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ELDER ABUSE, NEGLECT, AND EXPLOITATION: ARE WE DOING ENOUGH?

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, CORRECTIONS AND VICTIMS' RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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ELDER ABUSE, NEGLECT, AND EXPLOITATION: ARE WE DOING ENOUGH?

WEDNESDAY, SEPTEMBER 24, 2003

UNITED STATES SENATE,
SUBCOMMITTEE ON CRIME, CORRECTIONS AND VICTIMS RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:32 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Lindsey Graham, Chairman of the Subcommittee, presiding.

Present: Senator Graham.

Chairman GRAHAM. Thank you all for coming. This is a very important subject very near and dear to my heart, and I think most Americans. We have distinguished panels today and I look forward very much to hearing from you, but we have some housecleaning to take care of.

Is it Mr. Mihalko?

Mr. MIHALKO. Mihalko, right.

Chairman GRAHAM. And Mr. Huse, is that right?

Mr. HUSE. Yes.

Chairman GRAHAM. Would you please stand? I am going to have to swear you in. Raise your right hands, please.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. MIHALKO. I do.

Mr. HUSE. Yes, I do.

Chairman GRAHAM. Take a seat. Again, I do appreciate both of you coming and look forward to hearing your testimony and having a little interaction with you.

I have got a statement here from Senator Biden that I would like to make part of the record, and Senator Breaux and Senator Hatch. Senators Breaux and Hatch have been working on protection for our senior citizens for a long time. I want to recognize Senator Biden's interest and support.

OPENING STATEMENT OF HON. LINDSEY GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Chairman GRAHAM. A little bit about why I wanted to hold the hearing. In a previous life, before politics—it seems to me the more I am in it, the more I miss it, but in a previous life I was a lawyer and I had a chance to work several groups that were representing abused children in our family court system in South Carolina. Through that association, I found myself getting more and more in-

volved in cases where our senior citizens were being abused financially, physically, and otherwise.

I don't think most Americans realize how much of a network exists out there in the private sector trying to prey off the fears and concerns of senior citizens. We have criminal laws at the State and Federal levels to deal with that, but I don't think there has been enough attention and enough effort in combatting this growing problem.

The reason for this hearing today is to get input from people on the panels and others to make sure we are on the right track, and if we can do more, we should do more. That is the purpose of the hearing, and I think there will be a lot of bipartisan support for any recommendations you have to make our world better for seniors. And for those who try to make a living exploiting seniors, there is not enough bad things we can do to them, in my opinion. So that is why we are all here today.

With that little speech over, I would like to have Mr. Mihalko start off and make a statement to the Subcommittee, if you would like.

STATEMENT OF DANIEL L. MIHALKO, INSPECTOR IN CHARGE, CONGRESSIONAL AND PUBLIC AFFAIRS, U.S. POSTAL INSPECTION SERVICE, WASHINGTON, D.C.

Mr. MIHALKO. Thank you, Mr. Chairman, and I appreciate you holding this hearing on this very important issue of crimes against the elderly and giving us the opportunity to talk about the role of the United States Postal Inspection Service in combatting these crimes.

There are countless illegal schemes that violate the Nation's first consumer protection law, the mail fraud statute. Back in 1872, it was enacted and it is still the most effective fraud enforcement weapon, and postal inspectors have been using it for over 100 years. Last year, we responded to over 84,000 mail fraud complaints and we handed over 3,000 fraud cases, arresting 1,600 mail fraud operators. As a result of these investigations, there was over $2 billion in court-ordered and voluntary restitution, and this is only a portion of the financial impact on the victims, many of them senior citizens.

Over the years, postal inspectors have used the mail fraud statute to investigate and prosecute all types of scams. With the advent of the telephone, of course, came telemarketing scams, and the Internet brought its own offerings. With these new communications vehicles, we have seen new twists on some old scams, but to us it is basically old wine in new bottles. Eventually, as part of the scheme, the mail is used, and when the mail is used, postal inspectors get involved.

The elderly often become victims of mail fraud schemes because older citizens, the physically-challenged, the shut-ins, rely on the mail to receive many of their purchases and they become easy prey for mail fraud operators. The problem is compounded when operators sell names and addresses of their victims to other criminal elements, resulting in the repeated victimization of many elderly.

The same holds true for telemarketers. Many offers are legitimate, but unscrupulous telemarketers can be the smoothest of op-

erators, successfully defrauding people out of their life savings. Losses attributed to telemarketing fraud are estimated to exceed $40 billion a year.

Senior citizens are particularly vulnerable. Fraudsters recognize that many seniors are widowed and feel isolated. A telephone call from anyone is greeted with open arms. Experienced con artists know the buttons to push when they have a senior on the telephone.

Because seniors are so vulnerable to these scams, postal inspectors have placed a high priority on investigating these fraud cases where seniors are victims. We have put together a video for the Subcommittee, and in this video victims and caretakers tell how this victimization happened to them. The last segment of this very short video shows the effectiveness of one of our crime prevention campaigns, where we were able to stop a senior from being victimized by sending $2,200 in a cross-border fraud initiative.

Mr. Chairman, I would like to play that video for you.

Chairman GRAHAM. Please.

[Videotape shown.]

Mr. MIHALKO. Mr. Chairman, we see these types of investigations, these types of cases, and these victim stories everyday. In the video, you saw some of the items that telemarketers sent to victims through the mail. In searches of telemarketers' places of business, we have discovered that the files they maintain on their victims contain intimate details of the victims' health, names of their children, vacation and travel memories, and even information on deceased spouses.

Telemarketers, in particular, use this personal information when they call the victims. They will mention family names, inquire about someone's health, and they will very effectively portray themselves as being caring and knowledgeable. For the victims, these telephone calls may be their only regular contact with other people. Victims often even defend the fraud operators in the continued belief that they are friends who are trying to help them win a sweepstakes or manage investments. Some victims will even knowledge that the fraud operator is taking advantage of them, but explain that no one else has showed any interest in them.

One particular technique used by mail fraud operators is to target those who are ill or in the early stages of dementia. We call it "the check is in the mail" type of a scheme. A telemarketer will call a senior posing as a representative of a local business or hospital and asked if they have paid their bill. Since a senior's memory may be poor, the victim often thinks they have forgotten about this bill and will promptly write a check and put it in the mail. Telemarketers know that seniors have large savings and retirement funds that they can draw on.

Another scheme is the "you have won" scheme. It targets elderly victims who have previously participated in lotteries, sweepstakes, and other prize-winning opportunities. Fraudsters inform these seniors that they have won. However, some type of fee must be paid before the prize or check can be mailed. The victim receives nothing. The only one who wins is the scam artist.

One of the most notorious scams against seniors is what is known as the reload. When fraud operators are successful in ob-

taining money from a victim, they often make an attempt to gain even more money. This is the reload. In a typical reload, the fraud operator contacts the victim again and alters the original scam or even presents a new scam.

Sweepstakes winners may be told that their prize has been increased, but that additional fees are necessary to claim the new prize. Victims in fraudulent investment schemes may be convinced to invest more money or to convert their investment to another market product, like you saw in the video where the lady went from silver to gold. Usually, what they are getting is worth less than what they ordered in the first place.

Fraudulent telemarketers network with each other; they sell lists of targets to each other. If a telemarketer knows a particular senior has fallen victim to a scam, they will call the senior, posing as either an attorney or a law enforcement official, and advise that they have arrested the con artist and seized their money. The money is either in a State fund or being held by the courts, according to this person. Scam artists will then request another fee to release the funds to the victim, and in doing so steal from the victim once again.

The impact on seniors can be devastating on two fronts. Many pay an emotional cost, losing not only their money, but also their self-respect and dignity. We have interviewed victims who claimed they couldn't remember sending anything to the operators or, out of embarrassment, minimize the level of victimization they experienced.

Criminal prosecution is an important element in our fraud program, but it is not the only tool. We work hard to protect consumers by educating them about current fraud schemes so they don't become victims. I would like to finish up by telling you about a couple of different prevention programs that we have done.

In 1999, we sent this postcard to every household in the country, over 123 million addresses, under Project know Fraud. The card contained telemarketing fraud prevention tips, a Web address, and a toll-free number to call for additional information or to report a fraud. It was the largest fraud prevention campaign ever attempted.

National Fraud Against Senior Citizens Awareness Week was kicked off last August by postal inspectors. "Don't let one phone call take it away" fraud awareness posters, as you see over here on the easel, were posted at all 38,000 post offices around the country. We took out ads in major metropolitan newspapers. PSAs featuring Betty White were broadcast on television and radio, and fraud awareness flyers were mailed to roughly 3 million households of seniors and their families. The campaign brought immediate success, as you saw in the last clip on the video.

I think what is particularly important is the message; it was very compelling and on-target to our seniors. I am not sure if you can read it on the poster, but it says "He lived through two world wars and fought in one. He helped raise six children and three dogs. He saved a long time for his retirement. Don't let one phone call take it away."

Just last week, postal inspectors unveiled a national consumer awareness campaign on identity theft, known as Operation Identity

Crisis. The campaign focuses on the ease with which identity theft occurs unless consumers take steps to prevent it. The campaign features posters, again, in all post office lobbies, newspaper ads, a mailing, and a PSA with Jerry Orbach, the actor from "Law and Order," who is also a victim of identity theft.

You have all heard the saying "crime doesn't pay," but in this case it does. All of these campaigns have been paid for by a unique funding arrangement where we use monies received from criminal fines and forfeitures in cases where victims could not be identified. It will be paying for Postal Inspection Service PSAs, crime prevention videos, and brochures like these that we put out on a regular basis.

Our mission is clear, to protect Postal Service employees and customers from criminal attack, and to protect the Nation's mail system from criminal misuse. We take this mission seriously. We will continue to protect seniors from scam artists and ensure that the American public continues to have confidence in the U.S. mail.

Thank you.

[The prepared statement of Mr. Mihalko appears as a submission for the record.]

Chairman GRAHAM. Well done. Thank you very much.

Mr. Huse.

STATEMENT OF JAMES G. HUSE, JR., INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION, WASHINGTON, D.C.

Mr. HUSE. Good afternoon, Mr. Chairman. Thank you for the opportunity to discuss with you today some of the scams perpetrated against the Nation's seniors and some of the actions my office has undertaken to detect them or prevent them from occurring in the first place.

For over 60 years, the words "Social Security" have held special meaning for elderly Americans. So when mail arrives at their doorstep with the official Social Security seal or references to Social Security, many seniors respond reflexively.

Today, I will describe some of the investigations we have conducted into organizations and individuals that misuse the Social Security Administration's name and exploit the special bond between SSA and its beneficiaries. These cases represent one of our highest investigative priorities, and I would like to describe just three significant cases that have received our attention this past year. These cases are brought under authority of Section 1140 of the Social Security Act, which provides the Commissioner of Social Security with authority to impose significant civil monetary penalties. The commissioner delegated that authority to the inspector general in 1995.

The first case concerns an individual in Texas who was producing mass mailers containing what are referred to as lead cards for the insurance industry. These cards, enclosed in mailers that advertise such products as private burial insurance, urge seniors to fill out the card with their personal information and return the card to the sender. We all receive junk mail and don't hesitate to throw it out in the trash, but when the recipient is a senior and when the outside of the mailer contains the words "Social Security Benefits Update," as these did, most seniors will open the mailer.

These mailers are designed to elicit a belief that the recipient by filling out the card with sensitive personal data will receive important information about Social Security benefits. Instead, their information is sold as an insurance lead to a private company for purposes of soliciting the sale of private insurance. Other untoward things can happen to that information, too.

Working with the United States Attorney for the Northern District of Texas, our attorneys issued a civil monetary penalty and obtained an injunction against this individual. A search of his business premises revealed that he was sending out tens of thousands of these mailers each week. The court order we obtained froze his financial accounts, allowed for the interception and opening of his mail, and essentially shut down his business. Shortly thereafter, a settlement was reached in which a penalty was paid to the Social Security trust funds and the individual's business was closed permanently.

The second case occurred in San Antonio, where another individual was running a company that sent similar lead cards to seniors. The San Antonio mailers depicted the company's logo, a stylized image of the United States Capitol, and were otherwise designed to resemble official Government documents. On the back of many of the mailers were listed the titles of a number of official Social Security informational brochures that the company offered free of charge.

While the company alleged that this was a public service, it was, in fact, a rouse intended to mislead seniors into thinking that they were giving their personal information to Social Security, not to a private lead card company. A civil monetary penalty was imposed and has since been upheld by the departmental appeals board of Health and Human Services, and also by the Commissioner of Social Security.

Most recently, our imposition of a penalty in excess of $500,000 against a national political organization was upheld by an administrative law judge. The organization's political mailers were contained in envelopes bordered in red and white stripes with the words "Social Security Alert" repeated 36 times and the words "Urgent-Social Security Information Enclosed" in permanent bold typeface.

The organization took the position that they did not intend to mislead seniors into believing that the mailers originated with the SSA, and further alleged that the mailers would not have a misleading effect. The administrative law judge disagreed, upholding the imposition of the $500,000 penalty.

Our efforts in this area extend back to 1995, and the reduction in complaints from seniors is a testament to our success in this area. In our criminal investigative work, we consistently find examples of senior citizens being victimized by unscrupulous identity fraudsters and the like. We will continue to do everything in our power to protect seniors from being victims of these types of scams and those who would misuse their identity and Social Security benefits.

Thank you, sir, and I would be willing to answer any questions.

[The prepared statement of Mr. Huse appears as a submission for the record.]

Chairman GRAHAM. Thank you both.

Inspector Mihalko, you talked about the budget in terms of informing people about what to watch for. What is the budget? I mean, how much money do you spend each year doing the ads and the mailers?

Mr. MIHALKO. One of the unique things about this consumer fraud fund is by way of a fraud case that we worked out in the Midwest last year, the judge earmarked $15 million to come to the Postal Inspection Service just to work and use on fraud prevention campaigns. So right now, we are starting off with $15 million just in this fund. These campaigns are being paid for out of this fund. We are working on some consumer protection-type videos. We have hired a production company to do these types of things.

So we have $15 million. That doesn't include what we may get out of cases that we are working right now, some different fines in different mail fraud cases, and the forfeitures where we can't really get the money back and make restitution to individual victims for whatever reason it may be. So we do have quite a bit of money in this fund to go out and do these prevention campaigns, and we feel these prevention campaigns are very critical for this type of crime.

Chairman GRAHAM. I totally agree with you. Do you think you have enough money in place and enough money coming to do the job in the near future?

Mr. MIHALKO. I think we do, for the near future, yes. With this consumer fraud fund funding these programs, we have a lot of good ideas that we want to get forward. We have a lot of partners in some of these programs that we are putting forth.

Again, I think this type of crime really lends itself to consumer protection and crime prevention. Fraud is unlike crimes of violence. If somebody comes up to you and points a gun at you and says, I want your money, you don't have much choice in that matter; you are going to give them your money. You can't say to them, let me think about this, let me get back to you tomorrow, let me check you out, whereas with fraud you can do that.

If the solicitation comes in through the mail, you have an opportunity to read it in the comfort of your home. You can look at it, you can make decisions. You can contact us, the Better Business Bureau, any other agencies to check out the company. The same way with the phone call that comes through from a telemarketer; you have a choice, you decide whether or not you want to become a victim or be a part of this crime.

You can hang up the phone. You can tell the telemarketer, let me call you back, let me check you out, let me check your business records out with the Better Business Bureau, let me check with the postal inspectors, the FTC. You can ask a lot of questions before you get involved in these types of crimes. So we feel that the use of monies to come up with these prevention programs is very effective.

Chairman GRAHAM. I totally agree.

If someone mails the material from overseas, what happens?

Mr. MIHALKO. Well, that gets to be a little trickier. The mail fraud statute is very effective for domestic crimes. It doesn't give us the reach to go overseas.

Chairman GRAHAM. Is that a problem?

Mr. MIHALKO. It is somewhat of a problem. We are in such a global economy now and these fraudsters really don't have any boundaries. You have the telemarketers who, all they need is a telephone and they can be anywhere calling our seniors in this country and victimizing them. The same way with the Internet. So it does present somewhat of a problem because we are not able to really go after these folks. We rely on law enforcement agencies in the foreign countries to help us out. But what is even worse is we are not able to use any of the forfeiture laws in this country to try to get those assets that they steal from our people.

Chairman GRAHAM. Is there any way you can think of to change that? Are there any ideas that you have?

Mr. MIHALKO. One of the things that is of great interest to the foreign governments is money laundering. Some of the countries don't have mail fraud statutes, per se, but money laundering is kind of a hot button with them and if we can tie in some of these parts of a mail fraud scam—for example, if a senior in this country—like you saw in the video, the lady was going to mail a $2,200 check to a Canadian telemarketer. If we can use that particular mailing to make that part of the money laundering charge, I think we would very much get the attention of the foreign governments to assist us in trying to take the assets away from these folks that are scamming our people.

Chairman GRAHAM. Is there any particular country where the problem is worse compared to other countries?

Mr. MIHALKO. I don't know if there is one particular country, although we do see a lot of telemarketers coming from Canada and we are working very closely with the Canadian authorities. We have established through the Department of Justice a cross-border fraud initiative, or with the Royal Canadian Mounted Police, and we have been effective there.

But once again, if the money goes from our citizens to Canada and then it gets shipped overseas to a European account, laundered through the Caymans, and then even back into the United States, we don't have the reach to go after those assets.

Chairman GRAHAM. Well, is there any particular wish list that you would like to give me today about what we could do to better enhance your success rate?

Mr. MIHALKO. I think that might be something we would be willing to work with the staff on and try to figure out how we—

Chairman GRAHAM. You put it together and we will try to punch as many holes in it as we can. So my offer stands, and I appreciate what the Postal Service is doing. It must be very satisfying work, I would think, to get your hands on some of these people.

Mr. MIHALKO. Yes, it is. Thank you.

Chairman GRAHAM. Mr. Huse, you talked about three cases that really struck me as a bad thing to do to someone, because people live in fear of that Social Security check being manipulated or changed and that is their livelihood. Every case was resolved in some civil matter. Why not criminal action?

Mr. HUSE. In each of those instances, Mr. Chairman, we look at the criminal potential in those cases, too, but a lot of times these don't violate criminal statutes. We work closely with the United

States Attorneys' offices in each of those jurisdictions to get to where we would impose our civil money penalty.

Chairman GRAHAM. So it is not a crime to try to manufacture what would appear to be a Government document to mislead somebody?

Mr. HUSE. Well, it is something in similitude to a Government document. And the answer is, no, it is not a crime, but it is something that we can sanction from an administrative perspective.

Chairman GRAHAM. Is there any effort to make it a crime?

Mr. HUSE. That, I think, has been something that has been in potential for some time, but the problem you push up against, of course, is the First Amendment issues that are always an aspect of us trying to find criminal remedies against some of these practices. And these are only a sample of what we deal with everyday.

Chairman GRAHAM. Well, I would be very interested in working with your staff to see if we can take it to the next level.

Mr. HUSE. We would be delighted to work with you on that.

Chairman GRAHAM. The more pain, the less people are likely to do this.

Inspector, is the punishment scheme satisfactory from your point of view to deter this once you catch somebody?

Mr. MIHALKO. Yes, the mail fraud statute is pretty effective. It is a 5-year charge, up to 5 years in prison for each mail fraud count, and up to $250,000 in fines. So it is a great statute. It is over 100 years old. It has been tweaked just a little bit, but we find it to be extremely effective.

Chairman GRAHAM. Does it apply to telemarketing?

Mr. MIHALKO. Well, there is mail fraud and wire fraud.

Chairman GRAHAM. The mail follows the conversation, yes.

Mr. MIHALKO. Almost every one of these telemarketers involves the use of the mail at some point.

Chairman GRAHAM. What if someone was called on the phone and they just made a wire transfer of money? Would you have a problem there?

Mr. MIHALKO. We still work those types of cases, yes. If we get the complaint, we are going to follow through.

Chairman GRAHAM. Well, Mr. Huse, what would your wish list be? If you need some time to make it up, the offer stands for you, also.

Mr. HUSE. Well, Mr. Chairman, the title of this hearing, "Crimes Against the Elderly," really kind of embraces what we do for a living at the Social Security OIG. With the client base that we have of those American citizens who receive Social Security benefits, many of them are elderly. So it is not just limited to these kinds of schemes. We have those elderly beneficiaries who are in nursing home care facilities that are covered by representative payees who also are subject to our scrutiny and focus and are defrauded sometimes by those, and we have testified before Congress on those issues. And then the Social Security number itself, its integrity, is our prime responsibility, and that is the keystone to identity fraud in this country, since it is our ad hoc national identifier.

So I do have a wish list, to get to the point. Presently, in this Congress, there are two bills that originated with the Social Security Subcommittee in the House. H.R. 743 has provisions in it that

would strengthen some of the civil money remedies we have. And also in the identity fraud area the Social Security Protection Act, and that might be a general title, but H.R. 2971, when it comes to the Senate, definitely is something that would help us.

Chairman GRAHAM. Well, we will keep our eyes and ears open for that, but my offer stands about trying to take some of these civil aspects and make them criminal, if that is at all possible.

Mr. HUSE. We welcome that. We will work with you closely on that.

Chairman GRAHAM. No pun intended, pushing the envelope here, okay?

Well, thank you both very much for your testimony.

Mr. HUSE. Thank you, Senator.

Mr. MIHALKO. Thank you.

Chairman GRAHAM. Thank you very much.

I have for the record statements from Senators Grassley and Leahy that we will introduce, and appreciate their concern.

Well, thank you all. One administrative matter. I hate to get you right back up, but if you will stand just for a second, I will swear you in, if you don't mind. Raise your right hands.

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. CHILES. I do.

Mr. WRIGHT. I do.

Mr. HOLBROOK. I do.

Ms. STIEGEL. I do.

Chairman GRAHAM. If you could quickly introduce yourselves for the record for me to get to know you better, then we will start taking testimony from my left to the right.

Mr. CHILES. Senator, I am Chris Chiles. I am the prosecuting attorney from Cabell County, West Virginia, here on behalf of the National District Attorneys Association.

Mr. WRIGHT. I am Jim Wright, representing the National Sheriffs' Association, and I run the Triad program there.

Chairman GRAHAM. Thank you, sir.

Mr. HOLBROOK. Senator Graham, I am Doug Holbrook, a member of the board of directors of AARP.

Chairman GRAHAM. Thank you, sir.

Ms. STIEGEL. Senator, I am Lori Stiegel, from the American Bar Association.

Chairman GRAHAM. Thank you all. Thank you very much for coming. We look forward to hearing from you.

Mr. Chiles, would you like to start?

STATEMENT OF HON. CHRISTOPHER D. CHILES, PROSECUTING ATTORNEY, CABELL COUNTY, WEST VIRGINIA, AND VICE PRESIDENT, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, ALEXANDRIA, VIRGINIA

Mr. CHILES. Thank you, Senator. As I said, my name is Chris Chiles and I am the elected prosecuting attorney in Cabell County, West Virginia. I am honored to serve as Vice President of the National District Attorneys Association, and I want to thank you on

behalf of the NDAA for the opportunity to present our concerns on elder abuse, neglect, and financial exploitation.

To place my remarks in context, let me briefly tell you about my jurisdiction. Cabell County has a population of almost 100,000 people, with some 16 percent being over the age of 65 years. I currently supervise a staff of 8 full-time and 2 part-time assistant prosecuting attorneys. Annually, my office prosecutes several hundred felony cases, almost 7,000 misdemeanor cases, and over 800 juvenile cases.

Before I begin my remarks, Senator, I would ask that my complete testimony be included in the record, and I would also request that the National District Attorneys Association's policy entitled "Policy Positions on Elder Abuse, Neglect, and Financial Exploitation" be included in the record.

Chairman GRAHAM. Without objection, it will be so ordered.

Mr. CHILES. Thank you, sir.

Since 1986, the board of directors of NDAA has been concerned about elder abuse. In that year, they adopted a resolution on elder abuse, stating that vast numbers of our country's elderly citizens have silently endured physical trauma, financial devastation, and emotional distress because they have been victimized by anonymous criminals, or perhaps worse by one's trusted caretakers or family members.

Just as the criminal justice system has rightly recognized that child abuse can be curbed by the enactment of new laws and the use of special procedures, so too should the system be amenable to changes on behalf of our growing elderly population. Since then, NDAA has worked to make this resolution a viable concept.

Now, Senator, we have just heard about the problem of financial exploitation of the elderly. I have prosecuted many of those types of cases and have some pending right now. It is a serious problem, but I would like to talk to you now about physical abuse and neglect of the elderly.

I want you to realize that it could be your father who gets mugged when he comes out of the grocery store with a bag groceries and is unable to defend himself. It might be your mother, in her 80's or 90's, who is still able to live alone and proud of the fact that she is still able to care for herself, who has her house broken into one night and is sexually assaulted, vaginally and anally, before being strangled to death and not found until the next evening. I have a case just like that which is pending right now.

Or maybe it is someone who thinks that they are still able to care for themselves and make proper decisions about their well-being, but really isn't, and let's someone, perhaps a stranger or perhaps a relative with a drug problem, move in with them to help take care of them who ends up stealing from them or physically abusing them.

These abuses happen everyday somewhere in this country, and not enough is being done to stop it and successfully prosecute these predators. Elder abuse is an ever-growing problem and it comes in many different forms. The problem is similar to that which we faced with child abuse not that many years ago. Not so long ago, no one wanted to believe that a family friend, a parent, a grandparent, or a teacher would ever harm, much less sexually abuse,

a child. A child victim did not know who to tell when it did happen, or was reluctant to tell because it was a loved one who abused them. Or they didn't think anyone would believe them, or they thought it was their fault that this happened to them. It took years of educating the public and training our prosecutors and police that unfortunately this does happen and what has be done to stop it.

The same thing is true today with elder abuse. We as a society do not want to believe anyone, especially a family member or a caregiver, would harm or neglect our parents or grandparents. Similarly, our elders are afraid to disclose abuse or neglect for a variety of reasons. Just as we have found it difficult to convince a jury that a parent could harm a child, we are finding that it is equally hard to convince them that a child could harm their father or mother.

As prosecutors, we have a lot to learn about protecting our elderly. We need to recognize the special needs of elderly victims and witnesses. We need to learn the specialized forensic issues that are involved with elderly victims, and we need to learn the trial skills that will successfully ensure that justice is achieved for the elderly. As importantly, we need to become leaders in our communities in protecting our elderly and educating ourselves, but the police, EMTs, medical personnel, and the public about elder abuse and neglect.

In closing, Senator, I would commend to your review the Elder Justice Act, Senate bill 333, coauthored by Senator Breaux and Chairman Hatch, and many of the members of this Committee have joined as sponsors. The National District Attorneys Association has gone on record as supporting this bill for what it represents to our parents and grandparents.

We cannot as a society, and especially as those charged with protecting all our citizens, especially our elders, allow this abuse and neglect to continue unabated. On behalf of America's prosecutors, I and the National District Attorneys Association urge you to take steps to provide Federal assistance to our efforts to fight abuse, neglect, and exploitation of the elderly. We look forward to continuing to work with you on addressing this growing problem.

[The prepared statement of Mr. Chiles appears as a submission for the record.]

Chairman GRAHAM. Thank you, Mr. Chiles.

Mr. Wright.

STATEMENT OF JAMES A. WRIGHT, NATIONAL SHERIFFS' ASSOCIATION, ALEXANDRIA, VIRGINIA

Mr. WRIGHT. Thank you. Good afternoon, Mr. Chairman, and thank you for the opportunity to offer comments. I am here to represent the National Sheriffs' Association as the Director of Triad, a program that serves seniors all across the country.

Having spent my entire adult life in law enforcement, retiring at the rank of captain from the Metropolitan Police Department in Washington, D.C., I have firsthand knowledge of the devastating effect that abuse, neglect, and exploitation can have on the elderly.

Oftentimes, elderly victims of crime do not report their victimization to authorities. One of the most common reasons seniors give for not calling law enforcement is that they are afraid of the perpe-

trator, who is often known to the victim. In cases of financial exploitation, seniors cite the fact that they do not want their adult children or caretakers to know that they have been defrauded, primarily because the senior fears losing his or her financial independence.

In many cases, the persons abusing or exploiting the elderly are their own children, grandchildren, or trusted advisers. Such victimization raises enormous uncertainties in the minds of seniors, making them more likely not to report the incident.

When victimized, seniors often feel there is little that can be done to assist them, knowing that in many cases the perpetrator is in another State, or even another country, and may never be brought to justice. Restitution may not be likely, but revictimization is. Prevention, then, is not the only option, but is by far the best option.

In the late 1980's, at the beginning of the community policing movement in America, representatives from three national organizations came together to address the issue crime safety for seniors. The American Association of Retired Persons, now AARP, the International Association of Chiefs of Police, and the National Sheriffs' Association joined together to form Triad, and the name Triad is simply representative of the group of three.

In its simplest terms, Triad is a concept of partnership. Its goals were and are to reduce crimes committed against seniors and to reduce the unwarranted fear of crime that seniors often experience. Since Triad's inception, more than 800 counties throughout 47 States have signed Triad agreements.

After establishing the Triad agreement, a SALT council is formed to develop and implement programs and activities. SALT is an acronym for Seniors and Law Enforcement Together, and it is made up of community representatives. Since being founded 15 years ago, the number of partners has increased dramatically. A local Triad in the year 2003 is far more inclusive than ever before, and now a Triad is likely to include representatives from sheriffs' offices and police departments, Federal law enforcement, fire departments, EMS, the faith community, senior volunteers organizations such as AARP and RSVP, State and county prosecutors, district attorneys, State attorneys general, area agencies on aging, adult protection, social services, hospitals. Even banking institutions participate in Triad.

Programs fit local needs, and one example is an RUOK program where shut-in seniors or seniors with limited mobility are contacted each day by other volunteers simply to ascertain if they are okay. Another program, Senior Visitation, has deputies and officers periodically visiting seniors in their homes just to spend some time and to chat with the seniors. Some other Triad programs are senior education, senior fares, senior lectures on fraud, financial abuse, and other crimes.

Triad is one way for law enforcement personnel to be in frequent contact with the elderly. The value of this interaction between law enforcement and seniors cannot be overstated. Such contact opens communication and allows trained law enforcement personnel to recognize patterns and trends, and to witness situations where seniors are being victimized or are potential victims.

An important benefit is that when law enforcement officers observe these situations, they can intervene and either prevent a crime or initiate an investigation. This, in turn, removes the weight of having to decide whether or not to file a report from the senior. Such communication works the other way as well, in that it gives seniors the opportunity to pass along important information to the police about potential suspicious activity, such as terrorism or drug- or gang-related activities that are in their neighborhood.

So it seems to me, Mr. Chairman, that the question is not only whether or not we are doing enough to protect our Nation's elderly, but also whether those things we are doing are effective. Triad, like Neighborhood Watch, is there for the asking. These programs can be replicated in communities all across the country or can be modified to fit individual community needs.

Triad programs help ensure that law enforcement, criminal justice professionals, and volunteers coalesce their energy so as to reduce crime against the elderly. Senators Rod Grams and Evan Bayh sponsored legislation that passed Congress unanimously authorizing Federal funding for the Triad program, and while it has been funded in fiscal year 2003, it does not appear that it will be funded in fiscal year 2004. The National Sheriffs' Association and those of us committed to Triad will continue to work to increase the number of communities utilizing this grass-roots community-oriented program.

I sincerely thank the Committee for the opportunity to offer comments and for its willingness to address this important issue. I would be pleased to respond to any questions.

Chairman GRAHAM. Mr. Wright, thank you for coming. I understand that you gave up an annual meeting trip to Minnesota to be here. Is that correct?

Mr. WRIGHT. Yes, sir.

Chairman GRAHAM. Well, thank you for doing that. It has been very helpful. Before going to the next witness, what was the budget last year for Triad?

Mr. WRIGHT. One million dollars.

Chairman GRAHAM. And it is not in this year's appropriation?

Mr. WRIGHT. No, sir, not yet.

[The prepared statement of Mr. Wright appears as a submission for the record.]

Chairman GRAHAM. Mr. Holbrook.

STATEMENT OF DOUGLAS C. HOLBROOK, MEMBER, BOARD OF DIRECTORS, AMERICAN ASSOCIATION OF RETIRED PERSONS, WASHINGTON, D.C.

Mr. HOLBROOK. Thank you, Mr. Chairman, and good afternoon again. I am Doug Holbrook, a member of the AARP board of directors. On behalf of AARP, I want to thank the Crime Subcommittee for convening this hearing to assess the Nation's effort to combat elder abuse, neglect, and exploitation.

At this time, I would like to request also that our complete testimony be included in the record.

Chairman GRAHAM. Without objection.

Mr. HOLBROOK. State and national attention to elder abuse concerns is strongly supported by AARP members and older Ameri-

cans generally. Our members tell us that protecting themselves and their loved ones from abuse and fraud is one of their major concerns.

The risk of harm is real, and that risk is growing with the dramatic increase in the number of people living into advanced old age. Engaging all sectors of society in the fight against abuse, neglect, and exploitation is essential. Elder abuse is a hidden problem. Only the most visible and recurring cases get reported. Like an iceberg, the bulk of the problem remains hidden from view.

Despite underreporting, there has been a very substantial increase in the number of official reports of domestic elder abuse. Between 1986 and 1996, the number of reports rose from 117,000 to 293,000, an increase of 150 percent. The number is expected to continue to rise in the future.

Developing the support services and enforcement network to meet the needs of a large number of potentially vulnerable persons poses a significant challenge. Current laws addressing elder abuse and our system of protective services are far from perfect. Not long ago, it was difficult, if not impossible, to get an abuse case investigated or prosecuted. Fortunately, that situation has changed, but there is still a great need for specialized knowledge that will allow successful prosecution and encourage further development of case law. We would like for you to see our full statement for examples of the many gaps in the network of services for the abused.

Recognizing the need for a coordinated approach to the problems of abuse and neglect, AARP joined a number of organizations in supporting the Elder Justice Act of 2003. This legislation would greatly enhance the Federal Government's ability to partner with States and communities to develop the tools needed to ensure safety of the most vulnerable citizens.

While advocating strongly for Federal proposals like the Elder Justice Act, AARP recognizes the need for ongoing efforts at the State level to improve public awareness, the quality of investigations, and enforcement in cases of abuse and neglect. These efforts are particularly important in periods where we have fiscal austerity.

Enforcement and prosecution play a key role in redressing abuse and neglect after they have occurred. But just as important is the role of prevention. Early detection of warning signs through the encouragement of wider reporting and community policing can make a critical difference.

Also, AARP has historically been concerned about financial fraud—the fastest growing form of abuse. The main hurdles to successful prosecution of these crimes are getting the cases reported to law enforcement, having them thoroughly investigated, and obtaining timely and appropriate prosecution.

Financial exploitation has many disguises, causes, and forms of expression, but the common thread of its many methods is an effort by unscrupulous persons to extract money and resources through a variety of ways. AARP is addressing the problem through programs that educate members, families, professionals, and potential victims.

Some AARP initiatives include daily money management. This helps older persons who are losing their ability to handle their fi-

nances to find someone to help them manage their money—a very successful program. Financial education projects expand financial awareness and enable participants to evaluate the trustworthiness of supposed advisers and experts.

Colorado Elder-Watch protects older adults from the financial exploitation of telemarketers and other forms of identity theft schemes. Campaign Against Predatory Lending advocates legislative reform, pursues precedent-setting legislation, and offers education to homeowners regarding what to watch for in borrowing against the equity in their homes.

Consumer universities may offer presentations by local legal experts to avoid being exploited in the financial marketplace; legal clinics and attorney training seminars; use of the AARP media, including The Bulletin and AAPR-The Magazine, reaching over 34 million homes. Research by the AARP Public Policy Institute on consumer financial and fraud issues includes pre-need funeral and burial arrangements, identity theft, and the regulation of home improvement contractors and sub-prime mortgage lending.

Senator Graham, AARP appreciates your leadership and efforts to assure the safety and well-being of older American citizens. We look forward to working with the Committee, with your staff, the administration, and any other group concerned toward solving this very important problem.

Thank you very much.

[The prepared statement of Mr. Holbrook appears as a submission for the record.]

Chairman GRAHAM. Thank you, Mr. Holbrook. I really appreciate what AARP is doing. I know you all spend a lot of time and money on this, and it is very valuable to us all.

Ms. STIEGEL.

STATEMENT OF LORI A. STIEGEL, ASSOCIATE STAFF DIRECTOR, COMMISSION ON LAW AND AGING, AMERICAN BAR ASSOCIATION, WASHINGTON, D.C.

Ms. STIEGEL. Chairman Graham, thank you again on behalf of the American Bar Association for inviting us to be here today. I work for the ABA's Commission on Law and Aging, and for the past 10 years have directed all of our elder abuse activities.

You have already heard, and you had already mentioned that elder abuse is a crime. When I talk about elder abuse, I am specifically referring to that committed by family members, caregivers, and trusted others, not by strangers or the predators whom we heard about from the earlier panel.

Some case examples are always important. In your own State, a son was convicted for having allowed his mother to rot to death from bed soars that were embedded with bobby pins and roiling with maggots.

In Delaware, another example occurs where a nursing home aide was convicted for hanging a resident's baby doll by a noose from the ceiling of the resident's room. The aide knew that this resident had dementia and honestly believed that this baby doll was her live baby. These are two examples of the kind of cases that happen everyday in every State across this country.

Elder abuse is clearly a crime, but it is only fairly recently that we have begun to respond to it that way instead of only looking at it as being a family problem, a social problem to which social and human services responded. So as a result, we are really at the forefront of having the criminal justice system understand and respond to these cases.

My co-panelists have talked about the need for training of prosecutors and law enforcement, but the needs and the gaps go far beyond that. Judges need training on these issues. Civil lawyers need to understand that this is a criminal issue, and the criminal law needs to understand that it is a civil issue as well. Adult protective services workers need to understand that they need to co-refer and cross-refer these cases to law enforcement and others. The gaps in the system are tremendous just in terms of the basic knowledge and understanding of working with each other.

In addition, the science isn't there very often to prove that elder abuse has occurred in many of these cases. Whereas with children we know that certain types of injuries are only caused by abuse, we don't yet have that science to understand that for elder abuse, and we really need it for the criminal justice system to respond appropriately.

You have heard, and I would agree, that elder abuse is very complex because of the range of people who commit it, that being family members, caregivers, trusted others. That makes it so much more difficult for elder victims to turn to the system for help. The shame and stigma they face is even greater than when the problem has been conducted by a stranger.

We know that this impact is so serious on individuals. What we don't know is how serious is the impact on society. We know there must be social costs, but nobody has studied that yet, and the National Research Council study panel noted that in its recent report on elder abuse, neglect, and mistreatment.

Let me offer to you some suggestions and things on which the ABA has policy that we would like to see happen. We believe there is a need for a nationwide structure for raising public awareness, supporting research, providing training and technical assistance, funding critical services, including prosecution, adult protective services, and legal services, and coordinating the resources among the States, territories and national levels.

We believe there is a need to develop and implement specialized training about elder abuse for all components of the justice system. We believe there is a need to establish Federal leadership to ensure that adult protective services and legal and other services are of sufficient quality to protect and serve victims of elder abuse. There are numerous Federal employees who work on issues of child abuse and domestic violence. There is not one full-time Federal employee working on the issue of elder abuse.

There is a need for broad-based, multi-disciplinary task forces and coalitions in each State to examine and develop systemic approaches to elder abuse interventions. Your own State is an example of where there is a State adult protection coordinating council that is doing wonderful work.

We would like to see a multi-disciplinary research agenda sustained, advanced, and assessed. The National Research Council

just developed a wonderful agenda. Now, it needs to be funded and implemented. We would like to see resources for preventing and responding to elder abuse, and adequate tools and services to enable capacity assessments for victims of elder abuse because the capacity is often an issue in so many of these cases, and critical to successful prosecution. Again, we would like to see legal and other services more readily available to meet the immediate and crisis needs of victims.

There are a lot of wonderful things happening already across the country, but those efforts are intermittent and often very depend just on one person's interest and commitment to the issue. When that one person leaves, the interest goes away. So we need to see it become more institutionalized.

Thank you for the opportunity to testify today.

[The prepared statement of Ms. Stiegel appears as a submission for the record.]

Chairman GRAHAM. Thank you all.

We will just start with you on that note. One of the benefits, hopefully, of the Senate legislation—I think it is 333, the Elder Abuse Act?

Ms. STIEGEL. Yes.

Chairman GRAHAM. One of the hopes is it will create a system sort of like the Violence Against Women Act and other Federal legislation that sort of gives focus to it. But if you could get back to me with what you would like to see changed or improved—I don't know if you had had a chance to look at it, but some of your requests maybe could be molded into the Act, because that seems to be the best vehicle in the short term.

If we could pass this thing, I think it would be a huge leap forward. No pun intended, but we are in the infancy of addressing this problem nationally; we really are. In my time as a lawyer, it got to be something I heard about, but never really thought about that much because you are always focused on children. But you will find in some of those families that you have an abuse problem that goes beyond just children.

So I would very much like to institutionalize this, so that is maybe where the ABA could help us. If you would go over the legislation and give us some input on the Subcommittee on how we could make some changes, I would appreciate it.

Mr. Holbrook, how much money do you think you all spend trying to educate your membership and others about what is going on out there?

Mr. HOLBROOK. Mr. Chairman, as you know, our organization is basically a volunteer organization.

Chairman GRAHAM. Right.

Mr. HOLBROOK. We have over 300,000 volunteers across the country who are involved in different phases of all these programs that I mentioned to you today. I would be more than happy to have the staff supply you an itemized cost list as to what we spend in each category, but I would like to make sure that we take into account the fact that we have most of our activity going on with volunteers who are devoting their time, as we are on our board of directors, to make sure that these things happen. But the staff will

provide you with information on cost, because I think it is an important question.

Chairman GRAHAM. To me, it is one of the best projects you could take up in terms of your membership.

Mr. HOLBROOK. I agree.

Chairman GRAHAM. How many members do you have now?

Mr. HOLBROOK. Thirty-five million.

Chairman GRAHAM. And you communicate with them fairly regularly?

Mr. HOLBROOK. We try to communicate with them everyday.

Chairman GRAHAM. Everyday.

Mr. HOLBROOK. Not only with our magazine which goes out to each of their homes, but also those that have access to our Web page have immediate access to information that is going on all the time. So we are very pleased with the progress we have made in communicating with our members throughout the country.

Chairman GRAHAM. Now, when you talk to them and you get information back about what is on their minds, how does this particular elder abuse problem rank in terms of the top 5 or 6 or 10?

Mr. HOLBROOK. It ranks very high, within the first probably two or three. It is a very important issue on the minds of our members and continues, I think, to increase every year. We hear more and more problems about elder abuse in our country. Predatory lending is one that we spend a tremendous amount of time on.

Chairman GRAHAM. Absolutely.

Mr. HOLBROOK. And also the others that I mentioned in my testimony and in our statement. All of these concern our members, and the unfortunate part about this is that so many of them have been taken advantage of by operators who have no concern about what they do for a living. They just take advantage of people.

To me, it is a very personal thing, as it is with you, because it has affected my own family and the families of most all of us. So I am sure that it is something that we in AARP want to do something about, and I am delighted that the Senate and the Congress is now looking at this as a real problem that we must address.

Chairman GRAHAM. Do you think we are just asking better questions, or is there more activity going on in terms of elder abuse? A little of both?

Mr. HOLBROOK. Well, I think there is more activity going on. I think there is more awareness of it. I was a little disappointed today when I read what happened in Oklahoma on the "do not call" list, where the judge ruled it no longer in effect. I was a little disturbed about that.

Chairman GRAHAM. Me, too.

Mr. HOLBROOK. Fifty million people are already signed up and now they say they are not going to deal with that. That was a very important part of trying to protect senior citizens.

Chairman GRAHAM. One of the things I would like to look at is capacity. Some people really don't have the capacity to make that initial phone call to take them off the list. Maybe there is something the Bar Association can do, or we can sort of institutionalize some type of guardian program to kind of shut the flow of information off.

Just to sum up what you are telling me, you are getting more input from your 35 million members over this issue than you have in the past and it is in the top two or three concerns.

Mr. HOLBROOK. I would say yes.

Chairman GRAHAM. If you could let me know how that develops over time, I think you are a great resource for us there.

Mr. HOLBROOK. We would be very happy to.

Chairman GRAHAM. On the prosecution and enforcement side, the cases you have described are horrible, and there are laws that deal with sexual abuse and there are laws that deal with violence. What we have done in the child abuse area has paid tremendous dividends. I was a prosecutor in the Air Force and from my 6-year period, it went from being an occasional thing you would find to almost an epidemic. It really was always there; we just learned to ask questions better. We got the mental health agencies involved, and doctors involved, and school teachers involved to kind of educate the people on the front lines about victims.

If you look, you will find more victims than you ever thought. So, hopefully, one of the things that the Elder Abuse Act will do is give us more eyes and give us a greater ability to look and understand what we are looking for.

In terms of partnerships, I will try to help you with your $1 million funding. I am the new guy on the block. We will see how that goes, but it seems to be a project well worth putting some money behind.

My staff gave me a good question—more of a comment than a question. The Justice Department has done a good job, I think, with Project Safe Neighborhoods, where they coordinate with local law enforcement—I am sure you are familiar with it—on gun crimes. The number of gun crimes has gone down dramatically because you have a task force mentality now between law enforcement officers and prosecutors at different levels to look at a particular crime when a gun is involved and kind of brain-storm it and see what Federal laws would fit, what State laws would fit, to get the maximum impact.

I understand what Triad is about. Do you think something similar could occur in this area where you have elder abuse? I am all for States having the first bite at the apple and I don't want to federalize every crime in the country, but I would imagine a lot of these cases have a Federal component to them if you look hard enough.

Mr. CHILES. Senator, I think certainly on the financial exploitation side, that would be true.

Chairman GRAHAM. Right, exactly.

Mr. CHILES. On the physical side, probably not.

Chairman GRAHAM. Probably not, and you all are very capable of doing that, but I would like to get these people as hard as we can get them. Chances are, they have been abused in more than one way.

Mr. CHILES. Yes, sir. In our most recent policy statement, adopted in March, one of the things that we strongly recommend, where possible, with office size and everything else, is the forming of task forces much like you suggest, to incorporate all different law enforcement agencies, social service agencies, adult protective serv-

ices, and to react as a task force much as we are often now able to do in child abuse cases.

One of the things that would help us in that regard, with prosecutors taking the lead on that task force, is more training. One of the things that we are recommending is the formation of a national center for the prosecution of elder abuse, neglect, and exploitation through the American Prosecutors Research Institute. Right now, APRI has a section like that in child abuse where they train literally hundreds of prosecutors a year, which lets the prosecutors then go back and, among other things, set up these task forces and things like that.

Chairman GRAHAM. Become experts, right. Well, we have a good site in Columbia, South Carolina, to do that.

Mr. CHILES. We would love to use the NAC for that, also, yes, sir.

Chairman GRAHAM. Stay in touch with us about the efforts to do that.

Mr. Wright, I do appreciate your taking time out to come. From the law enforcement side of the equation, would you be amenable to a Project Safe Neighborhoods for seniors?

Mr. WRIGHT. Absolutely, Mr. Chairman. Triads are locally managed and they work in different ways, and there is one, in fact, in Denver, the Metro Denver Triad, in which the district attorney there kind of heads it up. Typically, as I understand it, each year the Irish travelers who do a lot of home repair fraud—

Chairman GRAHAM. Yes. Some of them are from South Carolina.

Mr. WRIGHT. They are, they are, and they go out there and when they come out there in the spring, they have a task force approach which includes the Denver Police Department and the sheriff departments in Arapaho, Jefferson, and the surrounding counties.

Chairman GRAHAM. Does it have a Federal component to it?

Mr. WRIGHT. Not that I am aware of, sir.

Chairman GRAHAM. Maybe that is something we could integrate because it has worked very well in the gun area, where you get a Federal-State connection to really look at all the avenues available to you.

Mr. WRIGHT. Yes. Certainly, the National Sheriffs' Association also supports the Elder Justice Act. As was already stated, a lot of the response is intermittent and it comes and goes, so I would certainly support it.

Chairman GRAHAM. Well, what I will do to help the cause a bit is I will try to write Attorney General Ashcroft, who is a good friend and I think doing a great job for us in terms of fighting crime. I will try to write him and see if we can get some involvement, some thinking going on to try to integrate into what you are already doing nationwide. Hopefully, we can get some funding.

Mr. WRIGHT. We appreciate that.

Chairman GRAHAM. Anything else that you would like to leave with the Subcommittee before we call it a day?

Thank you all. It has been very helpful. I appreciate your time and your energy, and I appreciate very much your coming.

We have a resolution from the bar association that we will put in the record.

Thank you all. The hearing is adjourned.

[Whereupon, at 3:39 p.m., the Subcommittee was adjourned.]
[Additional material is being retained in Committee files.]
[Questions and answers and submissions for the record follow.]

QUESTION AND ANSWER

SOCIAL SECURITY

Inspector General

November 21, 2003

The Honorable Lindsey O. Graham
Chairman
Crime, Corrections, and Victims' Rights Subcommittee
Senate Committee on the Judiciary
290 Russell Senate Office Building
Washington, D.C. 20510

Attn: Ed Bonapfel

Dear Senator Graham:

Thank you for your letter of October 20, 2003, requesting our response to a question posed by Senator Craig related to my appearance before the Crime, Corrections, and Victims' Subcommittee at your hearing on "Elder Abuse, Neglect, and Exploitation: Are we doing enough," held September 24, 2003. This was a very important and timely hearing on an issue that deserves everyone's continued diligence. Following is our response.

> ***Question: What additional authority would the Social Security Administration (SSA) and the Office of the Inspector General (OIG) need to safeguard the Social Security number?***

As I stated in my testimony before this Subcommittee, investigations regarding scams against the elderly represents one of our highest priorities. It is unconscionable to mislead the elderly to solicit money or personal identifiers by purporting that the contact is with, or is endorsed by, the SSA.

In conjunction with these concerns, it is clear from our work that the Social Security number (SSN) has become a national identifier. While many people may have challenged that statement in the past, it is not so today. Today, we live in a changed world, and the SSN's role as a national identifier is a recognized fact. It is a key to obtaining credit cards, loans, driver's licenses, and other identification documents. Its misuse creates a homeland security risk, and any failure to protect the integrity of the SSN can have enormous consequences. In addition, identity theft is the fastest-growing form of white-collar crime in the United States. We have no greater duty than to safeguard the SSN.

We have worked with SSA and Congress in the preparation of several legislative proposals designed to safeguard the SSN. Many of these provisions are included in H.R. 2971, the "Social Security Number Privacy and Identity Theft Prevention Act of 2003," introduced July 25, 2003, by Representative Shaw, Chairman of the Social Security Subcommittee, Committee on Ways

and Means of the House of Representatives. One is included in H.R. 743, the "Social Security Number Protection Act of 2003," introduced by Representative Shaw on February 12, 2003.[1] The proposals can best be divided into two categories: (A) those designed to ensure the integrity of the application for a SSN and the SSN replacement card; and (B) enhanced criminal and civil enforcement tools for the misuse of the SSN.

A. Measures to ensure the integrity of the application for SSNs and replacement Social Security cards.

These measures are designed to ensure the integrity of the enumeration process itself; to ensure that a SSN and/or Social Security card is issued to the proper person.

1. Requires that SSA independently verify birth records provided in support of applications for SSNs and replacement Social Security cards.

2. Requires the Commissioner of the Social Security Administration (Commissioner) to make improvements to the enumeration at birth program for the issuance of SSNs to newborns, with the intent to prevent: (1) the assignment of SSNs to unnamed children; (2) the issuance of more than 1 SSN to the same child; and (3) other opportunities for fraudulently obtaining a SSN.

3. Directs the Commissioner to issue regulations to restrict the issuance of multiple replacement Social Security cards. Currently, SSA may issue up to one replacement Social Security card per week to an individual.

4. Requires four studies which I believe could have a positive effect on safeguarding the SSN.

First, the Commissioner is to undertake a study to test the feasibility and cost effectiveness of verifying all identification documents submitted by an applicant for a replacement Social Security card. Included in the study is a determination regarding the development and associated costs of appropriate electronic processes for third party verification of any such identification documents which are issued by agencies and instrumentalities of the Federal and State Governments.

Second, the Commissioner is to determine the most efficient options for ensuring the integrity of the enumeration at birth process. This study is to include an examination of available methods for reconciling hospital birth records with birth registrations submitted to State agencies and their political subdivisions with information provided to the Commissioner as part of the enumeration at birth process.

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[1] H.R. 743 was passed by the House of Representatives on April 2, 2003. It was voted out of the Senate Committee on Finance, amended, on September 17, 2003.

Third, the Commissioner is to undertake a study to determine the best method of requiring and obtaining photographic identification of applicants for a SSN, Social Security benefits or for a replacement Social Security card.

Finally, the Commissioner, in consultation with the Secretary of Homeland Security, is to undertake a study to examine the best method of modifying a SSN assigned to individuals who: (1) are not citizens of the United States; (2) have not been admitted for permanent residence; and (3) are not authorized by the Secretary of Homeland Security to work in the United States, or are authorized subject to one or more restrictions.

B. Enhanced criminal and civil enforcement tools for the misuse of the SSN.

These measures are designed to safeguard the SSN from being obtained by an unscrupulous person and to punish those who misuse a SSN. One of the important tools included in this list is the expansion of the civil monetary penalty authority under section 1129 of the Social Security Act, 42 U.S.C. 1320a-8. We have found the Civil Monetary Penalty program to be an effective tool against fraud in other areas. Currently, section 1129 applies only to false statements or misrepresentations of a material fact in relation to an individual's right to receive benefits or the amount of benefits under the Social Security Act. These legislative proposals would provide us with the tools to pursue civil monetary penalties for the misuse of the SSN in cases where Social Security benefits were not involved, thus providing more support for United States Attorneys.

This is important because due to the volume of cases within some Districts, the United States Attorney's office has instituted a minimum loss requirement to pursue a case either criminally or civilly. Depending upon the office, it could be from $10,000 to $100,000 or higher for fraud cases. Under section 1129 of the Social Security Act, 42 U.S.C. § 1320a-8, the United States Attorney must prosecute or decline the case criminally and decline the case civilly before we may proceed.

Therefore, as an example, if the minimum loss requirement is $50,000 in the United States Attorney's office and the Social Security-related loss is $30,000, without some other compelling reason to prosecute the case, e.g., the accused is a public official, the United States Attorney's office will usually decline to prosecute the case criminally and civilly. Expansion of the scope of section 1129 provides law enforcement with an effective alternative and is an important step if we are serious about protecting the integrity of the SSN.

Other measures include:

1. Restrictions on the sale or display by government agencies to the general public of SSNs, with criminal and civil monetary penalties for violations.

2. Prohibition of the display of the SSN on checks issued by government agencies; driver's licenses or motor vehicle registrations; and, on employee identification cards or tags, with criminal and civil monetary penalties for violations.

3. Prohibition of inmate access to SSNs, with criminal and civil monetary penalties for violations.

4. Prohibition of the sale, purchase, or display to the general public of the SSN in the private sector, with criminal and civil monetary penalties for violations.

5. Criminal and civil monetary penalties for an individual to disclose, sell, or transfer their own SSN with the intent to deceive.

6. Criminal and civil monetary penalties for any individual, without lawful authority, to offer, for a fee, to acquire for anyone, or to assist in acquiring for anyone, an additional SSN or a number that purports to be a SSN.

7. Criminal and civil monetary penalties for a SSA employee to knowingly and fraudulently issue SSNs or Social Security cards.

8. Amends sections 208, 811 and 1632 of the Social Security Act, (42 U.S.C. §§ 408, 1011, and 1383a) to provide enhanced criminal penalties for a violation of the section in cases involving terrorism, drug trafficking, crimes of violence, and subsequent violations of the statutes.

9. Amends section 1129 of the Social Security Act, 42 U.S.C. 1320a-8, to authorize the imposition of civil monetary penalties for violations of section 208 of the Social Security Act, 42 U.S.C. 1320a-8, involving a SSN or Social Security card.

10. Amends 208, 807(i) and 1632 of the Social Security Act, (42 U.S.C. §§ 408, 1007(i), and 1383a), to provide authority for judicial orders of restitution. This is in response to a case that limits the ability of the Court to order restitution for convictions pursuant to the criminal statutes of the Social Security Act.

Disclosure of SSA maintained information

While not contained in pending legislation, I believe that expanded authority to disclose information contained in SSA databases to law enforcement during legitimate inquiries would greatly enhance our ability to safeguard the SSN.

As I have testified, I believe there should be cross-verification of SSNs through both governmental and private sector systems of records to identify and address inaccuracies in SSA's files, and in data bases at various levels of government and the financial sector. Cross-verification can combat and limit the spread of false identification and SSN misuse. All law enforcement agencies should be provided the same SSN cross-verification capabilities currently granted to employers. It would use data already available to the Federal, State and local governments and the financial sector. I believe the rewards of such a program would far outweigh the costs involved.

Currently, we have authority, formalized by a memorandum of understanding with SSA, to verify the SSN for law enforcement. However, this is very limited and we can only state whether the SSN and name match. If they do not match, we are unable to provide the name and/or SSN that each does match.

I believe it is important to discuss for a moment the information that SSA maintains in its databases. This information is of two types. First is Social Security information. This information is personally identifiable information obtained by SSA from the individual, e.g. information from an application for a Social Security number or for Social Security benefits. The disclosure of this information is controlled by SSA's policies and procedures. As indicated in a recent GAO report,[2] SSA's current disclosure regulations and policies are more restrictive than the Privacy Act, 5 U.S.C. 552a.

The second type of information is wages and earnings statements, e.g. W-2s, forwarded to SSA by an individual's employer. This information would include the name and address of the individual's employer. This information is considered Internal Revenue Service (IRS) information and its release is controlled by 26 U.S.C. 6103 which is much more restrictive than the Privacy Act. In addition, IRS regulations and policy are even more restrictive than SSA's disclosure policy with respect to the release of this information.

Current SSA and IRS regulations and policies deserve a close look to determine how greater access may be provided to law enforcement during legitimate law enforcement inquiries while protecting the privacy rights of individuals.

I hope this has been responsive to your question. Thank you again for the opportunity to appear before your Subcommittee. I look forward to working with your Subcommittee on this very important issue. If you have any questions, or need additional information, please contact me at 410-966-8385, or have your staff contact H. Douglas Cunningham, Executive Assistant, at 202-358-6319.

Sincerely,

/s/
James G. Huse, Jr.

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[2] United States General Accounting Office *Social Security Administration: Disclosure Policy for Law Enforcement Allows Information Sharing, but SSA Needs to Ensure Consistent Application,* GAO-03-919 (Washington, DC September 2003)

SUBMISSIONS FOR THE RECORD

Statement of Senator Joseph R. Biden, Jr.
Ranking Member, Subcommittee on Crime, Corrections and Victims' Rights
Hearing on "Elder Abuse, Neglect, and Exploitation: Are we doing enough?"
September 24, 2003

Mr. Chairman, I thank you for calling this important hearing on elder abuse. I am sorry that my duties in the Foreign Relations Committee prevented me from participating this afternoon, but I would like to thank the witnesses for their testimony and to make a few comments for the record on the issue of crimes against our seniors.

At the outset, let me note that the issue of crimes against seniors is one that is a ripe for a hearing in this Subcommittee. Last October, during my chairmanship of this Subcommittee, I noticed a hearing entitled, "Protecting America's Seniors from Fraud." Scheduling conflicts amongst invited witnesses forced me to cancel that hearing, but I am gratified to see the Subcommittee revisiting the issue today.

Today, about 34 million Americans – or one in eight – are 65 or older. In 30 years, the proportion of elder Americans will be one in five. One account last year noted that 67 percent of our Nation's wealth is held by Americans who are 50 years and older – a group making up only 26 percent of the population. Reports indicate that incidents of elder abuse are on the rise: one witness today notes that official elder abuse reports rose 150 percent between 1986 and 1996. Criminals tend to go where the money is, and criminal frauds of all kinds are often targeted at senior citizens because they tend to be wealthier than the average citizen. A study released last year but the Justice Department found that the elderly are disproportionately affected by property crimes, including financial and consumer frauds. These frauds account for over 90 percent of all crimes against senior citizens. I worry that the coming demographic shifts could result in a higher number of crimes against seniors.

I look forward to reviewing today's hearing record to learn more about elder abuse, neglect and exploitation. But experts have already told us that our oldest citizens are unfortunately vulnerable to a broad range of abuses. The Justice Department has noted that senior abuses run from telemarketing and home-repair scams to investment and securities fraud, to predatory lending abuses and even to expectant heirs who try to accelerate their inheritance.

Experts have offered differing views as to why seniors can be more vulnerable to these scams as compared to other sectors of the population. Seniors can be more trusting and less cynical than younger adults, some experts have reported. Others note that seniors can be less mobile, and thus more receptive to scams that promise to deliver goods and services that older Americans could find difficult to obtain on their own. Seniors also tend to be at home more often when scam artists come calling.

In addition to the enhanced vulnerability of senior fraud victims, some crimes against seniors can be more difficult to investigate and prosecute than other cases. The National Center for Elder Abuse has noted various prosecutorial obstacles, including the overlapping jurisdiction of the civil and criminal systems; the advanced age and frailty of some senior victims; and that

victims and the justice system at times fail to view these scams as the serious crimes that they are.

Chairman Graham, thank you again for calling this important hearing. I look forward to reviewing today's record and learning more from prosecutors, law enforcement officials, and elder abuse and criminal policy experts about what we can do together to reduce elder abuse, neglect and exploitation.

Committee on the Judiciary

Subcommittee on Crime, Corrections and Victims' Rights

Hearing on

Elder Abuse, Neglect, and Exploitation: Are We Doing Enough?

STATEMENT
of
SENATOR JOHN BREAUX

September 24, 2003

Chairman Graham, Ranking Member Biden and Members of the Committee. I would like to thank the Chairman and the Ranking Member for today's important hearing on elder abuse, neglect and exploitation, and crimes against the elderly. Today's hearing addresses a subject that Senator Hatch and I have worked on very closely together to address the growing problem of elder abuse, neglect and exploitation, far too long an invisible problem. I believe it is one of the gravest issues facing millions of American families.

As you know, older Americans are one of our most valuable resources. I've often said that the good news is that seniors are living longer; the bad news is that seniors are living long. With 77 million Baby Boomers advancing in age, we are faced with unprecedented numbers and unprecedented challenges ahead. It is essential that we begin to put in place the infrastructure to understand and address the myriad of issues facing older Americans, such as health care, retirement security, long-term care, and transportation. And, we must ensure an environment where seniors are protected from abuse, neglect and exploitation.

Although I am a proponent of maintaining the independence of seniors in their homes as long as that is possible, we all must recognize that there may come a time in many lives where nursing home care is essential. The question that remains is how we can consistently ensure that all older Americans are safe in

their homes and in our institutions. We must ensure that older Americans are safe in their homes and in institutions and free from all types of abuse: physical, sexual, financial and neglect.

Mr. Chairman, these are among the several reasons, why Senator Hatch and I offered the Elder Justice Act, S. 333, as part of that solution. I am pleased to say we have 29 co-sponsors in the Senate and a companion bill introduced in the House. Between the two houses, S. 333 and H.R. 2490 have more than 80 co-sponsors, and the number is growing. Three of the Senate co-sponsors are members of this Subcommittee and five co-sponsors are members of the full Committee on the Judiciary. More than half of the members of the Finance Committee, the committee of jurisdiction, are co-sponsors of the bill.

Congress has passed comprehensive bills to address the ugly truth of two other types of abuse - child abuse and crimes against women. These bills placed both issues into the national consciousness and addressed the abuses at a national level. Yet, despite dozens of congressional hearings over the past two decades on the devastating effects of elder abuse, neglect and exploitation, interest in the subject has waxed and waned, and to date, no federal law has been enacted to address elder abuse in a comprehensive manner.

The time has come for Congress to provide seniors a set of fundamental protections. Nursing homes are regulated at both the federal and state levels. Yet, abuses still occur. The larger percentage - approximately 80% - of our older population is cared for in homes, not nursing homes and other institutions. We are ill-equipped on both public health and law enforcement levels to address these abuses of our seniors now, and I submit we will be far less equipped to prevent abuses in the near future as 77 million Baby Boomers advance in age. The Elder Justice Act will elevate elder abuse, neglect and exploitation to the national stage in a lasting way. We want to ensure federal leadership to provide resources for services, prevention and enforcement efforts to those on the front lines in the states.

The Elder Justice Act addresses elder abuse in a comprehensive manner in homes and in institutions. It seeks to jump-start research and promising projects and improve the quality, quantity and accessibility of information. In addition, the bill seeks to develop forensic capacity to assist in the detection of elder abuse and

train individuals to combat abuse by recognizing the signs. Also Mr. Chairman, I would like to mention just a few of the provisions of the bill that I believe are particularly relevant to the kind of crimes against our older Americans that the Subcommittee is addressing today:

- The bill **enhances detection** by creating forensic centers and developing to enhance detection of the abuse.
- The bill **bolsters treatment** by funding efforts to find better ways to mitigate the devastating consequences of elder mistreatment.
- The bill **increases collaboration** by requiring ongoing coordination at the federal level, among federal, state and local private entities, law enforcement, long-term care facilities, consumer advocates and families.
- The bill **aids prosecution** by assisting law enforcement and prosecutors to ensure that those who abuse our nation's frail elderly will be held accountable, wherever the crime occurs and whoever the victim.
- The bill **improves prevention and intervention** by funding projects to enhance long-term care staffing.

Finally, Mr. Chairman, even more specific to elder crimes, the bill provides the following requirements:

- Prompt reporting of crimes in long-term care to local law enforcement;
- Criminal background checks for all long-term care workers; and
- Accountability through a new federal law to prosecute abuse and neglect in nursing homes.
- Model State laws and practices developed to share with the states.
- Training of judges, prosecutors, law enforcement and others to address elder abuse from a multi-disciplinary setting.
- Creation of a research institute to aid prosecutors in preparing cases of elder abuse.
- Enhanced community policing efforts to protect at-risk elders.
- Victim assistance, "safe havens," and support for at-risk elders.
- Training of health professionals in both forensic pathology and geriatrics.
- Enhancement of Adult Protective Services in the states to address abuse in home settings.

The cost of elder abuse and neglect is high by any measure. The price of this abuse is paid in needless human suffering, inflated healthcare costs, depleted public resources, and the loss of one of our greatest national assets - the wisdom and experience of our elders. With scientific advances and the graying of millions of Baby Boomers, the number of the elderly on the planet passed the number of children for the first time last year. Although we have made great strides in promoting independence, productivity and quality of life, old age still brings inadequate health care, isolation, impoverishment, abuse and neglect for far too many Americans.

I believe the Elder Justice Act can provide many of the solutions we seek today with regard to crimes against the elderly. The bill has broad support across diverse segments of the populations and across party lines. It is supported by a coalition of more than 180 organizations nationwide.

I thank you, Mr. Chairman, for providing me the opportunity to submit these comments for the record, and again, thank you for all your efforts to improve the quality of life for older Americans. Finally, I would like to thank Senator Hatch, Chairman of the Committee on the Judiciary and a member of the Special Committee on Aging, for his enduring support for the Elder Justice Act, S. 333, and I look forward to continuing to work with him toward passage of the bill.

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TESTIMONY

OF

HONORABLE CHRISTOPHER D. CHILES
PROSECUTING ATTORNEY
CABELL COUNTY, WEST VIRGINIA

AND

VICE PRESIDENT
NATIONAL DISTRICT ATTORNEYS ASSOCIATION

BEFORE A HEARING
OF THE
CRIME, CORRECTIONS
AND
VICTIMS' RIGHTS SUBCOMMITTEE

ON

ELDER ABUSE, NEGLECT
AND FINANCIAL EXPLOITATION

SEPTEMBER 24, 2003

My name is Chris Chiles. I am the elected prosecuting attorney in Cabell County, West Virginia and am honored to serve as vice president of the National District Attorneys Association. I want to thank you, on behalf of the National District Attorneys Association, for the opportunity to present our concerns on elder abuse, neglect and financial exploitation

To place my remarks in context – let me briefly tell you about my jurisdiction. Cabell County has a population of almost 100,000 people with some 16% being over the age of 65. Health care services are one of the largest employers in the county with home health care, services for the elderly, and hospice facilities being second only to our hospitals in terms of annual payroll. According to the 2001 economic census almost 10% of our population works in the health care field.

I currently supervise a staff that includes eight full-time and two part-time assistant prosecuting attorneys. Annually, my office prosecutes several hundred felony cases.

Before I begin my remarks I would ask that my complete testimony be included in the record.

I would also request the National District Attorneys Association policy entitled "**Policy Positions on the Prosecution of Elder Abuse, Neglect, and Financial Exploitation**" be included in the record. I am proud to have served as the co-chair of our Juvenile Justice and Family Law Committee, along with District Attorney Elizabeth Scheibel of Northampton, Massachusetts, during the period in which the policy was developed.

HOW BAD CAN IT GET?

On January 17, 2000 at about 7:52 a.m., the Fire Department in Des Moines, Iowa, received a call requesting non emergency response to the home of an elderly woman who had a "sore leg.:

When paramedics arrived they were admitted to the house by a man and they immediately knew something was wrong. An indescribable odor which poured from the home – the odor of decaying flesh, human feces and urine. When they entered the house they saw a small elderly woman, covered with a blanket and newspapers, on the floor in the living room.

The medics went over to the woman to provide medical assistance. The blanket that covered her was soaked with human waste. As they lifted the blanket, the stench was overpowering; the paramedics saw that she was positioned in a kneeling position with her legs crisscrossed. There were plastic bags around where she was seated and her foot was wrapped into the plastic. The paramedics tried to raise the woman but couldn't - she was physically stuck to the floor from the fluids from her own badly injured body.

The paramedics then called for backup and also called the police. A pumper truck arrived within minutes and four firemen worked to twist and move the woman to get her off of

the ground using specialized equipment. As she was moved from the ground, the smell of decaying flesh, human urine and feces became unbearable; steam rose from the carpet; and there were maggots on her body and on the plastic below her. As they separated her from the plastic that surrounded her, and that covered her foot, her heel fell off.

As one paramedic supported the woman the other firemen fled the house to put on oxygen masks that are typically used in fires.

The firemen moved the frail woman onto a cot. The paramedics tried to help straighten her rigidly locked legs but it was just too painful for her. They took her in the same kneeling position that they had found her to the ambulance.

The victim was taken to Lutheran Hospital Emergency Room by ambulance. When she arrived at the hospital, ER staff found that large sections of her body had rotted, that the tissue was dead. All that remained were huge open wounds. The nurses cut off her dirty clothing, sponge bathed her and removed maggots from her body. The nurses attempted to cauterize her but it was very difficult because the flesh had rotted away.

Emergency surgery was performed and the doctors tried to remove the massive sections of the decaying flesh, but the damage was too extensive. The infection was too deep. After emergency surgery was performed she never regained consciousness. Mrs. Blossom Deering died just three days later, on January 20, 2000. The infection was just too much for her little decaying body.

As the paramedics had treated Mrs. Deering at the scene they had asked the man who had answered the door what had occurred.

The man had told the paramedics that Ms Deering had leg pains and he had not been able to help her. When asked how long Mrs. Deering had been on the floor he had responded 4-5 days. The man also told the medics that he was a family friend, who had moved into the house, to help her out.

Mrs. Deering, however, had told the medics that she had been on the ground for approximately 2 weeks. She had not wanted the defendant to call for help for fear she would end up in a nursing home but finally she agreed to allow him to seek help for her.

The Des Moines Police arrived, as the paramedics were leaving. They told the police that they wanted the man charged with Neglect of Dependent Adult and Adult Abuse. The police waited outside for the arrival of detectives and crime scene investigators but allowed the man to return to the house.

Inside, the man picked up the human waste soiled blanket, the plastic and newspapers that had surrounded Mrs. Deering threw them into a big garbage bag and tried to conceal them in the basement. He then put baking soda down on the soiled carpet, covering it with clean newspaper, and lit incense to try and hide the odor.

The attempts to conceal the evidence were to no avail. When detectives arrived they could still smell the stench; when they lifted the newspaper and could clearly see the outline of Mrs. Deering's body; and they quickly found the trash bag with the soiled blanket where it had been hidden.

In questioning the man they discovered that the relationship had begun several years previously when he had started doing yard work for Mrs. Deering. He had then moved into the house rent free in exchange for taking care of Mrs. Deering and her home. He maintained that she had exhibited leg and foot problems that had caused her pain.

When asked how Mrs. Deering ended up on the floor he stated that he had returned from work during his lunch hour and found her there. She didn't want help summoned because it might require her to leave her home. He maintained that she was there only 4-7 days (his statements were inconsistent) and that he would bring her food and drinks.

Finally Mrs. Deering purportedly consented to contacting medical care and the call was placed to the Fire Department.

As the investigation proceeded some telling facts were uncovered. Mrs. Deering had income of only $1,000 per month. Before the man moved into her home Mrs. Deering was current on her bills and taxes; afterwards she was delinquent on her taxes and credit cards. After the man moved into the home, he wrote over $3,000 in personal checks to himself, from Mrs. Deering's checking account - approximately half of her income for that period of time.

While Mrs. Deering was on the floor dying in her own waste he used her money to go on a shopping spree and gamble, not once but several times.

The man was charged under the Iowa code with Neglect of Dependent Person Dependent Trial commenced on August 21, 2000 and the defendant pled guilty as charged. Defendant's total prison term is 10 years. He has been denied parole.

NATIONAL POLICY ON ELDER ABUSE

In May of 1986 the Board of Directors of this Association adopted a policy on elder abuse stating that:

> "Vast numbers of our country's elderly citizens have silently endured physical trauma, financial devastation, and emotional distress because they have been victimized by anonymous criminals – or perhaps worse – by once trusted caretakers, or family members. Just as the criminal justice system has rightly recognized that child abuse can be curbed by the enactment of new laws and the use of special procedures, so to should the system be amenable to changes on behalf of our growing elderly population."

The resolution then went on to list the steps that were believed necessary to deal with the growing problem of elder abuse. Among these were specialized units in police and prosecutors offices to handle these crimes; enactment of new laws enhancing punishment and the establishment of special hotlines to report incidents of crimes against the elderly. The resolution also called for a "high visibility" campaign against elder abuse to deter offenders.

The policy concluded by saying:

> "All segments of the community must unite to protect the victims, prosecute the offenders and prevent the recurrence of the outrageous acts against these citizens who deserve our respect and reverence."

Since then NDAA has worked to make this policy a viable concept through meetings with the Department of Justice, with congressional committees with oversight on issues involving the elderly and with other organizations that specialize in the area of elder law.

Ultimately this lead to the development of the more lengthy policy that I have offered for the record today. This was compiled by prosecutors representing the various state prosecutor associations and, we believe, represents an accurate portrayal of both the issues and solutions facing us today.

A few of the many prosecutors who helped develop the policy should be recognizable to members of this committee. From **South Carolina** Solicitors John Justice, Donnie Myers and Randolph Murdaugh contributed their experience; from **Delaware** it was Attorney General Jane Brady; from **Iowa** it was Polk County Attorney John Sarcone and Black Hawk County Attorney Tom Ferguson; **Utah** was represented by District Attorney David Yocum of Salt Lake City and County Attorney Mark DeCaria of Ogden; from **Alabama** it was David Barber the DA in Birmingham; from **Wisconsin** it was E. Michael McCann; **Idaho** was represented by Prosecuting Attorney Greg Bower of Boise; from **California** we had Jim Fox from San Mateo County, Grover Trask of Riverside and Tom Sneddon of Santa Barbara; Cook County States Attorney Dick Devine and Winnebago County States Attorney Paul Logli were from **Illinois**; **North Carolina** was represented by C. Colon Willoughby of Raleigh; and **Texas** by Jamie Esparza of El Paso and Henry Garza of Bell County.

Collectively their years of experience as prosecutors, along with those of the many others who worked on this policy, are an unheralded national treasure and their insights should be given due recognition in this troublesome area of the law. I commend their work for your study.

While the policy addresses a number of areas of concern I want to highlight several that I believe require special attention.

THE GROWING PROBLEM OF ELDER ABUSE

Whether we have more incidents of elder abuse or are simply more aware of the problem does not decrease the magnitude of the issues that we, and generations to come, face in addressing abuse of those unable to protect themselves.

Incidents of elder abuse are underreported – sometimes by the victims themselves - and often times ignored, but they are fast becoming a pressing national concern if for no other reason than we are the victims of the future.

The significant elder population that exists today, the large number of individuals in institutional settings, and the current reported levels of elder abuse in domestic and institutional settings help to illustrate the current magnitude of the elder abuse problem in this country. In 2001, only 41.6% of prosecutors surveyed had handled elder abuse cases (Bureau of Justice Statistics Bulletin, National Survey of Prosecutors, "Prosecutors in State Courts, 2001). With our increased life spans we will soon see multigenerational families with several generations above the age of 60. A dramatic increase in the elder population must, unfortunately lead to an increased rate of crime against elders as well. As prosecutors we must be aware of this increase and the impact that it will have on our communities and their resources.

The issue of elder abuse is by no means a small-scale matter given the number of elders in this country and the growth in those numbers projected for the future. The number of persons 65 years and over has increased substantially "from 3.1 million in 1900 to 33.2 million in 1994. Under the Census Bureau's middle series projections, the number of persons 65 years and over [will] more than double by the middle of the next century to 80 million. About 1 in 8 Americans were elderly in 1994, but about 1 in 5 could be elderly by the year 2030." (U.S. Census Bureau, "65+ In the United States")

Because elder abuse is so often unreported, it is difficult to develop accurate statistics on the number of crimes of elder abuse that occur in this country every year. The National Center on Elder Abuse estimated that in 1991, for cases of domestic setting abuse, "2.5 million people were victims of various forms of elder abuse. This figure was adjusted in 1996, based on state reporting data, to suggest that there were between 820,000 and 1,860,000 abused elders in the country" in domestic settings.

The Administration on Aging reports that the National Elder Abuse Incidence Study, done in 1996, found:

- "555,011 persons, aged 60 and over, experienced abuse, neglect, and/or self neglect in a one-year period;

- Almost four times as many new incidents of abuse, neglect, and/or self-neglect were not reported as those that were reported to and substantiated by adult protective services agencies;

- ξ Persons, aged 80 years and older, suffered abuse and neglect two to three times their proportion of the older population; and

- ξ Among known perpetrators of abuse and neglect, the perpetrator was a family member in 90 percent of cases. Two-thirds of the perpetrators were adult children or spouses."

In July 2001, a report prepared by the Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, revealed several major findings regarding abuse in institutional settings:

- ξ "Over thirty percent of nursing homes in the United States-- 5,283 nursing homes - were cited for an abuse violation that had the potential to cause harm between January 1999 and January 2001. These nursing homes were cited for almost 9,000 abuse violations during this two-year period.

- ξ Over 2500 of the abuse violations in the last two years were serious enough to cause harm to residents or to place residents in immediate jeopardy of death or serious injury. In total, nearly 10 % of the nursing homes in the United States-- 1,601 nursing homes--were cited for abuse violations that caused actual harm to residents or worse.

- ξ The percentage of nursing homes cited for abuse violations has increased every year since 1996. In 2000, over twice as many nursing homes were cited for abuse violations during annual inspections than were cited in 1996."

THE ELDER VICTIM

As we develop more information in elder abuse it is becoming readily apparent that traditional victim's services, and concepts, must be expanded to meet the needs of the elderly.

As shown in the circumstances leading to the death of Mrs. Deering, fears that may not impact on us in our current stage of life may become increasingly problematic as we get older. In her case, as you may remember, her fear of being removed from her home delayed, at least to some degree, notification of medical authorities.

A man who stormed ashore at Normandy on D-Day or walked out of the "Frozen Chosen" is not likely to report that he was mugged and couldn't defend himself; your mother – who taught you all you needed to know about balancing your checkbook- isn't willingly going to tell you that she was just fleeced by a telephone scam artist.

Just as the crimes committed against the elderly are varied so are the characteristics and needs of elders as victims. Impairments, disabilities and fear may interfere with the ability or willingness to report the crime, to testify in court, to remember essential details of the offense, or to even recognize they have become the victim of a crime. Cognitive

impairments may place significant limitations on the elder victim's capacity to remember and describe the crime. Speech disabilities may make speaking difficult and may even render the victim incapable of communicating. Even the enhanced frailty of the elderly may increase the chance of death or impairment that younger victims might survive. These are all issues which prosecutors must be trained to identify and address in order to adequately prepare the witness, and case, for trial. Prosecutors must also lead their communities in educating them about the problems of elder abuse.

In addition to those physical and mental abilities that directly impact on viability of an elder victim as a witness, there are a number of special needs with elder victims that are not seen in most criminal trials. Many elders require specialized medical equipment to function, require medications administered on a regular basis, experience fatigue easily and often have hearing and vision impairments. Prosecutors must be sensitive to these needs and plan their trial strategy to accommodate these requirements.

Lastly, the elder victim may come forward with a number of reluctances and fears. An elder victim of financial exploitation may be very embarrassed over losing money in one of the many perpetrated scams and, therefore, reluctant to participate in the prosecution. The perpetrator of the abuse, neglect, or exploitation may be, and often is, a family member. As a result, the elder victim may be either fearful due to threats by the family member or reluctant to prosecute because of feelings of compassion towards the relative. Lastly, elder victims may feel that they may be viewed as vulnerable and will in some way lose their autonomy if they participate in the prosecution of the matter. Prosecutors should be trained to recognize these fears and reluctances and their causes. They should also be trained how to address these concerns with the elder victim so that the case can be successfully prosecuted.

Elder abuse cases often present problems similar to what we frequently encounter in cases of domestic violence or child abuse. Some victims may be afraid of their abusers, particularly if they think they will be returned to their care. Others may feel that they love their abusers and do not want to do anything that will negatively impact them. Many of these victims will be reluctant to testify and some will simply refuse to testify.

We need to develop special policies and procedures in our offices that address the needs of elder victims. We must ensure that the overall stress and inconvenience to the elder victim during the investigation and prosecution of the case is minimized to reduce trauma as much as we can.

Because of the increased risk of memory loss, illness, and even death, we need to take all possible action to expedite the filing, trying, and sentencing of elder abuse cases. To preserve vital evidence we need to consider videotaped depositions of the elder victim, and work to change state law when this is not permitted..

Addressing the special needs of elder victims should be a cooperative effort. While prosecutors will need to identify the special needs of their elder victims, there will be times when the prosecutor simply will not have the ability to deal with them alone. For

instance, prosecutors should consider involving non-offending family members as an additional source of support for the elder victim.

Above all else we must ensure that elder victims are treated with respect and dignity throughout the process.

TRAINING PROSECUTORS

As a result of the many types of crimes perpetrated against the elderly occur, the complexity of many of these crimes, and the unique needs of elder victims, we recognize that there must be specialized training for prosecutors in dealing with these matters. There are some trial skills that may be transferable but there will be many others that we need to develop and teach others in our ranks. We must also ensure that our police, EMT, and medical personnel are trained in the specialized aspects of elder abuse just as they have been in cases of child abuse and domestic violence.

For instance prosecutors who specialize in child abuse cases have become adept at working with children who do not have fully developed language and cognitive abilities. What can we take from this and use in working with elderly witnesses with Alzheimer's? Likewise lessons learned in domestic violence cases may lend themselves to cases in which an elderly person has been victimized by a partner or a child.

There is so much that we need to learn. The special needs of the elderly as victims and witnesses as identified previously; the unique aspects of crimes committed against the elderly; the medical and forensic evidence applicable in cases involving the elderly; the physiological and psychological aspects of these cases – the list continues to grow as we learn more and more.

The National District Attorneys Association supports the formation of a National Center for the Prosecution of Elder Abuse, Neglect, and Exploitation within the American Prosecutors Research Institute (APRI), an affiliate of NDAA. APRI currently provides training to literally hundreds of prosecutors each year in trying child abuse cases and we hope to see a mirror image to provide training in cases involving the elderly.

THE ELDER JUSTICE ACT

In closing I would commend to your review the "Elder Justice Act," S.333. Coauthored by Senator Breaux and Chairman Hatch, many of the members of this Committee have joined as sponsors. The National District Attorneys Association has gone on record as supporting this bill for what it represents to our parents and grandparents.

On behalf of America's prosecutors I, and the National District Attorneys Association, urge you to take steps to provide federal assistance to our efforts to fight abuse, neglect and exploitation of the elderly. We look forward to continuing to work with you on addressing this growing problem.

United States Senate
JUDICIARY COMMITTEE HEARING

Elder Abuse, Neglect, and Exploitation: Are we doing enough?

STATEMENT OF SENATOR CRAIG

September 24, 2003
2:30 P.M., SD 226

Thank you Mr. Chairman for holding this very important hearing today. As you know, crimes of abuse and exploitation perpetrated against the elderly are issues of high priority to me as Chairman of the Senate Special Committee on Aging.

Abusing or exploiting the most vulnerable of senior citizens is reprehensible and those who commit such offenses should be prosecuted to the fullest extent of the law.

It is important to note that there are various forms of abuse. As Chairman of the Senate Special Committee on Aging, I have convened several hearings on elder crime. We have explored abuses perpetrated by court-appointed guardians; financial exploitation by Social Security representative payees; and identity theft targeting seniors where life savings have been lost.

We in Congress have been working on various pieces of legislation that would provide protection to our most vulnerable senior citizens as well as educate our elderly to be vigilant. We must continue to explore ways to coordinate federal and state efforts to resolve these devastating crimes.

I look forward to hearing today's testimony.

STATEMENT OF SENATOR LINDSEY O. GRAHAM
Before the Crime, Corrections and Victims Rights Sub Committee
Senate Judiciary Committee
"Elder Abuse, Neglect, and Exploitation; Are we doing enough?"
September 24, 2003

I want to thank everyone for coming today. I know several of you have made special arrangements to be here and I appreciate those efforts.

Over the past several years, our expanding and increasingly global culture has given new opportunities to those who seek to take advantage of our seniors. The quick and easy movement across borders and jurisdictions of people, information, and money has allowed some to hide in other countries while continuing to operate their fraudulent schemes here. These criminals utilize our state-of-the-art commercial infrastructure to identify, contact, and defraud some of our most vulnerable citizens. Due to today's technology, these fraudulent efforts are extremely hard to detect, and even harder to prevent.

The enticements range from automobiles to increased insurance benefits to cash prizes. The solicitations pour into seniors' mailboxes and onto their answering machines. They trade on the reputations of some of our

most trusted institutions and companies. Their promises seem as manna from heaven to our seniors.

Once a senior responds to a fraudulent phone or mail solicitation, they are at risk of being exploited over and over again. The calls will come from overseas and the money will go out in express mail. Family members, friends, and law enforcement officials may not know anything is wrong until it is too late. While it is difficult to combat these crimes, we cannot shirk our duty to do so.

Accordingly, I have asked those who are on the front lines to share with us their successes, their challenges, and their needs. As our senior population continues to grow, we need to strengthen and enhance their capabilities. Again, I thank you for coming.

STATEMENT OF SENATOR CHARLES GRASSLEY
ELDER ABUSE HEARING
SUBCOMMITTEE ON CRIME AND DRUGS

September 25, 2003

Mr. Chairman, thank you for holding today's hearing on the abuse and financial exploitation of the elderly. Over the years, many Congressional hearings have been held on nursing home abuse and other crimes and scams which target older Americans. I chaired a number of these hearings myself, starting as far back as when I was Chairman of the Subcommittee on Aging of the Committee on Labor and Human Resources in the 1980's and more recently, as Chairman of the Special Committee on Aging. On those Committees and as a member of the Finance and Judiciary Committees, I've been actively engaged in protecting America's elderly from abuse of all kinds.

It's a good thing that this Subcommittee has focused

its attention on the protection of the elderly. However, because of society's need to protect our seniors' right to choice and self-determination, these cases are complicated.

Older Americans are particularly vulnerable to financial exploitation because they tend to be more trusting and less cynical than younger people. Because of this, the elderly are more susceptible to being preyed upon by fraudulent telemarketers, home repair scam artists, and even greedy relatives and friends.

According to a Department of Justice publication, in 1996 the AARP conducted a survey where they found that 56 percent of all telemarketing fraud victims were aged 50 or older. This is unsettling when you consider that this age group makes up only 26 percent of the overall population. The AARP also found that telemarketing fraud costs $40 billion a year, with the most popular scams being in the forms of prizes and

sweepstakes scams, slamming, pay-for-call services, work at home sales, and magazine sales. I'm sure these statistics don't reflect how prevalent consumer fraud really is. This is because the elderly are reluctant to report their having been defrauded, because they fear that they will lose their independence.

I look forward to hearing from the Social Security Administration's Inspector General and from the representative of the Postal Service on this important matter. I'm also interested in hearing about the work that the associations are doing to prevent elder abuse. Of particular interest to me is the TRIAD program, a community-based program that puts law enforcement, senior assistance groups, and seniors together to both protect seniors and teach law enforcement about the unique issues affecting seniors. I look forward to learning more about the issues confronting seniors, and their multi-disciplinary proposals for responding to those issues.

Mr. Chairman, I want to once again thank you for devoting the Subcommittee's attention to this critically important issue.

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

September 24, 2003 Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Judiciary Committee
Subcommittee on Crime, Corrections and Victims Rights
Hearing on

"ELDER ABUSE, NEGLECT, AND EXPLOITATION: ARE WE DOING ENOUGH?"

I want to thank Senator Graham for holding this important hearing today. In addition to chairing the Judiciary Committee, I am a member of the Special Committee on Aging, an original co-sponsor of the Elder Justice Act with Senator Breaux, and I have had a long standing interest in making sure that the tools exist to protect our nation's senior citizens from crime. This is an important group of Americans that we must ensure lead better lives as we unlock the mysteries of science that permit us to live longer.

As much as possible, the Congress should provide leadership in protecting against elder abuse and, if discovered, prosecuting elder abuse. As I have said in the past, our right to live free from abuse and neglect does not and should not diminish with age.

Since it has a particularly devastating impact, elder abuse increases mortality. Because of their advanced age, troubled health, or limited resources, senior citizens usually have fewer options for resolving or avoiding abusive situations. Additionally, senior citizens may be more vulnerable to and harmed by physical abuse because of existing physical limitations. Senior citizens are also limited in their ability to recover from financial exploitation if they have already retired, have limited resources, or a short remaining life span.

Our country's elderly population is growing at a much greater rate than any other segment. Our experience has shown that senior citizens as a group are increasingly experiencing abuse, neglect, and exploitation.

Across the country, State legislatures have enacted legislation addressing domestic or institutional elder abuse. State legislatures have created various reporting systems to identify elder abuse cases and create adult protective services systems to investigate alleged incidents and respond to the needs of victims. These statutes vary widely in the age at which a victim is covered; the definition of elder abuse; classification as criminal or civil; types of abuse covered; reporting requirements (mandatory or voluntary); investigation procedures; and remedies for abuse. I look forward to hearing from some our witnesses about their views on this type of legislation.

More than one-half million older persons are abused or neglected in domestic settings each year. Estimates conclude that for every reported incident of abuse, nearly five go unreported. The National Elder Abuse Incidence Study estimates that of the reported elder incidences, 30% involved financial or material exploitation, 25% involved physical abuse, and, absolutely unacceptably, there are those senior citizens who are victims of sexual assault.

I hope that the testimony provided today will be helpful in our oversight of the laws that impact this special group of Americans. To the extent that there are areas where the Congress should act, we should do so immediately. For these reasons, I am particularly interested in hearing from our witnesses today.

# # #

Testimony of

Douglas C. Holbrook

AARP Board of Directors

Regarding

"Elder Abuse, Neglect and Exploitation: Are We Doing Enough?"

Before the

Senate Committee on Judiciary

Subcommittee on Crime, Corrections and Victims

United States Senate Dirksen Office Building

Room 226

September 24, 2003

Washington, DC

Mr. Chairman and Members of the Committee:

On behalf of AARP members, I want to thank Senator Graham for convening this hearing regarding the nation's commitment to protecting older, vulnerable and dependent adults from abuse, neglect and exploitation. National and state attention to elder abuse concerns is highly valued by AARP members and America's older population.

Elder abuse is an issue of critical importance for AARP. Our members tell us that protecting themselves and their loved ones from abuse and fraud is one of their major concerns.

The risk of harm is real and growing as the number of people living into advanced old age increases dramatically. Fully mobilizing the law enforcement community and engaging all sectors of society in fighting abuse, neglect, and exploitation is essential.

Elder Abuse—A Hidden Problem

Elder abuse, like other forms of domestic violence, is a hidden problem. It is not discussed because, in many cases, it's occurring within a family — 90 percent of the abusers in domestic cases are relatives. Two-thirds of these are adult children (47%) and spouses (19%). The secrecy, personal embarrassment, and fear that surrounds abuse leads to significant under-reporting of incidents.

The National Elder Abuse Incidence Study, commissioned by the U.S. Administration on Aging and released in 1998, provides a starting point for gauging the extent of the problem. The study estimated that in domestic settings, some 450,000 older persons, aged 60 and over, experienced abuse and neglect in 1996.

Most significantly, the Study concluded that over five times as many incidents of elder abuse and neglect went unreported. Only the most visible and recurring cases get reported. Like an iceberg, the bulk of the problem remains hidden from view.

The Study also confirmed reports by enforcement personnel across the nation with regard to the demographic characteristics of victims. The Study found:

- Persons 80 years of age or older are abused and neglected at rates two to three times their proportion in the older population.
- Women are disproportionately victims.
- Older persons with physical and mental frailty are more likely to suffer abuse and neglect. Over three-quarters (77%) of victims of abuse are unable or only partially able to physically care for themselves. Sixty percent of abuse victims are suffering from some degree of confusion and close to half exhibit depression.
- Other effects of abuse are helplessness, alienation, guilt, shame, fear, anxiety and denial.

These characteristics have significant implications for the detection and successful prosecution of abuse cases. Older victims must be removed from an offender's reach to appropriate shelter. Specialized protocols are often required where victims are unable to testify on their own behalf due to cognitive impairments or poor physical health.

Despite under-reporting, there has been a very substantial increase in the number of official reports of domestic elder abuse. Between 1986 and 1996, the number of reports rose from 117,000 to 293,000, an increase of 150 percent. Indeed, a study in the Journal of the American Medical Association (1998) revealed that only 9% of abused elders survived beyond the thirteen-year study versus 40% of non-abused elders in the control group for the same period.

In addition, a recent Congressional report found that 30 percent of all nursing homes between the years 1999 and 2001 were cited for an abuse violation that caused or had the potential to cause harm to a resident. The study also found that reported abuse violations in nursing homes had tripled between 1996 and 2001.

These figures help to demonstrate the seriousness of today's problem. But dramatic changes in the older population portend a substantial increase in the number of abuse and neglect cases in the not-too-distant future.

Meeting the Demographic Challenge

By the year 2030, the number of people over 85 years of age -- those most at risk of Abuse -- will more than double. This is the fastest growing segment of the older population. Developing the support services and enforcement network to meet the needs of a larger number of potentially vulnerable persons poses a significant challenge.

Current laws addressing elder abuse and our system of protective services are far from perfect. Many state elder abuse statutes lack adequate provisions to encourage wider reporting of incidents and thorough investigation and prosecution of abuse cases. Not too long ago, it was difficult, if not impossible, to get an abuse case investigated and prosecuted. Fortunately, that situation has changed but there is still a great need for specialized knowledge that will allow successful prosecutions and encourage further development of case law.

There are also many gaps in the network of services for abused and vulnerable adults. These include a lack of:

- Emergency temporary housing and in-home care for abuse victims;
- Responsible guardians to act on behalf of victims who lack the capacity to manage their own affairs;
- Training for adult protection, law enforcement, and prosecutorial staff;
- Coordination between federal, state and local agencies; and
- Reliable national and state data.

The Elder Justice Act of 2003

Recognizing the need for a coordinated approach to the problems of abuse and neglect, AARP joined a number of organizations in supporting S. 333, the Elder Justice Act of 2003, which was recently introduced in Congress on a bipartisan basis. This legislation would greatly enhance the federal government's ability to partner with states and communities to develop the tools needed to ensure the safety of their most vulnerable citizens. A number of provisions are particularly relevant to the enforcement community. These include:

- Creation of an Office of Elder Justice within the U.S. Department of Justice, similar to the Department's Office of Juvenile Justice and Delinquency, to be responsible for developing a national strategy to improve the elder justice system in the United States.

- Creation of an Elder Justice Coordinating Council as a forum at the federal level for states and private non-profit agencies working on abuse issues. The bill would also authorize funding for similar coordinating committees at the state level.

- Authorization of grants to establish forensic centers to enhance forensic expertise in the area of elder abuse. This would include development of forensic markers and methodologies to aid in the detection and diagnosis of abuse.

- Authorization of grants for multi-disciplinary response teams and training of professionals from a variety of disciplines including prosecutors, police and sheriffs, and adult protective services.

- Creation of a Center at the American Prosecutor Research Institute to provide support to local prosecutors working on elder abuse cases (similar to the National Center for Prosecution of Child Abuse).

- Authorization of grants to develop community policing efforts designed to make communities safer for older persons living in all settings. Such efforts could include expanding the TRIAD program -- a collaboration of the National Sheriffs Association and other entities -- to address not only street crime but abuse and neglect, particularly against older persons living in isolation.

While advocating strongly for federal proposals like the Elder Justice Act, AARP recognizes the need to encourage and support ongoing efforts at the state level to improve public awareness, the quality of investigations and enforcement in cases of abuse and neglect. These efforts are particularly important as the nation struggles with what is expected to be a prolonged period of fiscal austerity.

Fostering Collaborative Efforts

Enforcement and prosecution play a key role in redressing abuse and neglect after they have occurred. But just as important is the role of prevention. While research has indicated a number of potential risk factors for abuse -- a history of marital abuse, financial dependency on the part of the abuser, and living in isolation -- we still do not know why some instances of abuse are widely reported in the national media, but not others. Studies suggest, as a possible answer, that persons who are isolated and/or in declining health are more reluctant to report abuse or testify regarding their abuse.

These situations make early detection of warning signs through the encouragement of wider reporting and community policing extremely important. Similarly, prosecution of abuse draws a line in the sand and indicates that we, as a society, will not tolerate such conduct. Sending this message is especially critical because elder abuse is a crime that has long remained out of public view.

Elder Financial Abuse and Exploitation

AARP has also historically been concerned about financial fraud, the predominant type of reported elder abuse after self-neglect, and the fastest growing form of abuse. The main hurdles to successful prosecution of these crimes are getting these cases reported to law enforcement, having them thoroughly investigated, and having them prosecuted in a timely and appropriate manner.

Financial exploitation has many disguises, causes, and forms of expression. But the common thread of its many modalities is an effort by unscrupulous persons to extract money and resources through a variety of devious means from unsuspecting and often vulnerable individuals.

How best to determine the frequency of exploitation and its many effects on older citizens continues to be the subject of much debate. The incidence and impact of exploitation are difficult to estimate because

- there is no national reporting mechanism,
- cases are often not reported,
- definitions vary, and
- the crimes are difficult to detect.

According to the 1998 National Elder Abuse Incidence Study, financial abuse accounted for about 12% of all elder abuse reported nationally in 1993 and 1994, and 30.2% of substantiated elder abuse reports submitted to Adult Protective Services (APS) in 1996 after excluding reports of self neglect.[1]

[1] National Center for Elder Abuse, The National Elder Abuse Incidence Study (1998) http://www.aoa.gov/eldfam/Elder_Abuse/ABuseReport_Full.pdf.

In the 2000 survey of the National Association of Adult Protective Services Administrators for the National Center on Elder Abuse, financial abuse/exploitation comprised 13% of the allegations of mistreatment investigated. [2]

However much exploitation is detected, reported, investigated, substantiated, or prosecuted, everyone agrees that more happens than is brought to light and that any exploitation is too much.

Recognizing that financial exploitation is a pervasive and increasing problem that specifically threatens our members' financial security, AARP is addressing this problem through programs that educate members, families, professionals and potential victims.

Daily Money Management:
Older persons who are losing their ability to handle their financial affairs due to physical or cognitive impairments are vulnerable targets for financial exploitation. For more than twenty-two years, the AARP Foundation's Money Management Program has been successful in using volunteers to assist vulnerable low income older people with their daily money management needs. The program either provides a bill payer for those individuals who can still sign checks or a representative payee for those people who receive federal government income, such as Social Security, but need someone to help them manage their money.

Financial Education:
AARP has conducted extensive educational projects to meet the needs of surviving spouses who may suddenly find themselves responsible for taking over the management of complex financial affairs when their spouse dies. Because these surviving spouses may not have had experience in managing money, they are vulnerable to the conniving "hero" who offers to help out. In reality, such con artists only intend to help fill their own pockets. AARP's financial literacy programs are designed to expand financial awareness and enable participants to evaluate the trustworthiness of supposed advisors and experts.

Colorado Elder Watch:
The Attorney General of Colorado dedicated approximately $1.5 million over a 3-year period to protect older adults from financial exploitation after learning about the many telemarketing and other identity theft scams taking place in that state.
The three purposes of AARP ElderWatch are: (1) INFORMATION IN: to provide a hotline for older persons in order to refer them to appropriate services, as well as to document the types of crime committed against older individuals in the state of Colorado and to track down and bring criminals more quickly to justice; (2) INFORMATION OUT: to provide educational information to the senior, legal, law enforcement and larger community to detect and prevent crime before it occurs; and (3) CLEARINGHOUSE: to serve as a clearinghouse by providing information on financial exploitation and consumer fraud to older Coloradans.

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[2] National Center of Elder Abuse, A Response to the Abuse of Vulnerable Adults: the 2000 Survey of State Adult Protective Services 21 (2002).

Campaign Against Predatory Lending:
AARP recognizes that for the vast majority of older persons, their home is their most valuable asset. In many instances, it is their only asset. To empower older homeowners to maintain their financial security and preserve the equity in their homes, AARP has launched an integrated campaign against predatory home lending practices. Predatory lenders extend high interest repayment loans that strip the home equity -- leading to a growing number of foreclosures. In addition to advocating legislative reform and pursuing precedent-setting litigation, AARP reaches out to older homeowners to educate them regarding what to watch for in borrowing against the equity in their homes. Trained AARP volunteers in two dozen states repeatedly go out into their communities and churches with talks, videos, warning signs and checklists – in both Spanish aand English – to spread the word.

Consumer Universities:
Another popular and very successful tool that AARP uses to alert older consumers to financial exploitation schemes is what we call "Consumer Universities." At this university we will offer presentations by leading local experts on how to avoid being exploited in the financial marketplace, in one's home, or by false advisors.

Legal Clinics and Attorney Training:
In a number of states, we have held legal clinics for homeowners who are about to take out loans. At these clinics, expert lawyers or housing counselors examine loan applications to see if owners are about to be exploited by the loan terms. We also have trained over 200 lawyers in seven states on the legal remedies available to help victims of predatory lending, financial exploitation and elder abuse.

Use of the AARP Media:
AARP recognizes that we can educate many persons about financial exploitation through our array of publications, including "The Bulletin," and "AARP – The Magazine." Each issue of our monthly newspaper, The Bulletin, has a "Consumer Alert" column. A recent video news release we disseminated tackled the problem of unscrupulous moving companies that hold customers' goods hostage, demanding payment far in excess of the estimate. Other Bulletin articles inform our readers of other potential ways in which they might be exploited. For example, the next issue will alert seniors to protect themselves from being targets of complex investment scams that promise huge returns.

Research

The AARP Public Policy Institute (PPI) undertakes research on consumer financial and fraud issues to better understand their causes, and to promote the development of preventions and protections against possible financial exploitation. Such issues include preneed funeral and burial agreements, identity theft, and the regulation of home improvement contractors and subprime mortgage lending.

Conclusion

AARP regards its multifaceted effort against the financial exploitation of older persons as a valuable way to equip consumers, families, professionals and vulnerable elders to detect, prevent, or intervene before financial crises arise. We make information about all of these programs, services and research available online, in print media or both.

AARP appreciates this opportunity to share our concerns about elder abuse and our education and prevention activities with the Committee. However, greater national attention is needed for this growing national problem. We look forward to working with you to pass legislation, like the Elder Justice Act (S. 333), to provide a comprehensive national approach to elder abuse prevention. Thank you.

U.S. Senate

Committee on the Judiciary

Subcommittee on Crime, Corrections and Victims' Rights

Statement for the Record

Elder Abuse, Neglect, and Exploitation

James G. Huse, Jr.
Inspector General of the Social Security Administration

September 24, 2003

Good morning, Chairman Graham, Senator Biden, and members of the Committee. Thank you for the opportunity to discuss with you today some of the scams perpetrated against the nation's seniors, and some of the actions my office has undertaken to detect them or prevent them from occurring in the first place.

For over sixty years, the words "Social Security" have held special meaning for elderly Americans. So when mail arrives at their doorsteps with the official Social Security seal, or references to "Social Security," many seniors respond reflexively. Today I will describe some of the investigations we have conducted into organizations and individuals that misuse Social Security Administration's (SSA) name and exploit this special bond between SSA and its beneficiaries.

These cases represent one of our highest investigative priorities, and I would like to describe three significant cases that have received our attention over the past year. These cases are brought under authority of Section 1140 of the Social Security Act, which provides the Commissioner with authority to impose significant civil monetary penalties. The Commissioner delegated that authority to my predecessor in 1995.

First, an individual in Texas was producing mass mailers containing what are referred to as "lead cards" for the insurance industry. These cards, enclosed in mailers that advertise such products as private burial insurance, urge seniors to fill out the card with their personal information and return the card to the sender. We all receive junk mail, and don't hesitate to throw it in the trash. But when the recipient is a senior—and this individual targeted seniors—and when the outside of the mailer contains the words "Social Security Benefits Update," as these did, most seniors will open the mailer. These mailers are designed to elicit a belief that the recipient, by filling out the card with sensitive personal data, will receive important information about Social Security benefits. Instead, their information is sold as an insurance lead to a private company, for purposes of soliciting the sale of private insurance.

Working with the United States Attorney for the Northern District of Texas, our attorneys issued a civil monetary penalty and obtained an injunction against this individual. A search of his business premises revealed that he was sending out tens of thousands of these mailers each week. The court order we obtained froze his financial accounts, allowed for the interception and opening of his mail, and essentially shut down his business. Shortly

thereafter, a settlement was reached in which a penalty was paid to the Social Security trust funds and the individual's business was closed permanently.

In San Antonio, another individual was running a company that sent similar lead cards to seniors. The San Antonio mailers depicted the company's logo—a stylized image of the U.S. Capitol—and were otherwise designed to resemble official government documents. On the back of many of the mailers were listed the titles of a number of official Social Security informational brochures that the company offered free of charge. While the company alleged that this was a public service, it was in fact a ruse intended to mislead seniors into thinking that they were giving their personal information to the SSA, not to a private lead card company.

A civil monetary penalty was imposed, and has since been upheld by the Departmental Appeals Board of the Department of Health and Human Services and by the Commissioner of Social Security.

Most recently, our imposition of a penalty in excess of half a million dollars against a national political action organization was upheld by an Administrative Law Judge. The organization's political mailers were contained in envelopes bordered in red and white stripes, with the words "Social Security Alert" repeated 36 times, and the words "Urgent—Social Security Information Enclosed" in prominent bold typeface. The organization took the position that they did not intend to mislead seniors into believing that the mailers originated with the SSA, and further alleged that the mailers would not have a misleading effect.

The Administrative Law Judge disagreed, upholding the imposition of the half-million dollar penalty.

These cases are only our most recent and most noteworthy. Our efforts in this area extend back to 1995, and the reduction in complaints from seniors is a testament to our success in this area. In our criminal investigative work, we consistently find examples of senior citizens being victimized by unscrupulous identity fraudsters and the like. We will continue to do everything in our power to protect seniors from being victims of these types of scams and those who would misuse their identity and Social Security benefits.

Thank you. I would be happy to answer any questions.

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Subcommittee on Crime, Corrections and Victims' Rights
Hearing on "Elder Abuse, Neglect, and Exploitation: Are We Doing Enough?"
September 24, 2003

The subcommittee gathers today to consider a problem that has not received the attention it deserves – the abuse of our elderly. I think it is clear that we are not doing enough to combat crime against seniors, and I applaud Senators Graham and Biden for holding this hearing to examine what we are currently doing, and what we need to do to prevent and punish this deplorable behavior.

I, along with Senators Kennedy, Feingold, Daschle, and Bingaman, introduced S. 1286, the Seniors Safety Act, earlier this year. The Seniors Safety Act is a comprehensive bill that addresses many of the most prevalent crimes perpetrated against seniors, including health care fraud, nursing home abuse, telemarketing fraud, and bribery, graft and fraud in pension and employee benefit plans. A title from an earlier version of this bill that I introduced – in the 106th Congress – was enacted as part of Senator Bayh's "Protecting Seniors from Fraud Act of 2000," requiring that the Attorney General both conduct a study of crime against seniors and include in the National Crime Victimization Survey specific information about crimes that disproportionately affect seniors, and the characteristics of the seniors who are victimized. Unfortunately, I understand that the study has not yet been completed.

It is particularly important that we deal with these crimes because older Americans are the most rapidly growing population group in our society, making them an ever more attractive target for criminals. The Department of Health and Human Services has predicted that the number of older Americans will grow from 13 percent of the U.S. population in 2000 to 20 percent by 2030. In Vermont, seniors comprise about 12 percent of the population, a number that is expected to increase to 20 percent by 2025.

Crime against seniors has remained stubbornly resistant over the last decade. According to a 2000 Justice Department study, more than 90 percent of crimes committed against older Americans were property crimes, with theft the most common. As our nation addressed our violent crime problem, we did not take a comprehensive approach to deterring the crimes that so harm the elderly, like telemarketing fraud, health care fraud, and pension fraud. The Seniors Safety Act provides such a comprehensive approach, and I look forward to working with Senators Graham, Biden, and others to accomplish our goals in protecting seniors from crime.

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We all deserve to age with dignity, free of the threat of abuse or fraud. No one can guarantee that this will happen, but the Seniors Safety Act can be a powerful new tool to help crack down on those who prey upon older Americans. This effort is about all of us and our families.

I would ask the Chairman to include a sectional analysis of the Seniors Safety Act in the record of this hearing.

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Statement of Daniel L. Mihalko, Inspector in Charge
Congressional & Public Affairs
of the
United States Postal Inspection Service
On Elder Abuse, Neglect and Exploitation:
Are We Doing Enough?

Before the
Subcommittee on Crime, Corrections and Victims' Rights
of the
Committee on the Judiciary
U.S. Senate

September 24, 2003

Mr. Chairman and members of the Subcommittee: thank you for holding this hearing on the topic of crimes against the elderly. I appreciate the opportunity to discuss the subject, and the role of the United States Postal Inspection Service in combating it.

Role of the Postal Inspection Service

The U.S. Postal Service delivers more than 200 billion pieces of mail a year, containing money, messages, and merchandise, to 138 million addresses at some of the most affordable postage rates in the world. U.S. Postal Inspectors are mandated to safeguard all of it—including the people who move it and the customers who use it.

Congress empowered the Postal Service "to investigate postal offenses and civil matters relating to the Postal Service." Through its security and enforcement functions, the Postal Inspection Service provides assurance to American businesses for the safe exchange of funds and securities through the U.S. Mail; to postal customers of the "sanctity of the seal" in transmitting correspondence and messages; and to postal employees of a safe work environment.

There are approximately 1,900 Postal Inspectors stationed throughout the United States who enforce roughly 200 federal laws covering investigations of crimes that adversely affect or fraudulently use the U.S. mail and postal system. Approximately 300 Postal Inspectors conduct mail fraud investigations, including those that target the elderly.

The Mail Fraud Statute and Its Use

There are countless illegal schemes that violate the nation's first consumer protection law—the Mail Fraud Statute, enacted in 1872. The statute is the most effective fraud enforcement weapon and U.S. Postal Inspectors have been using it for over 100 years. Last year, Postal Inspectors investigated 3,355 fraud cases and our analysts prepared more than 84,000 letters in response to

mail fraud complaints. In 2002 Postal Inspectors arrested 1,634 mail fraud offenders, and 1,453 were convicted. As a result of these investigations, there was more than $2 billion in court-ordered and voluntary restitution.

Swindlers long ago realized the adaptability of the postal system for perpetrating crimes. In the latter part of the 19th century, consumers found they could easily obtain goods by purchasing items through the mail. Unfortunately, many customers were deceived by misleading advertisements or were charged for merchandise they never received. The mail was being used by scam artists for a variety of schemes. In response, in 1872 Congress enacted legislation relating to the Post Office Department and the use of the mail to conduct certain fraudulent enterprises. The newly enacted law was used against schemes involving the sale of worthless securities and prize contests sent through the mail. By 1896, the statute was expanded to include mailed advertisements that misrepresented the expected investment return on bonds available for purchase. As the 19th century drew to a close, the mail fraud statute had established itself as the weapon of choice in attacking the fraud schemes of the day.

From 1920 to 1940, Post Office Inspectors were active in numerous investigations that would have a lasting impact on the history of fraud. The Roaring Twenties ushered in what might be termed the Golden Age of fraud with such legendary con men as Charles Ponzi, Joseph Weil, Oscar Hartzell and others challenging Post Office Inspectors and the mail fraud statute.

In Boston in 1919, Charles Ponzi, perhaps the most famous con artist of all time, developed what would forever after be called a "Ponzi scheme." Simply put, the scheme works by robbing Peter to pay Paul. Ponzi claimed he would buy International Postal Reply Coupons from foreign countries and then redeem the coupons in this country at a substantial profit due to differences in exchange rates. Ponzi gave personal notes as security for investors' money and guaranteed a 50 to 200 percent return in 45 to 60 days. Ponzi promised that investors would make millions, and the lure of quick fortunes caused thousands to invest their money. Ponzi never bought the coupons, but by paying initial investors with money he got from new investors, he created an investing frenzy. In just seven months, more than 30,000 people paid him more than $9 million.

Ponzi was arrested by Post Office Inspectors and charged by both the District Attorney's Office and the United States Attorney's Office. He paid back some money, but then fled with several million dollars. He was caught, sent to prison and eventually deported to Italy. This didn't stop Ponzi, however. Years later, he convinced Italian dictator Benito Mussolini to give him a position in the Italian Treasury. True to form, Ponzi cleaned out a large sum and fled to South America, where he died in 1949.

In 1927, the Bureau of the Chief Post Office Inspector formed a special unit to investigate medical fraud cases that were proliferating throughout the country. This centralized unit of specially trained Inspectors was tasked with investigating quackery cases and compiling evidence to support criminal or civil prosecutions against the promoters. Common medical frauds included alleged cures for cancer, arthritis and rheumatism, as well as worthless potions, beauty and diet products, rejuvenators and sexual devices.

In the years after World War II, work-at-home schemes conducted through the mail became more commonplace, including everything from mushroom raising, chinchilla breeding and bead stringing to plastic laminating, artificial flower making and envelope stuffing. One operator was running 44 related fraudulent companies.

By the late 1960s, the mail fraud statute became a key weapon in the war against organized crime. Organized crime strike forces in U.S. cities brought successful prosecutions against mobsters. Postal Inspectors joined these strike forces and participated in successful multi-agency investigations and prosecutions. Through the Organized Crime Control Act of 1970, mail fraud was considered a racketeering activity and a RICO (Racketeering Influenced and Corrupt Organizations) predicate.

The last years of the 20th century have affirmed the mail fraud statute as the premier fraud-fighting tool. Although more than 75 years have passed since the first Ponzi scheme, people are still falling victim to them. All the arrests, publicity and warnings have not deterred con artists from victimizing the innocent and the trusting.

Postal Inspectors have investigated a myriad of complex and noteworthy cases ranging from the swindles of the past like the Ponzi scheme to new twists on old scams, from investments to health care, all of which are now offered through telemarketers and over the Internet.

The language of the mail fraud statute remained unchanged for 100 years. It wasn't until 1994 that Congress expanded and enhanced the statute as part of the Violent Crime Control and Law Enforcement Act, inserting new language into Section 1341 that reads "or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier." Con artists who try to circumvent the mail by using private interstate couriers are no longer exempt from the law, as the 1994 Crime Bill amended the mail fraud statute to include them. The mail fraud statute can now be used for items sent through the U.S. Mail, as well as FedEx, UPS or other interstate carriers and couriers.

Working closely with the Senate Permanent Subcommittee on Investigations, Postal Inspectors helped craft legislation that addresses fraudulent sweepstakes and other deceptive mailings. As a result, the Deceptive Mail Prevention and Enforcement Act was passed and became law in April of 2000. The law protects consumers, especially seniors, against deceptive mailings and sweepstakes practices by:

- establishing standards for sweepstakes mailings, skill contests and facsimile checks,
- restricting government look-alike documents, and
- creating a uniform notification system allowing individuals to remove their names and addresses from all major sweepstakes mailing lists at one time.

Mailings must disclose in clear and prominent language that no purchase is necessary to enter a sweepstakes and that a purchase will not improve consumers' chances of winning a prize. The law also creates strong financial penalties for companies that do not disclose all terms and conditions of a contest.

Crimes Against the Elderly Investigated by U.S. Postal Inspectors

The most common examples of mail fraud against consumers investigated by Postal Inspectors are illegal contest and sweepstakes schemes, chain letters, travel and vacation fraud, merchandise misrepresentations, phony billing scams and fraudulent investment opportunities. In addition, there are work-at-home schemes, rebate fraud, and foreign lottery fraud – all through the mail. Older citizens, the physically challenged, and "shut-ins" conveniently receive many of their purchases by mail. Sadly, that makes them easy prey for mail fraud operators. The problem is compounded by operators who sell the names and addresses of their victims to other criminal elements, resulting in the repeated victimization of many elderly citizens.

Americans receive thousands of unsolicited phone calls from telemarketers each year trying to sell a variety of products, with older citizens often the target. By definition, telemarketing involves the use of the telephone. But calls are often preceded or followed by a postcard or letter. In most business transactions, including fraudulent ones, it is difficult not to use the mail.

Many offers are legitimate, but unscrupulous telemarketers can be the smoothest of operators. Losses attributed to telemarketing fraud are estimated to exceed $40 billion per year.

Tactics Used by Fraudulent Operators

Many senior citizens are vulnerable to being victims of telemarketing and mail fraud scams. Fraudsters recognize that many of these seniors are widowed and feel isolated. A telephone call from anyone is greeted with open arms. Experienced con artists understand elderly citizens' vulnerabilities and know what buttons to push when they have them on the telephone.

In searches of telemarketers' places of business, we have discovered the files they maintained on their victims. The files contained intimate details of the victims' health, the names of their children, vacation and travel memories, and even information on deceased spouses. Telemarketers, in particular, use this personal information when they call their victims. They mention family names, inquiring solicitously about their health, and very effectively portray themselves as being caring and knowledgeable. For the victims, these telephone calls may be their only regular contact with other people, and the victims actually value the interaction with someone willing to talk with them. Victims often even defend the fraud operators in the continued belief that they are "friends" who are trying to help them win a sweepstakes or manage investments. Some victims will even acknowledge that the fraud operator is taking advantage of them, but explain that they had no one else who showed interest in them.

One particular technique used by fraudsters is to target those who are ill or in early stages of dementia. It is known as "the check is in the mail." The telemarketer will call a senior posing as a representative of a local business or hospital and ask if they have paid their bill, invoice, etc. Since the senior's memory might be poor, the victim often thinks they have forgotten about this bill and will promptly write a check and put in the mail. Telemarketers target seniors also because they know they have large savings and or retirement funds they can withdraw if they choose. These large retirement accounts are attractive targets of con artists.

"You have won" schemes target elderly victims who have previously participated in lotteries, sweepstakes, and other prize winning opportunities. Seniors are told that they have won—however, either administrative fees, taxes, or membership fees must be paid before the prize check can be mailed. Foreign telemarketers are notorious for this type of scam. They are aggressive and fearless since they are in a different country, and they understand how difficult extradition can be to the United States. This is why the Postal Inspection Service is one of the leading agencies in the Cross-Border Fraud Investigative Initiatives and work closely with Canadian law enforcement.

Another tactic utilized by con artists is to tell a senior that they have won a large cash prize and then ask them to verify their identification by providing a credit card or bank account number so they can verify they have the right winner. These telemarketers are very persuasive and once they obtain the personal financial information of a victim, they can clean out their accounts.

One of the most notorious scams against seniors is what is known as the "reload." When fraud operators are successful in obtaining money from a victim, they often make an attempt to gain even more. This is the reload. In a typical reload, the fraud operator contacts the victim again and builds upon the original scam by adding a new twist to it, or pitches an entirely new scam. Sweepstakes "winners" may be told that their prize winnings have increased, but that additional fees are necessary to claim the new amount. Victims of fraudulent investment schemes may be convinced to invest even more money, or to convert their original investment to another market product which is invariably worth even less than what the victims were sold before. Fraudulent telemarketers also often network with each other. They sell each other the names of people they have successfully ripped off. The con artists refer to these lists as "mooch lists" or "sucker lists." If a telemarketer knows a particular senior has fallen victim to several scams, the telemarketer will call the senior posing as an attorney or law enforcement officer and advise that they have recovered the victim's money and it is either in a state fund or being held by the courts.

The telemarketer will then request an administrative or bonding fee to release the funds, and in doing so steal from the victim again.

Fraudulent telemarketers have the same capability as legitimate businesses to buy lead lists. They can request lists of specific demographics such as the names of people over 60, widowed, handicapped, prior investments over $10,000, etc. The companies that compile and sell lists may or may not know the intentions of the buyer. It is difficult to hold these companies accountable without hard evidence they had knowledge what the lists would be used for.

Impact on Victims

Illegal telemarketing and mail fraud schemes continue to target senior citizens who are often the most vulnerable and trusting. Many senior citizens have been robbed of their hard-earned life savings and frequently pay an emotional cost, losing not only their money, but also their self-respect and dignity. Postal Inspectors have interviewed victims who claimed they could not remember sending anything to the operators, or, out of embarrassment, minimized the level of victimization they experienced.

Interagency and Industry Cooperation

To increase efficiency in investigating suspected mail fraud, Postal Inspectors lead or participate in several law enforcement and consumer group initiatives aimed at safeguarding the public's confidence in the U.S. Mail, and protecting consumers. Listed below are some of our major cooperative efforts.

Health Care Fraud Working Group

Chaired by the Department of Justice (DOJ) Fraud Section, this interagency group seeks to share investigative strategies, prevention and training programs and develop best practices in fighting health care fraud affecting those dependent on health care, mostly seniors, and the American government which bears much of the costs. Members include DOJ, the FBI, Health and Human Services Office of the Inspector General, state attorneys general offices, various health care groups and the Postal Inspection Service. The Postal Inspection Service is also an active law enforcement member of the National Health Care Anti-Fraud Association (NHCAA).

Telemarketing and Internet Fraud

The Telemarketing and Internet Fraud Working Group is chaired by DOJ and as the name implies, focuses on the large problem of telemarketing and the dramatically increasing use of the Internet in fraud schemes. The former impacts the elderly significantly. This working group was the one which first brought attention to the cross-border problem of telemarketers operating in Canada and focusing on U.S. victims to evade prosecution. U.S. law enforcement was frustrated in its attempts to investigate and apprehend these operators in Canada, due to national sovereignty issues. It served as a catalyst in the development of the Cross-Border Crime Forum (see below). Members of this group include DOJ, the FBI, Federal Trade Commission, Secret Service, state attorneys general offices, and the Postal Inspection Service.

Corporate Fraud Task Force

Created in the wake of the Enron scandal to address the corporate criminal mismanagement, the corporate fraud task force was initiated by a Presidential Directive. Although the term "corporate fraud" implies a business fraud, the vast majority of the victims are the consumer investors who trusted the integrity of the firm. Many seniors have lost their life savings through this wave of corporate greed. The members of the group include several United States Attorneys in districts where the problem appeared, the Treasury Department, the Labor Department, the Securities

and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), Federal Energy Regulatory Commission (FERC), Federal Communications Commission (FCC) and the Postal Inspection Service.

Council on White Collar Crime

Chaired by the Attorney General and his staff, this working group meets once a year and includes all the major agencies involved in combating white collar crimes, both civilly and criminally.

Securities and Commodities

Chaired by DOJ to focus on fraud in the stock market, its members include the Postal Inspection Service, the FBI, the SEC, the IRS, the Secret Service and various U. S. Attorneys.

Cross-Border Crime Forum

Established by another Presidential Directive, the Cross-Border Crime Forum meets once a year to address problems and solutions to cross-border crimes. Members include DOJ, the FBI, FTC, Customs, the Postal Inspection Service and our Canadian counterparts.

Consumer Education and Fraud Prevention Initiatives

Criminal prosecution is an important element in our fraud program, but it is not the only tool. Arrests are not the only solution. The Postal Inspection Service works to protect consumers by educating them about current fraud schemes so they don't become victims. For years, Postal Inspectors have led fraud prevention projects and participated with consumer protection agencies and other groups to help citizens protect themselves before they become victims of fraud.

Project kNOw Fraud

Responding to the proliferation of telemarketing fraud cases, the Postal Inspection Service led an interagency group of law enforcement and consumer organizations in what was named Project kNOw Fraud, one of the most ambitious fraud prevention initiatives ever undertaken. In 1999, Project kNOw Fraud sent a postcard to every household in America—more than 123 million addresses. The card contained valuable telemarketing fraud prevention tips. The project included a Web site and toll-free number to call for additional information or to report a fraud. In addition, a telemarketing fraud prevention video was produced and delivered to more than 15,000 public libraries. Funding to print, address and prepare the mailing for distribution came from money seized by the Postal Inspection Service in a telemarketing fraud case.

National Fraud Against Senior Citizens Awareness Week

People 60 years of age and older accounted for 26 percent of telemarketing fraud victims in 2001, according to the Alliance Against Fraud in Telemarketing and Electronic Commerce. Seniors, however, showed a much higher representation in specific categories—especially prize and sweepstakes fraud—where they accounted for 60 percent of the victims. In a hearing before the Senate Permanent Subcommittee on Investigations in June 2001, Postal Inspection Service representatives and the Pittsburgh Senior Action Coalition discussed the idea of having the Inspection Service and the Coalition initiate a national campaign with other agencies to raise the awareness of older citizens about illegal telemarketing and mail fraud schemes.

In support of the effort, the Senate passed a resolution, introduced by Senators Carl Levin and Susan Collins, designating the week of August 25, 2002, as "National Fraud Against Senior Citizens Awareness Week."

On August 26, 2002, the Chief Postal Inspector joined forces with Postmaster General John E. Potter, Federal Trade Commission Chairman Timothy J. Muris, Assistant Attorney General Michael Chertoff, and representatives of the Royal Canadian Mounted Police to announce the campaign kick-off. Popular actress Betty White, who fits the age range of the targeted group, signed on as spokesperson for the campaign. A total of 51 press events were held in cities nationwide.

Nationally, a multimedia campaign encompassed a wide range of activities: fraud awareness posters were created and posted at more than 38,000 Post Offices across the country; brochures were inserted in Postal Service mailings of stamps and philatelic materials; half-page ads were placed in 40 major metropolitan newspapers; public service announcements featuring Betty White were broadcast on television and radio stations; and fraud awareness flyers were mailed to roughly three million households of seniors and their families.

The Postal Inspection Service's Web site, www.usps.com/postalinspectors, promoted the campaign and offered seniors tips on how to protect themselves from mail and telemarketing fraud. Hundreds of consumer-oriented organizations with Web sites catering to older citizens added links from their sites to the Postal Inspection Service site.

An immediate success of the campaign was declared when, during its first week, a woman in her 80s went to a small Post Office near Pittsburgh, Pennsylvania, to mail a $2,200 cashier's check to Canada, telling the postmaster she needed the money right away because her husband had won $162,000 in a Canadian sweepstakes. She had to mail the check to pay for taxes on the winnings before she could receive the prize money. The postmaster, educated by the Postal Inspection Service's campaign, told her "Don't mail him anything. It's a scam." And it was. The venture was being investigated by Postal Inspectors and our Canadian counterparts.

National Consumer Protection Week

In 1999 and 2000, the Postal Inspection Service and the Postal Service Consumer Advocate's Office joined the AARP, Consumer Federation of America, Department of Justice, Federal Trade Commission, National Association of Consumer Agency Administrators and National Association of Attorneys General to launch National Consumer Protection Week (NCPW). The purpose of NCPW is to educate consumers about various types of mail fraud, including identity theft.

In 2001, the NCPW theme was "If it's too good to be true, it probably is." The campaign focused on the technological advances that have provided new avenues for scams that were once perpetuated solely through the use of the mail. The theme for 2002 was "Deceptive Mailings – Don't Be Duped." An educational video news release was issued featuring Senators Susan Collins and Carl Levin speaking on the Deceptive Mail Prevention and Enforcement Act. In February 2003, NCPW focused on identity theft, which is currently the fastest growing crime.

Operation: Identity Crisis

Just last week, the Postal Inspection Service, in conjunction with the U.S. Postal Service, the Federal Trade Commission, the U.S. Secret Service, and various other government agencies and private companies unveiled a national consumer awareness campaign. Known as "Operation: Identity Crisis," the campaign focuses on the ease with which identity theft occurs unless consumers take steps to prevent it. This crime affects all age groups, including older Americans. The percentage of seniors as a victim group rose from 17 percent to 23 percent as reported by the FTC in 2003.The campaign also provides prevention tips to businesses to help them protect consumer data and ensure privacy.

The national information campaign features newspaper ads appearing in 17 newspapers in markets with the highest number of identity theft complaints (Arkansas, California, Florida, Georgia, Illinois, Michigan, New Jersey, New York, Pennsylvania, and Texas) and a three million piece mailing to residents in the above-mentioned states. Jerry Orbach of television's *Law & Order,* as the national spokesman, appears in Public Service Announcements. Also as part of the campaign, the Postal Inspection Service produced a new consumer video on identity theft entitled "Identity Crisis," and revised a Postal Inspection Service brochure on identity theft.

Crime Doesn't Pay... or Does It? The Establishment of the Consumer Fraud Fund

We recognize that the success of the fraudulent operator depends heavily upon the victim's participation. Fraud is a crime that can be reduced or prevented by educating the general public and specific groups, like the elderly. Accordingly, the Postal Inspection Service established the Consumer Fraud Fund to augment fraud prevention programs. The fund was created with monies received from criminal fines and forfeitures in cases where victims could not be identified.
The consumer protection programs that will be financed using the fund entail a series of fraud prevention programs designed to educate the American public and to create consumer awareness of the various fraud schemes being perpetrated, including many which are aimed at the elderly population.

Enhanced Enforcement

To make the most effective use of the Deceptive Mail Prevention and Enforcement Act of 1999 and protect consumers, the Postal Inspection Service established a Deceptive Mail Enforcement Team, composed of Postal Inspectors, Inspector Attorneys and Inspection Service fraud analysts. The team reviews complaints related to promotional mailings to assess their compliance with the Act and ensure swift, investigative attention as appropriate.

Other Enforcement Strategies

In those instances where the crime does not meet federal prosecutorial guidelines, Postal Inspectors bring their cases to local prosecutors or seek alternative solutions. Regrettably, most frauds target those who can least afford it—the elderly, the poor, the disadvantaged, or the ill. These frauds most often result in relatively small monetary loss and are not always prosecutable under federal guidelines. Although the loss is significant to the victim, it is often not significant enough to support a federal criminal action.

In these cases, we seek alternative resolution whenever the crime is certain, but lacks criminal prosecutive appeal. Alternative resolutions consist of civil or administrative action. In instances where the criminal activity does not meet federal or state prosecutive guidelines, yet the scam affects a large number of consumers, often the most disadvantaged, Postal Inspectors take quick action to withhold mail or to encourage the promoter to voluntarily discontinue the fraud. Over the past decade, more than 5,500 envelope stuffing, chain letter and coupon fraud scams have been halted in this manner. We have achieved similar success in combating illegal foreign lottery mail. Since 1994, over 10 million envelopes containing foreign lottery material have been destroyed.

Withholding Mail Order

A Withholding Mail Order (Title 39, USC 3003) enables the Postal Service to withhold an addressee's mail if they are using a false or assumed name to conduct or assist with activity that violates lottery, mail fraud or use of a fictitious name or address statutes.

Temporary Restraining Orders and False Representation Orders

The Postal Service has unique remedies for civil/administrative relief under the postal false representation and lottery statutes, Sections 3005 and 3007 of Title 39. Temporary Restraining Orders (TROs) and False Representation Orders (FROs) enable Postal Inspectors to stop mailed-in responses (most of which contain checks) before they reach the operator of a fraud scheme. An immediate stop of mail requires a TRO, which is sought from a U.S. District Court with approval by and assistance from the United States Attorney's Office. If a TRO is issued, the mail is detained pending completion of administrative proceedings. FROs are issued by a Postal Service Judicial Officer. If issued, mail sent to the promoters will be returned to its senders, thereby preventing victim losses.

FROs are often used to combat illegal lotteries, both foreign and domestic. Lottery promotions usually involve the purchase of a share in a foreign lottery pool and promise large winnings for little effort. They often target senior citizens who are most vulnerable to such scams. Such promotions are usually conducted from a foreign country. Those who pay money to enter a pool that plays numbers in an overseas lottery usually see no return, even if one of the pool's numbers wins, because participants are usually not made aware of what numbers are played or what numbers win. If a pool number does win, and a payout is made to participants in the pool, it is often in an amount disproportionate to a participant's share of the pool, but a participant has no way of knowing that.

Reporting Fraud Complaints

Each year the Postal Inspection Service responds to thousands of consumer fraud complaints received through our toll-free mail fraud hot line, online complaint system, or by mail. In addition, we receive numerous complaint referrals from federal, state and local law enforcement agencies, prosecutors, and industry and consumer groups. Nearly all of these complaints question the legitimacy of promotional offers they received in the mail. Postal Inspectors urge consumers to report incidents of potential mail fraud. Information that is collected by complainants is input to the Postal Inspection Service's Fraud Complaint System, which helps identify violators of the Mail Fraud or False Representation Statutes.

Civil Asset Forfeiture Reform Act

The Civil Asset Forfeiture Reform Act (CAFRA) of 2000 was of great help to Postal Inspectors resolving fraud cases. Prior to CAFRA, when the best or the only way to seize proceeds of a fraud was forfeiture, the requirements of forfeiture were such that it was very difficult to provide victim restitution. Moreover, it was only possible to pursue forfeiture in mail fraud cases when money laundering could be proven. CAFRA changed all of that. Now forfeiture of assets in mail fraud cases can be accomplished by showing the property is a proceed of the crime. Further, restitution to identified victims is through a much more efficient and simplified process.

Frequently Asked Questions About Mail Fraud and Prevention Tips

Below are frequently asked questions about mail fraud schemes, as well as tips and suggestions to assist consumers in identifying a potential fraud.

Which schemes generate the most complaints?

1. *Contest and sweepstakes fraud.* A consumer is told he or she is a guaranteed prize winner, but the "free" prize could end up costing hundreds of dollars, and often the victim never receives a thing.
2. *Chain letters.* These usually require the recipient to send money to others on a list. The letter promises fantastic earnings to participants if the chain is continued. They fail to tell participants it is mathematically impossible for every person to benefit.

3. *Foreign lotteries.* Any lottery involving a foreign country and conducted through the mail is illegal; they may also be fraudulent. You may not even be entered to play.
4. *Travel scams.* Recipients are promised a dream vacation, which becomes a nightmare. Travel arrangements are either unavailable when the traveler wants to go, or transportation and lodging are paid for in advance, but not booked by the travel agent, who pockets the money.
5. *Work-at-home schemes* promise work stuffing envelopes or assembling products. The only *real* work is selling the program to dupe others into falling for the scheme.
6. *Investments.* Enticing pitches promise low-risks with high returns in exotic minerals, strategic metals, and rare gemstones, ostrich ranching or other "can't miss" offers.
7. *Phony billing scams.* These target businesses and professionals, using unsolicited calls or letters offering Yellow Page ads, copy machine supplies, specialty advertising items and other overpriced products. They may imply they are your regular supplier offering a special discount.
8. *Internet auction fraud.* Buyers place bids for items on an auction Web site. Successful bidders "win" the auction and pay via the U.S. Mail. They're scammed when the seller doesn't deliver the goods after receiving payment, delivers something other than the advertised item, or doesn't disclose relevant information about the item. Inspectors investigate Internet fraud when the mail is used as part of the scam.

Other common types of mail fraud include advance-fee loans, credit repair offers, business opportunities scams, home improvement schemes and supplemental health insurance frauds, to name a few.

Are the fraudulent schemes directed at any particular group?
Sophisticated con artists target older citizens who often live alone, have sizable savings accounts and may be disarmed by convincing salespeople. Favorite schemes include sweepstakes scams, guaranteed prize promotion investments and foreign lotteries. Many seniors are victimized repeatedly through the sale of victim lists. Other operators offer to help recover victims' previous losses—for a fee, only to scam them all over again.

How do people avoid being scammed?
A consumer's good judgment is the last line of defense against the con artist. Consumers should be skeptical of any offer that sounds too good to be true. The following questions can help consumers evaluate questionable offers:

- Do I have to pay to receive a "prize" or enter a sweepstakes?
- Do I have to provide personal or financial information?
- Am I a "guaranteed" winner or told "no risk is involved?"
- Am I pressured into responding right away?
- Do they ask for advance payment or accept cash only?

If the answer is "yes" to any of these questions, consumers should be wary. Consumers should ask that all statements about the product or service be provided in writing, and check the offer with the consumer protection agencies, the Better Business Bureau (BBB), State Attorney General, or the National Fraud Information Center, at 1-800-876-7060.

The Postal Inspection Service's Web site, **www.usps.com/postalinspectors**,offers more tips on postal-related crimes and allows consumers to submit a mail fraud complaint online. Fraud complaint forms are also available at every Post Office. In addition, the Postal Inspection Service offers several publications to assist consumers in preventing mail fraud. Copies may be obtained by calling 1-800-332-0317.

Publication 280, *Safeguard Your Personal Information*
Publication 300-A, *Consumer and Business Guide to Preventing Mail Fraud*
Publication 281, *Consumer Fraud by Phone or Mail, Know How to Protect Yourself*

Summary of Recent Fraud Investigations by U.S. Postal Inspectors

- A fraud operator in Rhode Island obtained a list of elderly women who had previously entered sweepstakes contests. He relentlessly pursued these victims, calling a 76-year-old victim at least 38 times, and an 85-year-old woman at least 95 times, with news that they were sweepstakes "winners." Many women fell for his scheme, and mailed the fraud operator a ten percent "processing fee" to claim their prizes, which he described as being $75,000 to $150,000. After victims sent the fees, he called them again to say their winnings were increased, and convinced them to send even more money, which was used to support the fraud operator's fondness for luxury and drugs. Postal Inspectors' interviews revealed a callous disregard for his victims. One woman was blind; one depleted her entire savings account and took out cash advances on a credit card to send in the processing fees; and one had to turn to her children for financial support after she exhausted all of her savings. The fraud operator pled guilty to twelve counts of conspiracy, mail and wire fraud, and interstate transportation of stolen property. He was sentenced to five years in prison and ordered to make restitution of more than $218,000.

- The operator of fraudulent lottery marketing enterprises in Vancouver, Canada, and Barbados pled guilty to illegal interstate transportation of gambling material. With a staff operating from telephone rooms in Vancouver, Kelowna, and Toronto, Canada, the operator sold chances, shares and interests in Canadian, Australian, Spanish, Irish and U.S. lotteries to senior citizens in the U.S., using trade names such as "The Lottery Connection," "Winners," "New Eagle," and "Project Rainbow." During their investigation, Seattle Postal Inspectors learned that his victims averaged 74 years of age, and that losses per victim ranged from $10,000 to $329,000. As part of his plea agreement, the operator agreed to pay $11.7 million in restitution to victims of the scheme.

- Three Illinois men were sentenced for their roles in a telemarketing scheme targeting the elderly. The operators paid other telemarketers up to $1,000 per name for a good "sucker," and then telephoned senior citizens with news that they had won a large cash prize or were owed a federal tax refund. Victims were told to mail or wire $500 to $2,000 to pay fees or taxes due on their "windfall" before their claims could be processed. During Postal Inspectors' questioning, the men admitted that they also browsed through phone books looking for given names such Agnes, Rose, and Elmer that were common in prior generations. The operators would often "reload" their victims, calling the same person many times with variations of their pitch. They also used telephone calling cards to make it difficult for authorities to obtain records of their calls. Upon sentencing, the judge said the men's crimes were more serious than drug offenses or bank robberies, because they robbed vulnerable people of their dignity at the end of their lives.

- A mail fraud operator running a fraudulent telemarketing scheme pled guilty to charges of mail fraud. Operating out of Hawaii, the principal operator purchased lists of elderly individuals over 65 years of age who had made prior $10,000+ investments. He defrauded seniors for more than five years, promising up to 30 percent returns while selling investments in silver coins for 400 to 500 percent more than the coins' actual value. The principal was difficult to identify because his name was not on any bank accounts or documents related to the businesses. He distanced himself from authorities by using "runners" in Nebraska, Iowa and New Jersey to pick up his mail and set up bank accounts, and by frequently changing company names and addresses. Postal Inspectors discovered his true identity when they executed a search warrant at the home of one of his runners. After his arrest, he pled guilty to a forfeiture count which allowed the government to utilize $132,000 in cash and coins seized by Postal Inspectors for victim restitution. The court ordered the principal accountable for $1.1 million in restitution. In March 2003 the Federal District Court in Nebraska sent disbursement checks to the

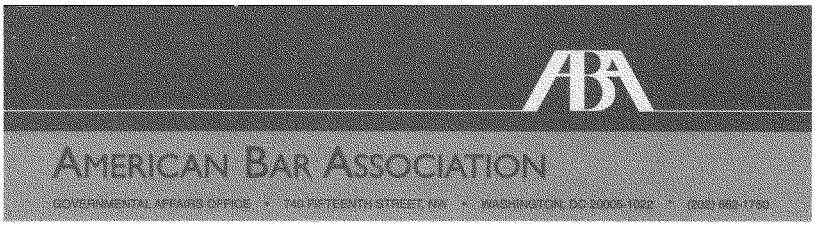
victims as part of the restitution order pursuant to recent changes in the Civil Asset Forfeiture Reform Act (CAFRA) which allows the victims' restitution to be identified and provided without burdening elderly individuals with completion of the Petitions for Remissions. An employee of the operator was identified late in the investigation and was indicted earlier this year.

- Postal Inspectors launched an investigation of a Santa Rosa, California woman acting as office manager for a fictitious law office. The suspect befriended an elderly woman and used her identity to open multiple credit card accounts. She also assumed the identity of a former resident of an assisted living facility where she worked, opened at least three credit card accounts in the second woman's name and rented a storage facility using her identity. Postal Inspectors obtained search warrants for the storage facility and the suspect's residence and arrested her in Minnesota. She was later indicted for mail fraud, identity fraud, wire fraud and bank fraud.

- Seattle Postal Inspectors led a joint investigation of the 60-year-old mastermind of a Ponzi scheme who bilked more than 3,200 victims of approximately $70 million. Thousands of elderly victims lost their life savings in the scheme, in which proceeds from new investors were used to pay off previous investors. The judge found the defendant obstructed the government investigation, made no effort at restitution, provided no cooperation and has no remorse. He was sentenced to 30 years in prison after he was found guilty of 25 counts of mail fraud, wire fraud, money laundering and conspiracy. An accomplice was sentenced to 24 years in prison. The government seized approximately $25 million from accounts in Samoa that will be used for restitution to victims.

- A citizen of Quebec, Canada, was sentenced to 10 years in prison, three years' probation and ordered to pay more than $1.2 million in restitution as a result of "Project Colt," a joint United States and Canadian law enforcement effort to curb cross-border telemarketing fraud. The man was charged with directing the operation of a fraudulent scheme in Montreal that victimized mostly elderly American citizens. Telemarketers posed as attorneys or government officials and claimed to have recovered money for persons victimized by previous lottery prize schemes. Postal Inspectors' investigation revealed that victims mailed purported taxes and/or fees to release the "recovered" money, which never existed. The defendant was also sentenced to two years, three months in prison for victimizing a Florida resident.

- Postal Inspectors arrested a man in Atlanta, Georgia for operating a sweepstakes scheme. The operator of the scheme placed telephone calls to elderly persons throughout the United States promising them that they won large amounts of money via a lottery, sweepstakes or contest. Victims were led to believe that if they mailed money as payment for taxes or entry fees, they would receive their "winnings." No winnings were ever sent to these victims. In some cases, elderly victims were victimized several times. To date, the investigation has disclosed more than 32 victims with losses in excess of $161,000.



STATEMENT OF

LORI A. STIEGEL, ASSOCIATE STAFF DIRECTOR

of the

COMMISSION ON LAW AND AGING

on behalf of the

AMERICAN BAR ASSOCIATION

submitted to the

SUBCOMMITTEE ON CRIME, CORRECTIONS, AND VICTIMS' RIGHTS

of the

JUDICIARY COMMITTEE
U.S. SENATE

on the subject of

"ELDER ABUSE, NEGLECT, AND EXPLOITATION: ARE WE DOING ENOUGH?"

September 24, 2003

Mr. Chairman and Members of the Subcommittee:

My name is Lori Stiegel. I represent the American Bar Association, where I work as Associate Staff Director of the Commission on Law and Aging. I have developed and directed all of the Commission's activities on elder abuse since 1993 and have worked in the law and aging field at the local, state, and national levels for 21 years.

As representative of the legal profession in the United States with over 400,000 members, the American Bar Association is particularly concerned with equal access to justice for those members of our society who are generally least able to protect their own rights. Among those members are older people who are victimized by abuse, neglect, and exploitation. I appreciate the opportunity to appear before you today on behalf of the Association, to discuss our views on the problem of elder abuse, neglect, and exploitation and to share some ideas for addressing that problem.

My testimony will focus on the following points:

1. Elder abuse is criminal conduct
2. Elder abuse has serious consequences to victims and to society
3. Elder abuse is a growing problem
4. The US Congress and Federal government could do much more to protect older persons from becoming victims of elder abuse and to improve the response to those who have been victimized.

Elder Abuse is Criminal Conduct

"Elder abuse" is a general term for a complex problem that takes many forms and occurs in different settings. As commonly used, and as it will be used in this testimony, the term incorporates the broad concepts of abuse, neglect, and financial exploitation. States' adult protective services laws generally include some or all of the following specific categories: physical abuse, psychological or emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. Some states also address the problem of self-neglect, but as self-neglect generally does not involve criminal conduct by another it will not be discussed in this testimony. Elder abuse occurs in people's homes and in nursing homes and other institutional settings.

Real stories give meaning to these words.

- In South Carolina, a son was convicted for having allowed his mother to rot to death from bedsores embedded with bobby pins and roiling with maggots.[1]
- In Delaware, a nursing home aide was convicted for hanging a resident's baby doll by a noose from the ceiling of the resident's room. The aide

[1] State vs. Gross, Charleston/Berkeley County Circuit Court (1994)

knew that the resident, who had dementia, believed that the doll was her real baby.

- In Iowa, the body of an 87-year old nursing home resident whose death certificate listed the cause of death as "unknown with complications -- including Parkinson's disease" was exhumed after a nursing home aide admitted to the Immigration and Naturalization Service that she had killed the resident. Subsequently the aide was charged with first-degree murder after an autopsy revealed that the resident had been "choked to death with food."[2]
- In Alabama, a former nursing home cook was convicted of sexual abuse and attempted rape of a 59-year-old female resident who had suffered a stroke that left her with impaired verbal and motor skills.[3]
- In Wisconsin, a waitress who had befriended a 72-year old male customer was charged with theft by false representation after she bilked him of thousands of dollars while she was in jail by telling him that she needed the money for cancer treatments.[4]
- In Texas, the daughter of a 72-year old man with Alzheimer's disease was charged with fraud after collaborative investigations by adult protective services and law enforcement indicated that the daughter was using an ATM card to take funds from her father's account and had purchased a sports utility vehicle using her father's name.[5]
- In North Carolina, a former state lawmaker and disbarred lawyer was found guilty of two counts of perjury and one of embezzlement for his handling of an older client's estate.[6]
- In California, a 29-year old beat his 86-year old grandmother, who sustained five broken ribs, two broken collarbones and several contusions. When the grandmother died five months later and the coroner ruled that the assault was a primary cause of death, the grandson was charged with murder. A mistrial was declared after opening statements when two jurors informed the judge that they could no longer be fair and impartial. The defense asked for a non-jury trial and the judge convicted the grandson of second-degree murder and sentence him fifteen years to life.[7]

Incidents like these happen in every state, the District of Columbia, and the territories every day.

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[2] http://www.ksfy.com/Global/story.asp?S=1076079&nav=0w0jDG0B; http://www.whotv.com/Global/story.asp?S=1088977&nav=2HABDR5A

[3] "Ex-Cook Gets Prison in Attack at Nursing Home," Birmingham News, February 11, 2003, http://www.al.com/news/birminghamnews/index.ssf?/xml/story.ssf/html_standard.xsl?/base/news/1044958686312960.xml

[4] "Inmate Uses Phony Cancer Story to Scam Elderly Man," Journal Times, March 12, 2003

[5] Case summary provided by National Association of Adult Protective Services Administrators

[6] "Former Lawmaker Found Guilty in Embezzlement Case," Citizen-Times, February 6, 2003, http://cgi.citizen-times.com/cgi-bin/story/news/28277

[7] People v. David McAllister (San Diego Superior Court)

Although this testimony explains elder abuse with the terminology used by adult protective services laws, elder abuse is not just an issue for adult protective services programs, which receive and investigate reports of suspected elder (and/or adult) abuse and provide or arrange for services to victims. It is also a crime that requires the involvement of state and federal law enforcement agencies, prosecutors, and the courts. Incidents of elder abuse may involve violations of criminal laws related to murder, manslaughter, sexual assault, theft, fraud, larceny, burglary, forgery, etc.[8] In addition to these traditional criminal laws, an increasing number of states have enacted new laws that criminalize elder abuse and neglect or that enhance existing penalty provisions for criminal acts committed against older persons.

As these cases illustrate, elder abuse is committed by a variety of perpetrators. Family members (including spouses/intimate partners, children, grandchildren, nieces and nephews, siblings, and others), paid and volunteer caregivers, fiduciaries and trusted others abuse, neglect, and exploit older people.[9] This existence of a relationship between the victim and the perpetrator is the hallmark of elder abuse; it is the factor that distinguishes elder abuse from criminal victimization of older people by strangers.[10] It is also the factor that -- until fairly recently -- triggered a social services response to an alleged victim, rather than a law enforcement response.

Elder Abuse Has Serious Consequences to Victims and to Society

Elder abuse may have a particularly devastating impact on its victims for several reasons. Again, the existence of a family or trust relationship between the victim and the perpetrator may make elder abuse even more destructive than a crime perpetrated by a stranger. The shame and stigmatization of victimization by a family member or trusted other may be even greater than when a stranger is responsible. Additionally, older people typically have fewer options than younger people for resolving or leaving an abusive situation due to their age, health, financial circumstances, or limited opportunities for alternative housing or care. They may be more vulnerable to and harmed by physical abuse because of their existing physical condition. Older people may have less ability to recover from financial exploitation if they are already retired, have limited resources, or a short remaining life span. Moreover, research has shown that elder abuse increases mortality.[11]

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[8] Heisler and Tewksbury, "Fiduciary Abuse of the Elderly: A Prosecutor's Perspective," Journal of Elder Abuse and Neglect, Vol. 3, No. 4 (1991).
[9] National Center on Elder Abuse, A Response to the Abuse of Vulnerable Adults: The 2000 Survey of State Adult Protective Services, pp. 34-35 (2003).
[10] National Research Council, Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America, p. 40 (2003).
[11] Lachs, M.S., et al., "The Mortality of Elder Mistreatment," Journal of the American Medical Association 280: 428-432 (1998).

The costs of elder abuse to taxpayers and society have not yet been researched. But when elder abuse victims are physically or sexually abused, there are likely to be costs associated with hospitalization or nursing home placement that are borne by the victims, their family members, or the taxpayers. When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs. When elder abuse victims need services from adult protection programs, long term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors, public guardians, or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs.

Elder Abuse is a Growing Problem

No statement better illustrates how little is known about the extent of the problem of elder abuse than the beginning of the first paragraph of the preface to the report by the National Research Council's Panel to Review Risk and Prevalence of Elder Abuse and Neglect:

> Reports of this kind typically begin by calling attention to the magnitude and social cost of the problem being explored. The fact that equivalent statement cannot be made with any confidence about elder mistreatment is a telling indication of the need for the report, as well as for an intensified program of research. No survey of the U.S. population has ever been undertaken to provide a national estimate for the occurrence of any form of elder mistreatment; the magnitude of the problem – among community-dwelling elders, as well as those residing in long-term care facilities – is basically unknown.[12]

Data from state adult protective services programs has indicated steady and significant growth over the past decade in the number of reports of suspected abuse made to those programs. The National Research Council's Panel to Review Risk and Prevalence of Elder Abuse and Neglect succinctly stated the trend in the second paragraph of the Preface to its report:

> The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and

[12] National Research Council, Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America, p. xiii (2003).

increasing numbers of older persons require long-term care.[13]

The US Congress and Federal government could do much more to protect older persons from becoming victims of elder abuse and to improve the response to those who have been victimized.

American Bar Association policy urges federal, state, territorial, and local governments and criminal and civil justice systems to improve their response to elder abuse, neglect and exploitation and to implement the law-related recommendations that were promulgated by the National Policy Summit on Elder Abuse in December 2001.[14] The National Policy Summit on Elder Abuse was a project of the National Center on Elder Abuse, in which the Commission on Law and Aging is a partner. The U.S. Administration on Aging funds the National Center on Elder Abuse. The Office for Victims of Crime of the U.S. Department of Justice also supported the national policy summit.

The following law-related recommendations were adopted by the ABA as policy, a copy of which is attached:

1. Create a nationwide structure for raising public awareness; supporting research, training and technical assistance; funding critical services; and coordinating local, territorial, state, and national resources;
2. Develop and implement specialized training about elder abuse for all components of the justice system;
3. Establish federal leadership to ensure that adult protective services and legal and other services are of sufficient quality to protect and serve victims of elder abuse;
4. Create broad-based, multidisciplinary task forces or coalitions in each state to examine and develop systemic approaches to elder abuse interventions;
5. Develop, fund, and implement a multidisciplinary research agenda to sustain, advance, and assess professional training and practice on elder abuse;
6. Maximize and expand resources for preventing and responding to elder abuse;
7. Develop adequate tools and services to enable capacity assessments and surrogate decision-making for victims of elder abuse;
8. Ensure that legal and other services are available to meet the immediate and crisis needs of victims.

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[13] National Research Council, Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America, p. xiii (2003).

[14] National Center on Elder Abuse, "The National Policy Summit on Elder Abuse: Creating the Action Agenda – Proceedings" (2002).

The Need for Federal Law and Leadership

The federal government's support of efforts to prevent and respond to elder abuse has been negligible compared to its commitment to the prevention of and response to child abuse and domestic violence. The elder abuse field is often described as being in the same situation that child abuse was 20-30 years ago and domestic violence was 10-20 years ago, before the federal government began devoting support and resources to those issues. Indeed, while the federal government has declared domestic violence to be both a public health and a public safety problem, it has not yet taken the same approach to elder abuse.

The lack of federal support and leadership has led to a patchwork of state responses, with significant inequities in the response of adult protective services, the justice system, and the health care system from state to state and community to community. Focal points for policy development and oversight, funding and coordination of services, funding of research and best practices, and training and technical assistance are essential.

The Need for Increased Funding and Resources

Efforts to increase federal funding for elder abuse have been discouraging. In the last few years, Social Services Block Grant (SSBG) funds, which are used to fund adult protective services in more than 30 states, have been cut by more than one billion dollars. Approximately $4.7 million of Older Americans Act money is devoted to elder abuse education, training and awareness, but that money is divided among the 50 states, the District of Columbia, and Puerto Rico. In 2001 Congress did appropriate $5 million under the Violence Against Women Act for training and education about older women who experience domestic violence and sexual assault. These amounts are very small compared to federal funding for child abuse and domestic violence.

The Need for Enhanced Training and Technical Assistance

The effective prevention of and response to elder abuse require ongoing training of a wide array of diverse professionals who work in a variety of settings. These include adult protective services workers, other social workers and aging services providers, law enforcement personnel, prosecutors, health care and mental health professionals, civil lawyers, judges, and virtually anyone else who may come into contact with vulnerable older people. At minimum, training needs to include the indicators of and risk factors for elder abuse, reporting requirements under state laws, and the role and responsibilities of the various professions and agencies that respond to elder abuse. It is also becoming increasingly important to have training on cultural diversity and the needs of older victims from diverse racial and ethnic groups. Many professions, such as medical examiners and coroners, bank personnel, hospital personnel, nursing facility surveyors, law enforcement personnel, prosecutors, civil lawyers and

others need specialized training.

In order to maximize resources and efficiency, the provision of technical assistance is necessary to share information about promising practices, training design, research, legal analysis, statutory drafting, etc. The field needs technical assistance so that it can avoid "re-inventing the wheel."

The Need for Development and Funding of Research

The lack of research means that no one can cite with any certainty the incidence or prevalence of elder abuse. That is usually the first question that policymakers and the media ask about the problem. Practices and programs responding to victims have been developed without evaluations of their effectiveness. Research about the risk factors for and indicators of abuse would benefit the civil and criminal justice systems.

Several research agendas have been developed in the past and the National Research Council published another earlier this year. Nonetheless, very little money from the federal government or private foundations has been used to support research on elder abuse.

The Need for More Effective Laws

In order for the justice system to respond successfully to elder abuse, more effective laws and protocols or procedures that enhance a coordinated response are needed. Existing laws often don't address situations of elder abuse such as neglect by caregivers. Frequently, current laws don't recognize the special nature of these victims, the crimes committed against them, and the perpetrators. Other laws may pose barriers to prosecution of perpetrators of elder abuse.

Not only do effective laws and protocols or procedures need to be developed, they need to be the subject of training in the jurisdictions where they are enacted. Moreover, they need to be evaluated and shared with professionals in other jurisdictions.

The Need for a Coordinated, Multidisciplinary Response

The response of the civil and criminal justice, health care, and mental health systems is generally not coordinated or effective. To illustrate, elder abuse has only recently been recognized as a crime, rather than a "social problem." Law enforcement officers who have not been trained about elder abuse often refuse to write a report, make an arrest, or investigate a case, dismissing it as a "civil problem." Adult protective services workers commonly do not report cases to law enforcement until critical evidence has been destroyed. Health care professionals may not be trained to recognize elder abuse and they may not know to what agencies they should report their suspicions. While some states

and communities are working hard to overcome these challenges creatively with few resources, and the federal government and a few foundations have supported training and technical assistance projects, much more is needed to develop a comprehensive system to protect vulnerable older persons from abuse, neglect, and exploitation.

The Need for Improved Tools and Services to Enable Capacity Assessments for Victims of Elder Abuse

A victim's capacity to make decisions will be critical to the protective services, civil justice, and criminal justice systems that should respond to elder abuse. Does the victim have capacity to reject an offer of protective services? Is the victim competent to testify in court about the abuse? Did the victim have capacity to deed real property to the suspected perpetrator? Does the victim need a guardian or conservator? The development of adequate tools and services to enable capacity assessments for victims of elder abuse is critically needed.

Efforts to improve the response to victims of elder abuse are underway in many states and communities. Your own states are illustrative:

- South Carolina has a strong statewide Adult Protection Coordinating Council that has helped strengthen the state's criminal penalties for elder abuse.
- In Delaware, the Attorney General's office and its Medicaid Fraud Control Unit have prosecuted many cases of financial exploitation and abuse and neglect in long term care facilities.
- Iowa has a new program to work with first-time elder abuse offenders and provide training on how to avoid becoming second-time offenders.
- Alabama's adult protective services program has partnered with the state's Crime Prevention Program to provide training on elder abuse for law enforcement officers and protective services workers.
- Wisconsin's adult protective services program has provided critical state and national leadership in understanding and providing services to victims of domestic violence in later life.
- Texas is among the first states to develop an elder abuse fatality review team.
- California law requires that law enforcement officers receive training about elder abuse.

I could cite to many other promising practices in other states. However, these efforts are sporadic, intermittent, and inconsistent. Few, if any, have been evaluated. Many of these initiatives are sparked by the interest of one person and if that one person moves on, the initiative falls apart. In other words, interest in improving the criminal justice system's response to elder abuse is not institutionalized. For example, in South Carolina, law enforcement instructor Randy Thomas, who has been teaching new and experienced officers about

elder abuse at the state Criminal Justice Academy, expects to retire at the end of the year and he believes those educational efforts will be discontinued.

The aforementioned ABA policy supports some provisions of the Elder Justice Act, S. 333, introduced by Judiciary Committee Chairman Senator Hatch and Senator Breaux. The Association endorses its provisions that would enhance public awareness and focus federal resources on elder abuse. We support increased leadership by the federal government on the problem of elder abuse. We encourage the federal, state, territorial and local governments to devote new funding and more resources to elder abuse. We support the development and funding of grant programs to provide training and technical assistance to justice system professionals and the other professionals and service providers who work with victims of elder abuse, as well as the development and funding of research to advance professional training and practice. We support research on and the development of more effective laws and supporting protocols and procedures that would promote prevention, enhance investigation, and serve better to protect older persons. We also support a coordinated response by the justice system and a multidisciplinary approach to the problem of elder abuse, with a broad multidisciplinary coalition in each state to examine systemic approaches to elder abuse. We encourage the development of adequate tools and services to enable capacity assessments of elder abuse victims, and we support federal funding to ensure that legal and other services are available to meet the immediate and crisis needs of elder abuse victims. The ABA has no policy related to other provisions of S. 333.

We commend the Subcommittee on Crime, Corrections, and Victims' Rights for holding this hearing on this timely and important subject, and appreciate the opportunity to present this testimony.

RESOLUTION OF THE

AMERICAN BAR ASSOCATION

ADOPTED AUGUST 2002

RESOLVED, That the American Bar Association supports efforts to improve the response of federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation (hereinafter "elder abuse").

FURTHER RESOLVED, That in order to address and reduce the incidence of elder abuse, the American Bar Association urges implementation at the federal, state, territorial and local levels of the following actions based upon recommendations adopted by the National Policy Summit on Elder Abuse in December 2001:

(1) Create a nationwide structure for raising public awareness; supporting research, training and technical assistance; funding critical services; and coordinating local, territorial, state and national resources;

(2) Develop and implement specialized training about elder abuse for all components of the justice system;

(3) Establish federal leadership to ensure that adult protective services and legal and other services are of sufficient quality to protect and serve victims of elder abuse;

(4) Create broad-based, multidisciplinary task forces or coalitions in each state to examine and develop systemic approaches to elder abuse interventions;

(5) Develop, fund, and implement a multidisciplinary research agenda to sustain, advance, and assess professional training and practice on elder abuse;

(6) Maximize and expand resources for preventing and responding to elder abuse;

(7) Develop adequate tools and services to enable capacity assessments and surrogate decision-making for victims of elder abuse;

(8) Ensure that legal and other services are available to meet the immediate and crisis needs of victims.

Statement of James A. Wright

Mr. Chairman, members of the committee. Thank you for the opportunity to offer comments on the issue of crimes committed against the elderly.

I am here to represent the National Sheriffs' Association as the director of the Triad; a program that serves seniors across the country.

Having spent my entire adult life in law enforcement, retiring at the rank of captain after 25 years of service with the Metropolitan Police Department of

Washington, DC, I have seen firsthand the devastating effect that abuse, neglect and exploitation can have on the elderly.

Oftentimes, elderly victims of crime do not report their victimization to authorities. One of the most common reasons seniors give for not calling law enforcement is that they are afraid of the perpetrator, who is often known to the victim.

In cases of financial exploitation, seniors cite the fact that they do not want their adult children or caretakers to know that they have been defrauded, primarily

because the senior fears losing his/her financial independence.

And, in many cases, the person abusing or exploiting the elderly are their own children, grandchildren, or trusted advisors. Such victimization raises enormous uncertainties in the minds of seniors, making them more likely to not report the incident.

When victimized, seniors often feel there is little that can be done to assist them, knowing that in many cases the perpetrator is in another state, or even another country and may never be brought

to justice. Restitution may not be likely, but re-victimization is.

Prevention, then, is not the only option, but it is by far, the best option.

In the late 1980's, at the beginning of the community policing movement in America, representatives from three national organizations came together to address the issue of crime safety for seniors.

The American Association of Retired Persons, (now AARP), the International Association of Chiefs of Police, and the

National Sheriff's Association joined together to form Triad. The name Triad is representative of this group of three. In its simplest terms, Triad is a concept of partnership. Triad's goals were, and are, to reduce crimes committed against seniors and to reduce the unwarranted fear of crime that seniors often experience.

Since Triad's inception, more than 800 counties throughout 47 states have signed Triad agreements. Triad is simply an agreement to work together to keep seniors safe from crime. After establishing a Triad agreement, a SALT council is

formed to develop and implement programs and activites. SALT is an acronym for Seniors and Law Enforcement Together and is made up of community representatives.

Since being founded 15 years ago, the number of partners has increased dramatically. A local Triad in 2003 is far more inclusive than before. Now, a Triad is likely to include representatives from sheriffs offices and police departments, fire departments; EMS; the faith community; senior volunteer organizations, such as AARP and RSVP; state and county

prosecutors, district attorney's, and state Attorney Generals; area agencies on aging, adult protection, social services, hospitals, and even banking institutions.

Triad programs fit local needs. One example is the R.U.O.K. program, where shut-in seniors, or seniors with limited mobility are contacted each day by senior volunteers, simply to ascertain if they are okay.

Another program, Senior Visitation, has deputies and officers periodically visiting seniors in their homes, just to spend time and to chat with a senior.

Some other Triad programs are senior education, senior fairs, and senior lectures on fraud, financial abuse, and other crime topics.

Triad is one way for law enforcement personnel to be in frequent contact with the elderly. The value of this interaction between law enforcement and seniors cannot be overstated.

Such contact opens communication and allows trained law enforcement personnel to recognize patterns and trends, and to witness situations where seniors are being victimized, or are potential victims.

An important benefit is that when law enforcement officers observe these situations, they can intervene and either prevent a crime, or initiate an investigation. This, in turn, removes the weight of having to decide whether or not to file a report from the senior.

Such communication works the other way as well, in that it gives seniors the opportunity to pass along important information to the police about potential suspicious activity, such as terrorist, drug, or gang-related activities in their neighborhoods.

So it seems to me, Mr. Chairman, that the question is not only whether we are doing enough to protect our nation's elderly, but also whether those things we are doing are effective?

Triad, like Neighborhood Watch, is there for the asking. These programs can be replicated in any community in America, or can be modified to fit individual community needs.

Triad programs help ensure that law enforcement, criminal justice professionals, and volunteers coalesce their

energy so as to reduce crime against the elderly.

Senators Rod Grams and Evan Bayh sponsored legislation that passed Congress unanimously authorizing Federal funding for the Triad program. While it has been funded in FY03, it does not appear that it will be funded in FY04.

The National Sheriffs' Association, and those of us committed to Triad, will continue to work to increase the number of communities utilizing this grass-roots, community-oriented program.

I sincerely thank the committee for the opportunity to offer comments and for its willingness to address this important issue.

I would be pleased to respond to the Committee's questions.

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