of respondents' continuing compliance with the above terms and provisions of this order. [154]

V.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order; *provided, however,* that if respondents do not have thirty (30) days lead time between the proposal of such change and its consummation, respondents shall notify the Commission thereof at the earliest feasible time before consummation and any entity which may succeed to any part of the business covered by this order will have been advised of every provision of this order and will have agreed to be bound thereby.

VI.

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.

VII.

It is further ordered. That nothing herein shall relieve respondents from compliance with a Trade Regulation Rule, governing the advertising or promotion of educational courses of instruction subject to this order, in the event such a rule becomes final. [155]

APPENDIX A

Ans. Par. - Paragraph of the Answer
CB - Complaint Counsel's Brief
CRB - Complaint Counsel's Reply Brief
CX - Complaint Counsel's Exhibit
Comp. Par. - Paragraph of the Complaint
RA - Respondents' Admissions
RB - Respondents' Brief
RRB - Respondents' Reply Brief
RX - Respondents' Exhibit

FINAL ORDER

On June 12, 1980 the Commission stayed the effective date of the unappealed Initial Decision in this matter, pending a determination whether or not the matter should be docketed for review. After further consideration, the Commission has decided not to place the case on its docket, but instead to lift the stay and allow the Initial Decision to become the decision of the Commission.

It is hereby ordered. That the Initial Decision become the decision of the Commission, and that the order to cease and desist be entered.

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IN THE MATTER OF

GROLIER, INCORPORATED, ET AL.

*Docket 8879. Interlocutory Order, Sept. 12, 1980*ORDER REOPENING PROCEEDING AND DIRECTING SUBMISSION OF
FURTHER INFORMATION

On January 24, 1980, the United States Court of Appeals for the Ninth Circuit remanded this case to the Commission.¹ *Grolier, Inc. v. FTC*, 615 F.2d 1215, 1222 (9th Cir. 1980). The purpose of the remand was to allow us to reconsider our denial of discovery "and in light of the results of that reconsideration, the disqualification motion" filed by Grolier. 615 F.2d at 1222. The Court did not require us to grant discovery but instead authorized the use of affidavits to show "the existence and extent of ALJ von Brand's involvement with the Grolier case while he served as attorney-advisor." *Id.* Under the procedure established by the Court, Grolier then has the burden of offering evidence to contradict these sworn statements or show any deficiency in them before it will be permitted to subpoena agency records. *Id.*

The Court mandated this course of action to us because it believed that our order denying discovery (87 F.T.C. 179, 181 (1976)) was an improper "flat refusal" (615 F.2d at 1222) to disclose anything at all about Judge von Brand's participation in the Grolier case while he was an attorney-advisor to Commissioner MacIntyre.

Since we denied the combined disqualification and discovery motion, however, Grolier has gained access to most of the information sought in its discovery request by virtue of a Freedom of Information Act ("FOIA") request that repeated the discovery request *in haec verba*. Indeed, most of the documents sought and an index of the few documents withheld have been available to Grolier since before Judge von Brand issued his Initial Decision. We note that the record of the district court proceeding contains much information, in affidavit form, which may make the discovery request moot. *Grolier, Inc. v. FTC*, No. 76-1559 (D.D.C.), *appeal pending*, D.C. Cir. No. 79-2263. We invite the parties to address this issue in the filings required by this order.

Because our earlier view was that attorney-advisors do not perform investigative or prosecutive functions there was no need for us to determine which of the twenty documents Grolier appended to the disqualification motion actually reached the Commission or

¹ A petition for rehearing was denied but the opinion was amended on April 17, 1980.