

**ELDER FRAUD AND ABUSE:
NEW CHALLENGES IN THE DIGITAL ECONOMY**

HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

—
PORTLAND, OR
—

MARCH 15, 2000
—

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CONTENTS

Opening statement of Senator Ron Wyden	Page 1
PANEL I	
Ruth Older, Portland, OR	3
Mitch Copp, Sergeant, Portland Police Bureau	7
Robert L. Dorszynski, Attorney, Salem, OR	12
PANEL II	
Roger Auerbach, Administrator, Senior and Disabled Services Division, Oregon Department of Human Services	28
Tom Perrick, President, Oregon Bankers Association	35
PANEL III	
Pete Shepherd	50
Noreen Millsap	58
Lisa Nerenberg	89
APPENDIX	
Testimony submitted by Mary Lou Ritter, Director Grady Tarbutton, Program Development Manager Department of Aging and Veterans Services, Washington County, OR	115

ELDER FRAUD AND ABUSE: NEW CHALLENGES IN THE DIGITAL ECONOMY

WEDNESDAY, MARCH 15, 2000

**U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
*Washington, DC.***

The committee met, pursuant to notice, at 9:30 a.m., in the Council Room, Metro Building, Portland, OR, Hon. Ron Wyden presiding.

OPENING STATEMENT OF SENATOR RON WYDEN

The CHAIRMAN. The Senate Special Committee on Aging will come to order. I am especially pleased to be able to convene the committee here, of course, at home in Portland.

My interest in senior concerns goes back to my days as director of the Gray Panthers. Back in the days when I had hair. I have had a chance to know many of you in the audience over the years and so appreciate the chance to be home.

I also want the record to state at the outset that Chairman Grassley and Senator Breaux, the bipartisan leadership of the committee, are especially interested in reviewing this testimony today. They consider, on a bipartisan, basis the information we are gathering especially important. It is very clear that seniors are the targets of a whole variety of scams and rip-offs, and that people who are trying to exploit older people are not technological simpletons, but very, very sophisticated rip-off artists. I am so pleased that Chairman Grassley and Senator Breaux are interested in the work that we are doing here and in reviewing the testimony.

As you know, fraud against seniors has a long and sordid history, and that is why we are here today. The Senate Special Committee on Aging is here to examine how and why so many older people are financially exploited. We are going to begin by examining the oldest scams, and end our session today by zeroing in on the ways that seniors are being targeted during these digital days.

Each year telemarketing fraud and cyber scams cost our citizens more than \$40 billion, enough to pay for a full year of nursing home care for more than a million older people. According to the Federal Trade Commission, 80 percent or more of telemarketing fraud victims are age 65 or older. Because seniors often have more savings than other members of our society, the amount of individual losses often ranges between 5,000 and 20,000 dollars a person.

While emerging technology certainly opens many doors for older people, it also makes them vulnerable to a host of new dangers. As we look at the challenges of the millennium, cyber scams such as

Internet fraud and identity theft unfortunately have become a much more prevalent threat to older people. For example, the new found popularity of on-line medical sources makes older people vastly more susceptible to Internet health scams such as the marketing of dubious products and the sharing of sensitive personal information.

So while the new economy brings new opportunities to our country, it also brings new opportunities to defraud older people. Our biggest challenge in terms of consumer protection remains an age-old tried and true method. That is, to ensure we are watchdogging aggressively to protect older people from con men who try to win an older person's trust, and then steal from them.

Today we are going to hear from witnesses who have been victimized by these scams firsthand. We are going to hear from state and local officials and financial fraud experts who are going to testify about what to look out for and offer suggestions about possible safeguards. High technology may make it easier to target fraud against older people, but it also offers law enforcement, state agencies and nonprofit groups new tools to help detect and investigate the perpetrators.

Now, in order to stiffen up the effort of the government to protect seniors from new cyber scams, I introduced the Telemarketing Fraud Seniors and Protection Act, which is legislation to include Internet fraud in the Federal laws addressing telemarketing fraud. If we are to do nothing other than to ensure that the protections that apply when we are dealing with scams against seniors in the off-line world are extended to the on-line world, it seems to me that will be a meaningful step towards protecting older people.

The legislation also directs the Federal Trade Commission to investigate deceptive on-line transactions. I think this legislation serves to complement the bipartisan privacy protection legislation I introduced with Senator Conrad Burns. Together, these two bills ensure that we are significantly beefing up the effort of government to protect seniors from those who might exploit them using new technology.

It is very obvious that the chance for seniors to have expanded access to the Internet holds great promise. Whether it is staying in touch with loved ones or getting easy access to health information, unquestionably the Internet is a powerful and democratizing and unifying force. In fact, just right now we are looking at the first ever survey of senior citizen centers to determine just how extensive Internet access is. So there are great opportunities in terms of new technologies and seniors having a chance to use these digital days to enhance their quality of life. We just want to make sure that those—and it is a fairly small minority numerically—who try to rip-off seniors during this period understand that the government is going to come down with hobnail boots on those who try to exploit older people in our society.

Finally, let me, as I noted earlier, recognize that we do have the bipartisan support of the Aging Committee. The staffs of Senator Grassley and Senator Breaux, Hope Hegstrom and Kristy Tillman are with us. Their presence today on a bipartisan basis is further evidence of how important the issue is. The fact that they came

many miles to be with us here for this hearing speaks a great deal about their commitment to older people.

We are going to examine over the course of this morning several different types of fraud against seniors. I think this hearing will be a good foundation to address ways of assisting older people who have been victimized, and then help us to better prevent, detect and prosecute incidents of financial abuse in the future.

I know that there are a number of seniors and others who would like to offer comments on this. What I will do is announce at this time that we are going to hold the record open over the next 10 days, so that those of you who would like to offer additional information to us, please feel free to do so. The good souls behind me, Stephanie Kennan and the folks from the Aging Committee would be happy to get those testimonies and those accounts.

So our first panel this morning is going to be Mrs. Ruth Older, Detective Sergeant Mitch Copp and Mr. Dorszynski they will be describing several specific cases of these financial exploitations of older people that really are representative of what we have to deal with.

Why don't we then without further ceremony go right to Ms. Older. We welcome you, ma'am, and so appreciate your being willing to speak out. As you know, lots of folks have been reluctant to come forward, and it is understandable. It is very, very exasperating to see people try to exploit you and take advantage of you. And so when you speak today, you are doing a real service for lots and lots of other people who are going to be safer and less vulnerable because of what you are doing.

So we really appreciate your coming, ma'am. If you would not mind, pull that microphone real close there to you. And you just proceed in any way that you feel comfortable. Why don't you just go right ahead?

STATEMENT OF RUTH OLDER, PORTLAND, OR

Mrs. OLDER. I want to thank Senator Wyden for inviting me to this hearing. My name is Ruth Older and I have lived in Portland for the last 50 years.

I met Marvin Norby several years ago when he purchased a car that my grandson had for sale that was parked in my driveway. Marvin came to my house to pay for the car and asked if he could visit me. And he seemed nice, so I said that would be fine. In a few days Marvin brought some muffins over and we visited, and then he started coming over more frequently.

Marvin told me that he had inherited a house in Tacoma and he was preparing the house for sale, but he needed funds to fix it up. I loaned him \$2,000 to do some of the work. Marvin told me I would get my money back when the house sold. Marvin also told me that he had put my name on the deed to the house and I would be sure to get my money back.

Marvin kept asking for more and more money and I kept giving him more. I gave him almost \$106,000. In the meantime Marvin also needed money for different things like surgery that he had to have, so I helped him with all he asked for.

Last fall I had to have eye surgery and was in pretty bad shape with a bad reaction from the anesthetic. At that time Marvin came

over and went through my purse and removed a check I had for deposit plus a check I had in the kitchen, and forged my name on it and cashed them.

I knew then that he was really a con artist. I could hardly believe it because he had seemed so nice and kind and considerate and I had believed him, which makes me feel like a dummy.

My son contacted the police because he thought something was wrong with the whole setup. Detective Mitch Copp came over to my house and started the investigation. Detective Copp arrested Marvin at my house. The police have been very kind and understanding. They didn't look down at me even though I was a dummy for believing everything. Though I won't believe everything I hear in the future.

I wasn't able to do some of the things I enjoy doing, such as taking a trip or two and buying clothes, since I was giving Marvin all my money, but I am going to start doing those things now.

This has made me feel that I am very vulnerable. I never thought anything like this could happen to me, that people could fool me. I was too smart. Before I give anyone else money, I will find out where it is going. I hope he doesn't do this to anyone else.

Thank you for inviting me to the Senate Special Committee on Aging hearing and making others aware of these crimes against seniors. At first I felt embarrassed to publicly tell my story, but then I thought if I can be a victim, then it could happen to anyone.

[The prepared statement of Ruth Older follows:]

RUTH OLDER TESTIMONY

I want to thank Senator Wyden for inviting me to this hearing. My name is Ruth Older and I have lived in Portland, Oregon for the last 50 years.

I met Marvin Norby several years ago when he purchased a car that my grandson had for sale that was parked in my driveway. Marvin came to my house to pay for the car and asked if he could visit me and he seemed nice so I said that would be fine. In a few days Marvin brought some muffins over and we visited and then he started coming more frequently.

Marvin told me that he had inherited a house in Tacoma and he was preparing the house for sale but he needed funds to fix it up. I loaned Marvin \$2000 to do some of the work. Marvin told me I would get my money back when the house sold. Marvin also told me that he had put my name on the deed to the house and I would be sure to get my money back. Marvin kept asking for more and more money and I kept giving him more money. I gave him almost \$106,000.

In the meantime Marvin also needed money for different things like surgery he had to have. So I helped him with all he asked for.

Last fall I had to have eye surgery and was in pretty bad shape with a bad reaction from the anesthetic. Marvin came over and went through my purse and removed a check that I had for deposit plus a check I had in the kitchen and forged my name on it and signed them. I knew then that he was really a con artist. I could hardly believe it because he had seemed so kind and so considerate and I had believed him which makes me feel like a dummy.

My son contacted the police because he thought something was wrong with the whole set up. Detective Mitch Copp came over to my house and started the investigation. Detective Copp arrested Marvin at my house. The police have been very kind and very understanding. They didn't look down at me even though I was a dummy for believing everything. Though I won't believe everything I hear in the future.

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Thank you for inviting me to the Senate Special Committee on Aging hearing and making others aware of these crimes against seniors. At first I felt embarrassed at being a victim and didn't want to publicly tell my story but then I thought if I could be conned then it could happen to anyone.

The CHAIRMAN. Well, thank you and you said it very well. Just the fact that you would be willing to come forward and to speak out, that is not the work of a dummy. That is the work of somebody who really cares and wants to help people. I will have a few questions for you in just a couple of minutes, but we will hear from these other gentlemen and then we will go to questions.

Mitch, why don't we go ahead? I appreciate your being here.

STATEMENT OF MITCH COPP, SERGEANT, PORTLAND POLICE BUREAU

Mr. COPP. Thank you, Senator. Thank you very much.

My name is Mitch Copp. I am a Sergeant at Portland Police Bureau. From October—actually, January 1999 to October 1999 I was assigned to the Elder Fraud Detective position. It is based out of the Southeast Portland Multnomah County Aging Services Office. And Detective Mark Coffey established this position in 1995, and he was excellent in educating the community regarding elder abuse, in particular financial abuse.

Now, in this particular case I was contacted by Mrs. Older's stepson. And Mrs. Older had been hospitalized, a nephew had taken control of the financial matters of Mrs. Older, and he discovered that checks had been written to a person by the name of Marvin Norby. And, in fact, he discovered that they totaled approximately \$100,000 over the course of 4 years.

And further investigation revealed that Marvin Norby had been convicted in 1991 of elder fraud and served 28 months in prison. And in those cases he took \$8,000 from one 83-year-old woman, 75,000 from another 75-year-old woman, and 43,000 from a 98-year-old woman who had a \$500 chimney repair job completed by Mr. Norby and he charged her 43,000.

In Mrs. Older's case, of course, first he gained her trust. And it took 4 years, finally, for the police to arrest this person, but he received, like I said, over—she's got 106,000, we know it was over \$100,000. In his interview with me he admitted that there was no home in Tacoma. Basically he had told her to invest in this property in Tacoma, we will rehab it and then we will share the profits. There was no home.

Karin Immergut from the District Attorney's Office of Multnomah County prosecuted the case. He received a year and a half in prison. He is in custody right now and he's also agreed to pay Mrs. Older approximately \$30,000.

Linda Martin is here today as a Protective Service worker for Aging Services, and she did an excellent job. She obtained a restraining order for Mrs. Older on Mr. Norby.

And in closing I would just like to say that the elder fraud is difficult to investigate. Like I said, Mark Coffey established the position in 1995. Right now that position is unfilled. I strongly believe that there should be a task force, and that is the primary reason why I am here today, for detectives to investigate this type of crime. And we had over 250 cases of financial abuse in the city of Portland. I was able to investigate about 40 in the 10 months that I was there. It was very time intensive.

I also believe that education and prevention is important. Federal funds should be spent not only educating the elderly, but also

the sons and daughters of the elderly. They're often out of town and out of touch with the parent, and these predators primarily pick people who have no family in the area or whose families are not very interested.

Again, thank you very much for allowing me to speak today. I really appreciate it.

[The prepared statement of Mitch Copp follows:]



CITY OF
PORTLAND, OREGON

BUREAU OF POLICE

VERA KATZ, MAYOR
Mark A. Kroeker, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

BIOGRAPHY OF MITCHELL A. COPP
SERGEANT, PORTLAND POLICE BUREAU

EDUCATION:

BS Administration of Justice
Portland State University 1984

WORK EXPERIENCE:

1984 - Appointed Police Officer
Portland Police Bureau

1984 - 1992 - Patrol Officer, Portland Police Bureau
Assigned to uniform patrol and the Gang Enforcement Team

1992 - 1999 - Promoted to Detective
Assigned to Gang Enforcement Team (Detective Unit), North Precinct Detective Unit, and the
Elder Crimes detective position

October, 1999 to present - Patrol Sergeant, North Precinct

North Precinct
7214 N Philadelphia Avenue Portland, Oregon 97203



CITY OF
PORTLAND, OREGON

BUREAU OF POLICE

VERA KATZ, MAYOR
Mark A. Kroeker, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

From January, 1999 to October, 1999 I investigated approximately 40 cases of elder fraud while I was assigned to the Elder Crimes Detective position. This was a position established in 1995 by now retired Detective Mark Coffey. Detective Coffey did an outstanding job investigating elder fraud in the Portland area and educating the community regarding various types of elder fraud. The Elder Fraud Detective position is based out of the SE Portland Multnomah County Aging Services office.

In this particular case, I was contacted by Mrs. Older's stepson. He explained that Mrs. Older had been hospitalized recently and family members had assumed control of her financial affairs. It was discovered at that time that Mrs. Older had written thousands of dollars in personal checks to the suspect in this case, Marvin Norby. Obviously the family became suspicious.

It should be noted that Marvin Norby had previously been convicted of cases involving elderly fraud in 1991 and was sentenced at that time to 28 months in prison. He has been implicated in several elderly fraud cases, usually involving home repair scams. In one case he defrauded an 83 year old female of over \$8,000, and in another case he defrauded a 75 year old woman of \$75,000; he also defrauded a 98 year old woman of \$43,000 when he performed a \$500 chimney repair job. In short, it's clear Marvin Norby made a profession of defrauding the elderly.

In Mrs. Older's case, he first gained her friendship and trust. Soon after they met he told her he had inherited a home in the Tacoma area from a deceased brother and convinced Mrs. Older to invest in the property. The plan Norby described to Mrs. Older was to rehabilitate the property, sell it, and then split the profits. He received over \$90,000 from Mrs. Older over the course of approximately 4 years. After I arrested Norby, he admitted that there was, in fact, no property in the Tacoma area and he tried to claim that the cash he received was basically a gift. After I confronted him with financial documentation the family had provided to me, Norby did admit the amount he received looked excessive.

Linda Martin, a Protective Service worker for Aging Services, was informed of the situation and she quickly assisted Mrs. Older in obtaining an elder abuse restraining order against Marvin Norby. Martin responded to Older's residence and did an excellent job assisting Mrs. Older.

Multnomah County Deputy District Attorney Karin Immergut prosecuted this case and in January Marvin Norby was convicted of Aggravated Theft and he is currently in custody.

Elderly fraud is difficult to investigate. The victims are embarrassed and often very reluctant to pursue prosecution. Gathering incriminating financial documentation is also hard to obtain and is very time intensive. Also, despite being victimized, the elderly often feel some sort of bond

North Precinct
7214 N Philadelphia Avenue Portland, Oregon 97203

with the suspect. Further, in home repair scams and investment fraud which is focused upon the elderly, it is somewhat difficult at times to determine if the case is primarily civil or criminal.

During my tenure as the Elder Crimes Detective for the City of Portland, the most frustrating aspect of the position was the sheer volume of felony cases that came through my office. Because there is only one detective position dedicated to this type of crime, felony cases that were actually workable were not investigated. I cannot fault the Portland Police Bureau for this; our Homicide and Felony Assault Units are also facing a personnel shortage.

I strongly believe that the federal government should allocate funds which would be used to subsidize elderly fraud investigators working in municipal and county agencies. Based upon my experience, I'm certain that if four detectives were assigned to the elderly crime section they would still not be able to investigate every felony case involving elderly victims. A four-person unit, however, would make a substantial impact. In my opinion, this would be the most efficient use of federal funds.

I also believe that education/prevention is also a necessary component. Federal funds should be spent not only to educate the elderly regarding these types of crimes, but also geared toward the elderly persons' sons and daughters who are often living out of the area and are unaware of the nature of this type of victimization.

I would like to thank the committee for inviting me to speak regarding this critical issue.

The CHAIRMAN. Well, Mitch, you said it well. I will have some questions for you in a moment. I have been bringing cases of rip-offs against seniors to the Portland Police force now really for more than 25 years, since the days when I was Director of the Gray Panthers. You all have always been responsive and I think it is clear that now we need a one, two punch. We need tough laws that ensure that you have the tools to go after rip-off artists, and then we need the resources so that you have adequate capacity to do these investigations.

When you tell us that you were able to look into—did you say 40 out of 250?

Mr. COPP. Correct.

The CHAIRMAN. That is a big gap. If you have the vast majority of these cases going uninvestigated, what happens is you send a message to the rip-off artists that they have a pretty good chance to slip out of the hands of the authorities. So we have to ensure that you have the tools to investigate more of those.

I will have some questions here in a moment, but I just really appreciate all your leadership in working with us.

Mr. Dorszynski, welcome, and why don't you go ahead and proceed as you feel comfortable.

STATEMENT OF ROBERT DORSZYNSKI, ATTORNEY, SALEM, OR

Mr. DORSZYNSKI. Thank you, Senator Wyden. I appreciate the opportunity to come testify today. As a short introduction, my name is Robert Dorszynski. I am an Attorney in private practice in Salem, OR. And my entire practice revolves around issues of conservatorships and guardianships primarily for elderly people. I frequently act as a conservator for incapacitated individuals. And a good portion of my practice involves cases that are referred to me through protective service agencies and stuff and involve a number of cases where elderly people are being financially exploited.

Today I come to share the situation of one particular lady and her case that I was involved in, a lady by the name of Betty Baxter. Betty lives right on the border of Beaverton and Portland. And at the time I got involved in her case, she was 71 years old. She was living in her home with the assistance of a caregiver who was accused of financially exploiting her.

Her only son was incarcerated. She had had no contact with her grandchildren for a number of years. She was a very isolated individual. She had a medical history of strokes and she was very frail. She suffered from dementia. Her memory was very poor. Her comprehension was poor. She was easily confused. And combined with her frail physical condition, she was very dependent on having people help her in order for her to meet the daily activities of living.

She first became—was contacted by this caregiver when the caregiver had been a cell mate of her son when the caregiver was scheduled to be released from jail and the son asked this person to look in on his frail mother and make sure she was doing OK. Well, certainly the caregiver walked right in and made contact with Mrs. Baxter and looked after her and gradually, as he gained her confidence, began to assume more and more responsibility for her care and her finances. Over a course of months he became financial power of attorney, a health care power of attorney for her. He

became the trustee of her living trust and the beneficiary of that trust.

Eventually her funds were used to buy him a new Mercedes, a new computer and all the accessories, a diamond ring that belonged to her was given to him, a ring reported to be worth about \$10,000. He took some trips and at least a portion of those expenses were charged on her credit cards. He began to receive compensation, transfers out of her account into his account. And at the time I got involved there was almost no money left in her accounts.

The situation was discovered basically by the son. The son did have frequent telephone contact with his mother. And it has been my experience in these kind of situations that the perpetrator, the caregiver was trying to isolate Mrs. Baxter, and he began to restrict telephone access from the son. Other friends or family members or family friends that tried to visit her were discouraged.

And it eventually leaked back to the son that some of his stuff that was in his mother's house had been sold or discarded. And eventually he contacted the sheriff's office, wrote a letter, and the sheriff's department followed up on that and eventually contacted the local protective services agency, who did an investigation and substantiated the concerns about the financial exploitation. And from that a conservatorship was established and I was appointed as a conservator for Mrs. Baxter.

At that point we began to try and review her financial records to see what had occurred. With the assistance of the caregiver's probation officer, we were able to keep him away from Mrs. Baxter until more of the criminal investigation could be completed. Ultimately we were able to document more than \$70,000 that had been taken from Mrs. Baxter. And I am sure there is a great deal more as our ability to find all of her financial records was somewhat difficult.

This gentleman was prosecuted and was recently sentenced for aggravated theft and criminal mistreatment. And, as I have been told, recently completed 28 of 180 days jail sentence and has now been released.

There's a lot of things about Mrs. Baxter's situation that are very common. You have an elderly person who is at risk, isolated, and the effects of this kind of exploitation are very dramatic and are illustrated by her case. Mrs. Baxter required 24-hour care at home. The funds that she lost would have paid for her care for another year, at least.

Recently she had to be moved from her home and into a care facility simply because the funds that she had left were insufficient to pay for her care and we had to put her in a care facility. The in-home care was very expensive and when the money was gone, there was really no choice but to place her in a care facility. The familiar home, the personal belongings that she was familiar with and loved, her beloved cats could not move with her, and so she's lost all of those things because of the exploitation that was directed toward her.

I have lot of things that I could certainly talk about. I appreciate the opportunity to come and at least present Mrs. Baxter's story and hope to see a lot of things that can be done to help individuals in this sort of situation.

Dear Committee Members,

Thank you for inviting me and allowing me to testify before you regarding the issue of financial exploitation of elderly individuals.

As a short introduction, my name is Robert L. Dorszynski. I am an attorney in private practice, and have my offices in Salem, Oregon. My entire practice is focused around issues of incapacitated individuals, and most particularly involves issues of conservatorship and guardianship. I typically become involved in a case after being contacted by an agency concerned about a particular individual who appears unable to handle their personal or financial affairs. In appropriate situations, I initiate a petition for the appointment of a conservator or guardian, and frequently serve as the conservator in these cases. The vast majority of the cases I deal with involve elderly individuals.

A number of my cases involve circumstances where the incapacitated individual is being financially exploited by another person. I have been involved in a number of financial exploitation cases that resulted in the successful criminal prosecution of the perpetrator, and many more cases where no civil or criminal prosecution was ever sought. Today, I have come to share the specific situation of one elderly lady, Betty Baxter, who was financially exploited.

Betty Baxter

I became involved with Mrs. Betty Baxter in May, 1998. At the time, Mrs. Baxter was 71 years old. She was living in her own home, with the assistance of the care giver who was accused of financially exploiting her. Mrs. Baxter's only son was incarcerated. She had no contact with her grandchildren for a number of years.

Mrs. Baxter suffers from significant dementia caused by strokes. She has very poor short-term memory, has trouble with comprehension, and is easily confused. Mrs. Baxter also has physical infirmities which make her very frail and dependent on 24 hour care to help her with many aspects of her daily living.

Mrs. Baxter's first contact with the care giver had been through her son. The care giver was convicted of embezzlement, and was a cell mate of Mrs. Baxter's son. When the care giver was scheduled to be released from jail, Mrs. Baxter's son asked his cell mate to look in on his elderly and frail mother to make sure she was okay. From that initial contact, the care giver gradually began to

take more and more responsibility and control of Mrs. Baxter's care and finances. After gaining Mrs. Baxter's confidence, the care giver eventually obtained a financial power of attorney and a health care power of attorney, and was named the trustee and beneficiary of her living trust. Mrs. Baxter's funds were used to pay cash "compensation" to the care giver, to purchase a Mercedes car, a new computer and accessories, and expenses of the care giver's vacations. A diamond reported to be valued at \$10,000.00 was "given" to the care giver. After Mrs. Baxter's death, the care giver was also in line to receive her West Hills residence, valued at approximately \$250,000.00.

Concerns about the care giver's actions were first raised by Mrs. Baxter's son. The care giver had begun to restrict the son's telephone access to Mrs. Baxter. Other friends and interested people were also denied access to Mrs. Baxter. Additional reports came back to the son that his personal property stored his mother's home had been discarded or sold by the care giver. The son wrote letters of concern to the Sheriff and District Attorney. After doing some checking of their own, the matter was then referred on to the local adult protective services (APS) office. Further concerns were raised by a temporary care provider who was hired to look after Mrs. Baxter while the care giver was away for a month on a trip. The investigation by APS ultimately substantiated Mrs. Baxter's incapacity and the concerns of financial exploitation, and resulted in a request for the initiation of a conservatorship and guardianship for Mrs. Baxter.

An expedited emergency petition for the appointment of a conservator and guardian was filed with the court. I was appointed as conservator for Mrs. Baxter. Another professional was also appointed as guardian for Mrs. Baxter. After my appointment, Mrs. Baxter's remaining assets were secured. With the assistance of his probation officer, the care giver was prohibited from contacting Mrs. Baxter or returning to her home. Law enforcement was contacted and a criminal complaint was made. I assisted the police in obtaining and making a thorough review of Mrs. Baxter's financial records. The car, computer and ring were seized by the sheriff's office. After the Sheriff's office completed their investigation, the matter was referred to a grand jury and criminal charges of theft and felony criminal mistreatment for both financial and care issues were brought against the care giver. Ultimately, the care giver pled guilty, under a plea arrangement, and was convicted of first degree criminal mistreatment and aggravated theft. I have been told the care giver served 28 days of his 180 day jail sentence. As part of the sentencing, Mrs. Baxter did receive an \$80,000.00 restitution order, including the car, computer, and diamond, which will be sold.

In my review of Mrs. Baxter's financial records, I was able to identify more than \$70,000.00 in cash or assets that the care giver had obtained from Mrs. Baxter. It is very likely, the true dollar figure was much higher. Additionally, Mrs. Baxter's estate incurred expenses in excess of \$15,000.00 associated with the conservatorship and guardianship proceeding initiated to intervene on her behalf.

* * * * *

The results of financial exploitation can be devastating to elderly individuals, and has a very real impact on their future quality of life. Financial exploitation of an elderly person is not just a "routine theft" of a person's money or property. Typically, the elderly individuals' assets and income are fixed. They do not have the ability to work or otherwise overcome the financial setback,

2 - Testimony of Robert L. Dorszynski before the U.S. Senate Special Committee on Aging.

and insurance does not cover these types of losses. The person's choices about where they will live, how they will live, and who they will live with are taken from them by financial exploitation. In Mrs. Baxter's case, she was being cared for in her own home, surrounded by her familiar belongings and her beloved cats. Mrs. Baxter's only remaining asset, the equity in her home, was used to generate funds to pay for this in-home care. However, very recently, Mrs. Baxter had to move from her home and into a care facility. A primary reason for this move was because Mrs. Baxter's funds were depleted to the point she could no longer afford to pay for in-home care providers. The cats and most of her personal possessions could not be moved with her into the care facility. The funds which were lost as a result of this financial exploitation could have paid for in-home care and her living expenses for at least another year.

In my experience, the likelihood of obtaining any financial recovery from the perpetrator is very small. Mrs. Baxter's experience of receiving some recovery is relatively unique. Most of the perpetrators who prey on vulnerable elderly individuals do not put their ill-gotten gains in a savings or investment account, or other assets. My observation is that the funds taken from the elderly person are used to support the perpetrator's own mis-managed finances, possibly an extended family or friends, and frequently a drug, alcohol, or gambling habit. The money is spent as quickly as it is taken from the elderly individual. Even where a viable civil lawsuit exists for the recovery of assets, the reality is that the perpetrators are most often judgment-proof, and the exercise of obtaining a judgment results in significant additional expense and a worthless piece of paper.

Pursuing any civil or criminal case against a perpetrator is very difficult for a number of reasons. Foremost, the primary witness (the victim) is often significantly impaired and may not be able to testify credibly. The victim's memory may be very poor or non-existent, and they may be unable to recall the details of the financial transactions in question. Issues of threats (real or perceived), intimidation, undue influence or embarrassment may also be a factor in the victim's willingness and effectiveness as a witness. Often the victim views the perpetrator as a trusted and helpful friend, and is reluctant to accept or acknowledge concerns that may be raised about possible financial impropriety. A prevailing argument the perpetrator often makes to the victim is "I want to take care of you here at home, and 'they' want to take your money away and put you in a nursing home." A victim's general fear of being "put in the nursing home" is a very effective tool of persuasion utilized by perpetrators.

Another obstacle in prosecuting financial exploitation cases is the fact there are typically very few, if any, other witnesses. As occurred in Mrs. Baxter's situation, the common tactics of a perpetrator include isolating their victim from other people, and making the victim increasingly dependent on the perpetrator. This minimizes the number of other people who can observe the victim's situation and raise concerns about the actions of the perpetrator. With no other witnesses, and a victim who is unable to testify effectively, it can become very difficult to meet the burden of proof in either a civil or criminal proceeding.

Finding sufficient financial records or other documentation to substantiate the financial exploitation can be very difficult. The records may be inconclusive about the nature of a transaction. (It can be hard to distinguish between a legitimate gift or compensation and financial exploitation) The financial records may be incomplete or missing. Often the perpetrator has complete control of

3 - Testimony of Robert L. Dorszynski before the U.S. Senate Special Committee on Aging.

the victim's financial information. In my experience, it is those cases where adequate financial documentation happens to exist that have the highest likelihood for successful prosecution.

Because of the inherent obstacles, it will always be difficult to criminally prosecute many of these types of cases. Where the witnesses and/or documentation are readily available, law enforcement is more than willing to pursue a prosecution. However, law enforcement often does not have adequate resources or expertise to devote to this type of case. These can be very time intensive investigations, often requiring auditor type skills. Property crimes of this sort often do not get the priority or attention that "persons" crimes receive. The difficult evidence issues, a high evidentiary standard, and a time intensive investigation, make these types of cases hard to criminally prosecute. It has been my experience that it will significantly increase the likelihood of a prosecution, if I am able to personally locate, assemble and tabulate the financial documentation myself, and "hand deliver" that information to law enforcement.

There have been some recent developments in Oregon's law which I believe have been very positive additions in dealing with financial exploitation of the elderly.

In 1993, the Oregon legislature significantly strengthened ORS 163.200 and 163.205 (copies attached and marked as Attachments A and B), which involve the criminal mistreatment of the elderly. These statutes appear to have been a significant aid to prosecution of these situations. The statutes are directed toward people who have assumed responsibility for the care and custody of an elderly person, and then use that position to physically or financially abuse the elderly individual. First degree criminal mistreatment is a felony crime. These statutes also fit many of the fact situations better. In the past, I often saw law enforcement struggling to prosecute these cases under more traditional definitions of theft or fraud, and it was not always a clear fit. In recent years, I have seen many more successful criminal prosecutions using these statutes. The challenge now appears to make sure that law enforcement is adequately educated about the existence and content of these statutes. In the past couple of years, most of the law enforcement officials I have talked with are now aware of the statutes, but I do still occasionally find people who do not know they exist and may not be taking action because they do not feel any other criminal statutes are applicable.

In 1995, the Oregon legislature passed ORS 124.100 *et seq.* (Copies attached and marked as Attachment C) regarding the civil prosecution of a lawsuit by an elderly individual who has been financially abused. As I indicated previously, the availability of a civil remedy is often hollow, as a practical matter, because the perpetrator is judgment proof. However, in circumstances where the perpetrator has financial means, this statute can provide a very effective basis for a civil suit.

The adult protective services departments of the senior and disability agencies remain a pivotal component in investigating and preventing financial abuse of the elderly. These departments are responsible for receiving and investigating complaints from the community regarding concerns of financial abuse. Providing adequate funding and training to these departments will help to insure that reports of financial abuse are addressed in a timely and appropriate fashion.

Ongoing training, including combined training, for law enforcement and adult protective services is important and needs to continue. Cooperative training will allow both sides to be aware

4 - Testimony of Robert L. Dorszynski before the U.S. Senate Special Committee on Aging.

of the services and expertise the other side has to offer, and to understand how they can best integrate and compliment each other's efforts to serve and protect our elderly citizens.

I want to thank the Committee again for inviting me and allowing me to testify on this important issue.

Respectfully submitted,

Robert L. Dorszynski

ORS § 163.200, 163.200. Criminal mistreatment in the second degree.

Page 1

O.R.S. § 163.200

1998 OREGON REVISED STATUTES
TITLE 16. CRIMES AND
PUNISHMENTS
CHAPTER 163. OFFENSES AGAINST
PERSONS
ASSAULT AND RELATED OFFENSES

*Current through End of 1997 Reg. Sess. and 1998
Cumulative Supp.*

163.200. • Criminal mistreatment in the second degree.

(1) A person commits the crime of criminal mistreatment in the second degree if, with criminal negligence and:

(a) In violation of a legal duty to provide care for another person, the person withholds necessary and adequate food, physical care or medical attention from that person; or

(b) Having assumed the permanent or

temporary care, custody or responsibility for the supervision of another person, the person withholds necessary and adequate food, physical care or medical attention from that person.

(2) Criminal mistreatment in the second degree is a Class A misdemeanor.

(3) As used in this section, "legal duty" includes but is not limited to a duty created by familial relationship, court order, contractual agreement or statutory or case law.

(1973 c. 627 § 2; 1993 c. 364 § 1)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

163.200

NOTES OF DECISIONS

When combined with criminal negligence standard of ORS 161.085, term "adequate physical care" in this section is not unconstitutionally vague. *State v. Damofle/Quintana*, 89 Or App 620, 750 P2d 518 (1988), Sup Ct review denied

ORS § 163.205, 163.205. Criminal mistreatment in the first degree.

Page 1

O.R.S. § 163.205

1998 OREGON REVISED STATUTES
TITLE 16. CRIMES AND
PUNISHMENTS
CHAPTER 163. OFFENSES AGAINST
PERSONS
ASSAULT AND RELATED OFFENSES

*Current through End of 1997 Reg. Sess. and 1998
Cumulative Supp.*

163.205. Criminal mistreatment in the first degree.

(1) A person commits the crime of criminal mistreatment in the first degree if:

(a) The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly withholds necessary and adequate food, physical care or medical attention from that other person; or

(b) The person, in violation of a legal duty to provide care for a dependent person or elderly person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly:

(A) Causes physical injury or injuries to the dependent person or elderly person;

(B) Deserts the dependent person or elderly person in a place with the intent to abandon that person;

(C) Leaves the dependent person or elderly person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person;

(D) Hides the dependent person's or elderly person's money or property or takes the money or property for, or appropriates the money or property to, any use or purpose not in the due and lawful execution of the person's responsibility; or

(E) Takes charge of a dependent or elderly person for the purpose of fraud.

(2) As used in this section:

(a) "Dependent person" means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person's physical needs.

(b) "Elderly person" means a person 65 years of age or older.

(c) "Legal duty" includes but is not limited to a duty created by familial relationship, court order, contractual agreement or statutory or case law.

(3) Criminal mistreatment in the first degree is a Class C felony.

(1973 c. 627 § 3; 1981 c. 486 § 1; 1993 c. 364 § 2)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

163.205

NOTES OF DECISIONS

Where there was ample testimony from which court could have inferred that, while taking a shower with ten-month old victim defendant choked and beat her, defendant cannot challenge constitutionality of statute on ground of vagueness. State v. Collins, 68 Or App 101, 680 P2d 713 (1984), Sup Ct review denied

*13442 This section was not unconstitutionally void for vagueness because legislature chose to use language that would include parents as well as persons other than parents. State v. Warner, 109 Or App 468, 819 P2d 1390 (1991), Sup Ct review denied

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Attachment B

ORS § 124.100, 124.100. Action authorized; relief; qualifications for bringing action; service on Attorney General.

Page 1

O.R.S. § 124.100

1998 OREGON REVISED STATUTES
TITLE 13. PROTECTIVE
PROCEEDINGS; POWERS OF
ATTORNEY; TRUSTS
CHAPTER 124. ABUSE OF THE
ELDERLY AND INCAPACITATED
CIVIL ACTION FOR ABUSE OF
ELDERLY OR INCAPACITATED
PERSON

*Current through End of 1997 Reg. Sess. and 1998
Cumulative Supp.*

124.100. Action authorized; relief; qualifications for bringing action; service on Attorney General.

(1) An elderly or incapacitated person who suffers injury, damage or death by reason of physical abuse or fiduciary abuse may bring an action against any person who has caused the physical or fiduciary abuse or who has permitted another person to engage in physical or fiduciary abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

(a) All economic damages, as defined in ORS 18.560, resulting from the physical or fiduciary abuse, or \$500, whichever amount is greater.

(b) All noneconomic damages, as defined by ORS 18.560, resulting from the physical or fiduciary abuse.

(c) Reasonable attorney fees incurred by the

plaintiff.

(d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

(2) An action may be brought under the provisions of this section only by a person who is 65 or more years of age, by an incapacitated person or by a guardian, conservator or attorney-in-fact for a person who is incapacitated or 65 or more years of age. A person shall be considered incapacitated for the purposes of ORS 124.100 to 124.140 if the person is either incapacitated as defined in ORS 125.005 or financially incapable as defined in ORS 125.005.

(3) An action may only be brought under the provisions of this section for physical abuse described in ORS 124.105 or for fiduciary abuse described in ORS 124.110.

(4) An action may be brought under this section against a person for permitting another person to engage in physical or fiduciary abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or fiduciary abuse.

*10342 (5) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced.

(1995 c. 671 § 1; 1997 c. 249 § 41)

<General Materials (GM) - References, Annotations, or Tables>

ORS § 124.110, 124.110. Fiduciary abuse subject to action.

Page 1

O.R.S. § 124.110

1998 OREGON REVISED STATUTES
TITLE 13. PROTECTIVE
PROCEEDINGS; POWERS OF
ATTORNEY; TRUSTS
CHAPTER 124. ABUSE OF THE
ELDERLY AND INCAPACITATED
CIVIL ACTION FOR ABUSE OF
ELDERLY OR INCAPACITATED
PERSON

*Current through End of 1997 Reg. Sess. and 1998
Cumulative Supp.*

124.110. Fiduciary abuse subject to action.

(1) An action may be brought under ORS 124.100 for fiduciary abuse in the following circumstances:

(a) When a person, including but not limited to a person who has the care or custody of an elderly or incapacitated person or who stands in a position of trust to an elderly or incapacitated person, takes or appropriates money or property of the elderly or incapacitated person for any wrongful use or for any purpose not in the due and lawful execution of the trust or duty of the person.

(b) When an elderly or incapacitated person requests that another person transfer to the elderly or incapacitated person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the elderly or incapacitated person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the elderly or incapacitated person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the elderly or incapacitated person; and

(B) The other person acts in bad faith, or knew or should have known of the right of the elderly or incapacitated person to have the money or property transferred as requested or otherwise made available to the elderly or incapacitated person.

(2) For the purposes of this section, a person has the care and custody of an elderly or incapacitated person if the person voluntarily, by contract or by order of the court undertakes the responsibility for providing subsistence, medical or other care to an elderly or incapacitated person, provides financial advice to an elderly or incapacitated person or manages the finances or resources of an elderly or incapacitated person. Persons with the care and custody of an elderly or incapacitated person include those persons providing care including but not limited to medical care, custodial care, personal care, mental health services, rehabilitative services or any other kind of care provided that is required because of age or disability.

*10346 (3) A transfer of money or property that is made for the purpose of qualifying an elderly or incapacitated person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful use under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section.

(1995 c. 671 § 3)

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Attachment C-2

The CHAIRMAN. Well, thank you. That is excellent testimony. I think you are right. Mrs. Baxter's case has a lot of the elements in it that you are likely to see. As you noted, essentially reaffirming the statement that I offered earlier, you could find one of these cases that very quickly they'll go through as much money as it would cost to take of somebody in a long-term care facility for a year. So that is very helpful and I appreciate your being here.

Why don't we start with you, Mrs. Older, for the first question. I think the first question I would have for you is: Are you fearful that you might be targeted again, that someone might try to victimize you another time?

Mrs. OLDER. I don't think so.

The CHAIRMAN. You think you have your radar up and you are on the alert?

Mrs. OLDER. [Gesturing.]

The CHAIRMAN. You have got your muscles out there. Well said. Good for you. [Applause.]

Good.

We gathered on the committee that you like to use the Internet. What do you sense is happening in terms of the Internet and seniors? And what do you think the concerns are about seniors being ripped off on the Internet?

Mrs. OLDER. Me? I don't use it.

The CHAIRMAN. You don't use it. Oh. I was under the impression that you did like to use the Internet.

Who do you turn to for information to talk about your concerns? When you have people who come to you with various kinds of things you might buy and sales and that kind of thing, who do you turn to to talk to?

Mrs. OLDER. Who do I talk to?

The CHAIRMAN. Yeah.

Mrs. OLDER. Anybody who wants to talk.

The CHAIRMAN. In terms of trying to prevent these scams, who would you turn to to talk to? Do you talk to Mitch or a relative? Who would you turn to?

Mrs. OLDER. My stepson.

The CHAIRMAN. Your stepson. Does he live close by?

Mrs. OLDER. And he contacted Detective Copp.

The CHAIRMAN. OK. Yeah. Well, that is always helpful, because I think if you have a relative close by who can talk to somebody like Mitch, that is a good partnership.

I want you to know that I will never forget you making that sign of your muscle in the air. I think as much as anything, it is going to be important that people have their radar up. When I asked you about being a victim, you made it clear and I could see it in your face that nobody was going to take you for a ride again because you were going to be very, very careful about anybody who is talking about something that was just sort of too good to be true. I read your testimony. When somebody asks for the muffins and things like that, you know they're always trying to build that relationship of trust and you have got to make sure that that relationship of trust doesn't turn into something else.

So three cheers for you for coming and flexing that muscle, and that will be the symbol of this hearing, that seniors are going to be on guard.

Mitch, a couple of questions for you. Are you seeing family members reporting these cases now even more frequently than seniors themselves?

Mr. COPP. Yes. Generally it is a family member who has had an opportunity to review the financial documents, as in Mrs. Older's case, when the elderly person goes to the hospital.

The CHAIRMAN. But in a lot of those cases the family member gets involved after a lot of the damage has already been done, right?

Mr. COPP. Absolutely. And it is usually very hard to recover the money that has been stolen.

The CHAIRMAN. That is one of the things that concerns me is how do we get to a more preventive-oriented approach. That is why Mrs. Older's response to me about how she would handle this again is so important, that she is now going to sort of be employing a preventive kind of strategy. She has got a stepson now here locally who she can talk to, and that is very helpful. But one of the things that concerns me and one of the reasons we wanted to do this hearing was to try to set in place a more preventive kind of approach so that we don't get there after a lot of damage has already been done. As your answer just confirmed, that is usually the case when the relative calls, somebody has already been hurt in a significant way.

What training have you had in terms of working with seniors and do you think there's enough training for officers like yourself who are trying to be advocates for older people?

Mr. COPP. A lot of my training came from my experience in the fraud unit and also from Detective Mark Coffey, who I mentioned in my statement, who was really the one who really initiated the Elder Crime Detective position. And he stayed on for about a month or a month and a half, and then I assumed his position. And a lot of it, frankly, is on-the-job training. It is very time intensive. You have got to gather all the documentation. So, yeah, most of it really was on-the-job.

The CHAIRMAN. So if programs say like the National Senior Citizens Law Center were to make available training materials that would be fairly inexpensive and accessible to officers, that kind of thing would be helpful?

Mr. COPP. Yes, it would.

I failed to mention, though, that I was based at the Southeast—in my statement I mentioned it, the Southeast Aging Services Office, so that was helpful in that I had people there who were in the field who had years of experience and they could assist me.

The CHAIRMAN. In your experience, how do seniors learn best how to protect themselves from scams?

Mr. COPP. Probably talking to other seniors who are aware of the scams and keeping in contact with their family. Like I mentioned in my statement and you just mentioned, we need to educate the sons and daughters of the elderly as to the problems that they could run in to.

The CHAIRMAN. What signs do you think officers ought to particularly be looking for when investigating crimes against older people?

Mr. COPP. Repeat offenders. Many of these people are professionals. This is what they do and they do no other type of crime. We need some sort of a log statewide or nationally that talks about these predators and lists them. Many of them travel the West Coast. That would be helpful.

The CHAIRMAN. That is an interesting idea. You were talking about those repeat offenders in your opening statement. I was the sponsor in the House of the Armed Career Criminal Law that allows us to target repeat armed career criminals, people who commit crimes with weapons and, in effect, have a special focus on them. We are talking about a different sort of thing here, but I gather that, if nothing else, you would like some information made available in an accessible, convenient way so that law enforcement could keep a special eye out for those kind of people who constantly come back again and again and again and seem to be out on the street not long after they commit their most recent offense.

Mr. COPP. Yes.

The CHAIRMAN. There's no such list now?

Mr. COPP. Not that I am aware of.

The CHAIRMAN. Something like the National Crime Information Center, for example, who have a lot of experience in terms of compiling these kinds of lists and information. I gather that if we were to work with them and people like yourself, that might be a good way to get started in terms of building a list, at least a list that would be available to law enforcement.

Mr. COPP. At least if we had a list of the Northwest: California, Oregon, Washington, Idaho.

The CHAIRMAN. Once you have received a complaint of suspected fraud against seniors, what are the problems you have, if any, in going forward with an investigation and prosecution?

Mr. COPP. Well, we have got a great law on the books in Oregon, the Criminal Mistreatment Law, that states any caregiver that steals any amount of money, a candy bar, a pack of cigarettes, if they are the caregiver and they steal in their position, that is a felony crime. And that is why I talked about the fact that we need more investigators assigned to this position. We have got over 250 cases. I investigated approximately 40. The laws are on the books, they are in place, we just have to prioritize. And, unfortunately, there are cases that may see \$10,000 in loss, we don't simply have the time to investigate those because we have others that are 40 and 50 and 100 thousand.

The CHAIRMAN. Mr. Dorszynski, how would you help seniors go about protecting themselves against financial fraud?

Mr. DORSZYNSKI. I think certainly the starting point is education to them of the sorts of threats that they should be aware of. I think that that is always a starting point for both them and family members. Unfortunately, I think with anything in life, you have a lot of people who are either not going to pay attention or don't believe it will happen to them or simply don't take the precautions.

And I think that the next step is then beefing up the law enforcement component and their education, their training. The Protective

Services in at least the sorts of cases that I deal with plays a vital role as part of the community's awareness of what may be going on.

There have been some developments and laws here in Oregon that allows for like banks and other people to report suspected abuse, financial abuse. And so often those are people that are in key positions to be able to see what may be going on, whereas other people because they are being kept away from the elderly person may not have that opportunity. And so I think increasing education awareness with those folks and enabling them to report is also a key component.

The CHAIRMAN. Now, you mentioned that family members can frequently be a part of the problem and I would assume that involves special challenges because there is the relationship of trust in so many instances. How do you think that one would go about better targeting rip-offs committed by family members against a family member?

Mr. DORSZYNSKI. Well, you have all the dynamics of a family involved and it seems like often in each different situation—every situation is a little bit different.

Again, I think that everything that the elderly person can do for themselves ahead of time to have their finances in order, to have someone that is trusted in place to help them at any point in which they do not know what to do or they need a little advice or something like that I think is helpful. A lot of times I see family members who step in at a point which the elderly person has become incapacitated and is really unable to do things for themselves. And sometimes it is just simply a situation of kind of a crime of opportunity when their inheritance becomes available a little sooner and sometimes that is a temptation that they can't resist.

The CHAIRMAN. What about the situation where a family member might be taking advantage of a senior? How do we protect or educate seniors that a family member might be taking advantage of them? Do you go to another one and ask them to review a particular transaction before you make a decision?

Mr. DORSZYNSKI. I think part of the problem you have, again is even if it is a family member who is trying to exploit you, you can get families where they are trying to isolate their parent or whoever it may be from other family members. I certainly see that dynamic a lot. So it can be very difficult.

Certainly if you can get the senior to talk to other people, that is always a good thing. Unfortunately, the targets are often the people who don't have a lot of other people to talk to and those that are there try and isolate them away from their support group.

The CHAIRMAN. So what you are saying is that even if there is another family member, if the person is sufficiently isolated, that other family member isn't there as sort of an independent check and the person ends up getting exploited?

I gather that a lot of seniors don't end up getting restitution for these kinds of problems and that you have got some information on this point.

Mr. DORSZYNSKI. In the situations that I have been involved in, I would say that it is very, very rare. Mrs. Baxter's situation was actually unique in that we were able to recover the car and the

ring and the computer and will get at least some money out of that at some point.

Most of the perpetrators that I have run across, they use this money pretty much as quickly as they can get it from somebody and they don't put it in the bank or anywhere else and it is gone. And most of these people are judgment-proof. So whether you are getting a restitution through a criminal case or civil judgment, often it is kind of a futile exercise because you're not going to get much back.

The CHAIRMAN. Well, listen, you all have been very, very good. Starting with you, Mrs. Older, special praise to you for coming forward and telling your story. I am going to spread the word far and wide that the seniors ought to flex their muscles when the rip-off artists come around.

Mitch, your professionalism is very much appreciated. It is evident that you and so many others on the force would like to do more and it is the job of us in elected office to give you the tools to go do your job. People in politics are always beating on their chest and saying, "I am tough on crime and vote for me because I am going to be tough on crime." Well, the reality is it is people like you who are on the front lines trying to deal with this day-to-day and it is our job to make sure you have the tools to do it.

Mr. COPP. Thank you.

The CHAIRMAN. So you have made a very good case for what those of us in elected office need to do to be supportive of your work, and we will be following up.

Mr. Dorszynski, thank you very much for your expertise. I guess if I wasn't in the U.S. Senate, I would probably be doing work like you because I ran in the senior citizens law office. We had a lot of these kinds of cases come through our doors. If anything, the problems have gotten more dramatic over the years as the people who perpetrate these rip-offs get increasing sophisticated.

So I very much appreciate having your expertise and the fact that our state is fortunate to have practitioners like yourself who specialize in these kinds of cases is a real asset, so we will be calling on you frequently.

Mr. DORSZYNSKI. Thank you.

The CHAIRMAN. Do any of you have anything else you would like to add? Mrs. Older? Mr. Copp? Mr. Dorszynski?

Mrs. OLDER. I don't think so.

The CHAIRMAN. All right. You said it well and we'll excuse you at this time and look forward to working with you. Thank you.

The CHAIRMAN. Our next panel will be Mr. Roger Auerbach, Administrator of Senior and Disabled Services, Oregon Department of Human Services and Mr. Tom Perrick, President of the Oregon Bankers Association.

Gentlemen, we welcome you both.

All right. Gentlemen, we thank you and thank you for working with us. You both have worked with us often on these kinds of issues. Our friend Roger Auerbach is one of this country's best known specialists on aging, somebody who is recognized across the country as an expert in the field, of course, of the Senior and Disabled Services Division.

Roger, why don't you hold forth as you would like and we will make your prepared remarks a part of the record. Welcome and we appreciate all the good work that you do.

STATEMENT OF ROGER AUERBACH, ADMINISTRATOR, SENIOR AND DISABLED SERVICES DIVISION, OREGON DEPARTMENT OF HUMAN SERVICES

Mr. AUERBACH. Thank you very much, Senator. For the record, my name is Roger Auerbach. I am the Administrator of Senior and Disabled Services Division.

Senior and Disabled Services is the state entity charged with serving older Oregonians and physically disabled adults, and I appreciate the opportunity today to address the committee about a very important issue confronting not only Oregon's elderly population, but every state in the country's population.

As the lead agency designated to protect elderly Oregonians, we have witnessed an unprecedented growth in the number of reports of elder abuse. Our elder abuse reporting statistics, which include categories of physical and sexual abuse, financial exploitation, and neglect, show that financial exploitation represents the leading form of perpetrator-related elder abuse in Oregon today.

Since 1993, Oregon's reported cases of elder financial exploitation has more than tripled to over one thousand cases. Those are the cases that are reported. The actual numbers we believe are higher.

Most of the perpetrators of financial exploitation are acquaintances, family members including spouses and adult children, many of whom serve as the primary caregiver for the abused senior. Sometimes paid caregivers are committing these abuses, also.

These figures tell only a part of the horrific story of what seniors are encountering. Protective service workers investigating these cases have documented cases of exploitation and abuse that are hard to imagine occurred. Some of them you have heard this morning.

For the record, I have in my testimony a case of a woman from Douglas County, OR, who was befriended by two younger women who ended up taking approximately \$200,000 by the time we were able to intervene. I think the only good part of the story, after she had to declare personal bankruptcy, is that one of the women has been indicted by the grand jury and will be hopefully brought to justice very shortly.

But the story does illustrate what we know; seniors with financial assets are a primary target for individuals who intend to defraud and steal. Although most caregivers, including family members, friends, and paid caregivers are honest and caring, there are some who seek to victimize vulnerable seniors.

Now, you talked before, Senator, about the aspect of prevention, and that is one of the things that we are very concerned about. Over the past few years, as a result of the numbers rising, even though as you know, we respond as quickly as we can to reports of elder abuse, we said in fact, we need to get out in front of these issues and try to do more on prevention and actually created an abuse prevention unit within Senior and Disabled Services that is a little over 2 years old.

Some of the things that we have been doing—and this is not certainly done by ourselves, it is done in partnership with the US Department of Justice, Office for Victims of Crime Oregon Department of Justice, the Oregon Department of Public Safety Standards and Training, the Oregon AARP, the Oregon Bankers Association—You'll hear from Tom Perrick in a minute—and the Oregon Association of Area Agencies on Aging and Disabilities and other key community partners have all been mobilized. We have done what we think are some landmark projects which I would like to talk with the committee about and you about today, Senator.

First of all, we have been working with banks on financial abuse. In 1995, the Oregon Bankers Association, the Oregon Department of Justice and Senior and Disabled Services helped draft and advocate legislation which provides immunity to bank employees who report suspected financial abuse of their customers. This change in law has resulted in numerous calls from banks of suspected abuse. Several counties have successfully prosecuted cases based on these leads. We have had funds from the US Department of Justice, Office for Victims for Crime to help develop a resource kit to teach bank employees how to spot suspected financial abuse. And Tom Perrick will talk more about that.

We are in the process now of working with local bank branches in other states to teach proper response protocols. We actually have a copy of the kit for bankers which we would like to introduce into testimony—I am looking for it. It is right there. Right in front of me—which we think is a great tool which we have developed. And that is now being used across the state and hopefully will extend to other states.

We have helped create locally based elder abuse multidisciplinary teams which bring SDS, Senior and Disabled Services, Adult Protective Service workers, law enforcement and prosecutorial staff together to address elder abuse cases. These multi-agency partnerships have resulted in enhanced relationships between our staff and law enforcement, and many counties in Oregon are prosecuting elder abuse cases for the first time due to these working groups.

We have offered statewide training programs and conferences for law enforcement, mental health professionals, domestic violence staff, and others to better share information in the investigation and prosecution of elder abuse cases.

In a partnership with the Oregon State Department of Safety Standards and Training and the Oregon State Police, we have offered a detailed elder abuse curriculum for new recruits and cadets. We have developed materials and training programs to educate seniors on how to avoid being victims of scams.

We will soon be starting a very unique project with the Oregon Bankers Association again to recruit and train retired bankers and other financial industry experts to assist our county multidisciplinary teams to investigate and prepare financial exploitation cases for prosecution.

Last, but very critical to our services, we have an Attorney General's Task Force on Elder Abuse which we have worked with since 1994 to coordinate legislative policy and programmatic solutions to elder abuse.

As you can see, we are attacking the problem of elder abuse from many different angles and, again, we are trying to work very hard on the preventive aspect in addition to following up on allegations of suspected abuse. We clearly must do more, Senator, and members of the committee who will read this testimony.

I am really very, very pleased that you came to Oregon today to hear from victims and from experts. We really would encourage you to try to look at other areas and try to create model programs such as has been done in the Violence Against Women Act. The Violence Against Women Act has helped protect women and provided resources to victims and also has begun preventive work in various communities. And I think a similar effort targeted toward the elderly would also generate some excellent results.

Finally, I want to mention that one of the most successful tools that we use at the state and local level are available funds contained in Title 7 of the Older Americans Act. These funds have enabled us to do many of these projects and trainings for law enforcement, bankers, Native Americans, domestic violence community, and other community partners. And, Senator, I know you have been very committed to the Older Americans Act, and I would urge you and others to keep this vital piece of the Older Americans Act well funded.

Again, I appreciate your interest in bringing the committee, the committee staff here. We appreciate both Senator Grassley and Senator Breaux's work on this issue, and would be very happy to respond to any questions. Thank you so much, Senator.

[The prepared statement of Roger Auerbach follows:]

Statement by
Roger Auerbach, Administrator
March 15, 2000

Chairman Grassley, Senator Wyden, members of the Committee, my name is Roger Auerbach. I am the Administrator of the Oregon Senior and Disabled Services Division (SDSD), Department of Human Services. SDSD is the state entity charged with serving older Oregonians and physically disabled adults. I appreciate the opportunity to address your Committee today about a very important issue confronting not only Oregon's elderly population, but every state in America.

As the lead agency designated to protect elderly Oregonians, we have witnessed an unprecedented growth in the number of reports of elder abuse. Our elder abuse reporting statistics, which include categories of physical and sexual abuse, financial exploitation, and neglect, show that:

- Financial exploitation represents the leading form of perpetrator-related elder abuse in Oregon today.
- Since 1993, Oregon's reported cases of elder financial exploitation has more than tripled to over one thousand cases a year. (Actual figures are likely much higher.)
- Most of the perpetrators of financial exploitation are acquaintances and family members, including spouses and adult children, many of whom serve as the primary care giver to the abused senior. Sometimes, paid care givers (non-family) are committing these abuses.

These figures tell only part of the horrific story of what seniors are encountering. Protective service workers investigating these cases have documented cases of exploitation and abuse that are hard to imagine. Let me tell you about one high-profile case from Douglas County, Oregon:

Mae Wilkinson is a seventy-three year old widow living in Myrtle Creek, Oregon. Several years ago, while living in California, she was befriended by two younger women (ages 38 and 42). The women initially offered Mae companionship, helped with her shopping and other errands. The relationship between the three women grew close; so close that Mae was eventually convinced to financially help the women start their own business. Mae initially gave them \$90,000 to help start the business. Soon thereafter, Mae was convinced by these women to put a \$55,000 down payment on land in Myrtle Creek and to pay for most of the construction of a three-bedroom house. Mae felt very alone and believed that these two women were going to take care of her into her very old age. These two women had other ideas, however.

Systematically, Mae became isolated from her own financial decisions, was coerced

into signing away many of her financial and legal assets and, eventually, was kicked out of her own house and forced to occasionally sleep in the barn used for animals. Through intimidation, deceit, manipulation and fraud, Mae's "care givers" took more than \$200,000 from Mae, forcing her into personal bankruptcy. In January, a grand jury indicted one of the women.

This story illustrates what we know: seniors with financial assets are a primary target for individuals who intend to defraud and steal. Although most care givers, including family members, friends, and paid professionals, are honest and caring individuals, there are some who seek to victimize vulnerable seniors.

Several years ago, Oregon began several initiatives to prevent the abuse of seniors. Working collectively with the United States Department of Justice's Office for Victims of Crime, Oregon Department of Justice, Oregon Department of Public Safety Standards and Training, Oregon AARP, Oregon Bankers Association and the Oregon Association of Area Agencies on Aging and Disabilities and other community partners, we implemented landmark projects and mobilized key constituencies around the protection of vulnerable Oregonians. I would like to highlight some of these projects:

Working with Banks on Financial Abuse

- In 1995, the Oregon Bankers Association, Oregon Department of Justice, and SDSO helped draft and advocate for legislation which provides immunity to bank employees who report suspected financial abuse of their customers. This change in law has resulted in numerous calls from banks of suspected abuse. Several counties have successfully prosecuted cases based on these initial leads. The United States Department of Justice, Office for Victims of Crime, has provided funds for us to develop a resource kit to teach bank employees how to spot suspected financial abuse. (We want to state for the record our appreciation for the exemplary help we have gotten from Dr. Duane Ragan, our grant manager from OVC.) We are now in the process of working with local bank branches and other states to teach proper response protocols. I am pleased to offer the Committee a copy of this kit for the record. Tom Perrick, CEO of the Oregon Bankers Association, is testifying today and will further discuss this effort.

Multidisciplinary Teams

- Helping create locally-based Elder Abuse Multidisciplinary Teams (MDT) which bring SDSO adult protective service workers, law enforcement and prosecutorial staff together to address elder abuse cases. These multi-agency partnerships have resulted in enhanced relationships between our staff and law enforcement. Many counties in Oregon are prosecuting elder abuse cases for the first time due to these working groups.

Statewide Training

- Offering statewide training programs and conferences for law enforcement, mental health professionals, domestic violence staff and others to better share information in the investigation and prosecution of elder abuse cases. This year's major conference will focus on the area of criminal neglect.

Curriculum for Police Cadets

- Partnering with the Oregon Department of Safety Standards and Training and the Oregon State Police, we offer a detailed elder abuse curriculum to new recruits and cadets.

Training Seniors

- Developing materials and training programs which educate seniors on how to avoid being victims of scams.

Retired Bankers Project

- We will soon be starting a unique project with the Oregon Bankers Association to recruit and train retired bankers and financial industry experts to assist our county MDT programs to investigate and prepare financial exploitation cases for prosecution.

Attorney General's Task Force on Elder Abuse

- Last, but very critical to our services, I would like you to know about the Attorney General's Task Force on Elder Abuse. Working with the Oregon Department of Justice to establish this task force in 1994, this interagency body has coordinated legislative, policy, and programmatic solutions to elder abuse. For example, in 1995, the Attorney General's Task Force on Elder Abuse drafted and assisted in the passage of three Oregon laws designed to assist victims of elder abuse:

1) **Elder Abuse Prevention Act** (ORS 124.005)— makes it easier to obtain a restraining order against an abuser or a potential abuser.

2) **Civil Action for Abuse** (ORS 124.100)— makes it easier to bring a civil suit for physical and financial abuse.

3) **Immunity for Banks** (ORS 192.575)— removes liability for the release of information relating to a suspected crime.

As you can see, we are attacking the problem of elder abuse from many angles.

Through legislation, public-private partnerships and community-based problem solving, we are increasingly getting Oregonians to pay more attention to this issue. But we clearly must do more to protect vulnerable elders.

I am pleased, Mr. Chairman and members of the Committee, that you have chosen Oregon to hear from victims and activists about this issue. Knowing that this issue has yet to fully engage our various human service and law enforcement systems, I would urge you to consider taking the step of creating a model program patterned after the Violence Against Women Act (VAWA). VAWA has succeeded in helping protect women, providing resources to victims, and beginning preventive work in communities. I believe that a similar effort targeted towards the elderly would generate excellent results.

Finally, I want to mention that one of the most successful tools that we use at the state and local level are the available funds contained in Title VII of the Older Americans Act (Elder Abuse Prevention Funds). These funds have enabled us to do many of these projects and trainings with law enforcement, bankers, Native Americans, the domestic violence community and other community partners. I urge you to continue to support this vital piece of the Older Americans Act.

We appreciate your interest in these very important issues and that you came to Oregon to hear first-hand about them today.

The CHAIRMAN. Thank you, Roger. It is very clear that you are trying to build with the Oregon Bankers a sort of state-of-the-art approach here in Oregon in terms of working to deal with fraud against seniors.

I very much appreciate that our state is willing to get out in front. That has been our tradition with aging services. It goes back to the days of Oregon Project Independence where we were the first in this country to say let's start moving some of the dollars from institutional care for older people into home care. So it is only fitting that we try to lead the country in terms of fighting financial fraud against older people. I really appreciate your work.

As far as the Older Americans Act is concerned, one of my priorities for this session is to get the Older Americans Act reauthorized. It is just unconscionable that this bill that for years was off-limits to partisan bickering and partisan sniping has been held up for so long. In the years when I was director of the Gray Panthers and chairing the Older Americans. Caucus in the House, this was a bill that was off-limits to partisan bickering. As you know, it has been held up for too long and it is important in terms of the elder abuse provisions you are talking about. It is important in terms of the other services that it provides and I do not want to see Congress go home this session without reauthorizing the Older Americans Act. I will do everything I can to try to make that possible.

Mr. AUERBACH. I know you will, Senator. Thank you very much.

The CHAIRMAN. Let's go right to Mr. Perrick, and then I will have some questions for both of you.

Tom, welcome. I think particularly the idea of using retired bankers, we have done that over the years in other sectors. I set up the Senior Citizens Law Service using retired attorneys volunteering their time in terms of trying to help older people. So I think that is a real contribution in and of itself.

Why don't I let you testify and hold forth any way you feel comfortable.

STATEMENT OF TOM PERRICK, PRESIDENT, OREGON BANKERS ASSOCIATION

Mr. PERRICK. Certainly appreciate the time, Senator. Good morning. Good morning to the committee. For the record, my name is Tom Perrick. I am the president of the Oregon Bankers Association. We are charged with legislative efforts and advocacy for banking issues both at the State and Federal level for all of Oregon's commercial banks.

Financial abuse has long been a matter of concern to Oregon's bankers. Over the years the Oregon Bankers Association has either directly sponsored or joined and participated with other organizations such as the Department of Justice, Oregon's Department of Justice, Oregon's Senior and Disabled Services Division in sponsoring these numerous public information campaigns to the elderly and incapacitated persons as well as their caregivers all because of the threat of financial fraud and other abuse.

More recently the Oregon Bankers Association has really been actively encouraging our sister associations across the country to also design and implement programs such as the one we have en-

joyed great success with to combat financial abuse of elderly and incapacitated persons.

The Oregon legislature, as Roger addressed, passed specific legislation in varying sessions dealing with this issue, and the Oregon Bankers Association are really proud to support that passage of that legislation and did that, as was mentioned before, in partnership with Oregon's Department of Justice and, again, the Senior and Disabled Services Division.

Currently we are actively participating and encouraging all of our own Oregon institutions and their customers to report suspected incidences of abuse to appropriate authorities and also be a source of information on this problem of financial abuse of the elder.

One thing we have learned in this area that is a significant challenge for us is both the bankers' desire and need to protect customers' private information, but also know when to use that information wisely. As you know, state and Federal law generally prohibits the disclosure of customer financial information to local, state and Federal authorities. However, there are certain exceptions within these laws and we find some comfort in these exceptions, one of which allows our financial institutions to ourselves initiate contact with governmental agencies and disclose what otherwise might be private customer records and information concerning suspected violations of the law.

For the record, I have attached a letter from my general counsel dated February 25 that goes to the concern and the impact of the recently passed Financial Modernization Act with specific regard to privacy.

[The prepared statement of Tom Perrick follows:]

**TESTIMONY
OF
TOM PERRICK
PRESIDENT, OREGON BANKERS ASSOCIATION
BEFORE THE
SENATE SPECIAL COMMITTEE ON AGING
MARCH 15, 2000
PORTLAND, OREGON**

CHAIRMAN GRASSLEY, SENATOR BREAUX, SENATOR WYDEN, THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE YOU ON THE IMPORTANT SUBJECT OF FINANCIAL ABUSE OF ELDERLY OR INCAPACITATED PERSONS:

SUCH ABUSE HAS LONG BEEN A MATTER OF CONCERN TO OREGON BANKERS. OVER THE YEARS, THE OREGON BANKERS ASSOCIATION HAS EITHER SPONSORED OR PARTICIPATED WITH OTHER ORGANIZATIONS SUCH AS THE OREGON DEPARTMENT OF JUSTICE AND THE AMERICAN BANKERS ASSOCIATION IN SPONSORING NUMEROUS PUBLIC INFORMATION CAMPAIGNS TO ALERT ELDERLY AND INCAPACITATED PERSONS AND THEIR CAREGIVERS TO THE THREAT OF FINANCIAL FRAUD AND OTHER ABUSE. PARTICULAR EMPHASIS HAS BEEN PLACED ON EFFORTS TO PROVIDE INFORMATION ON ABUSE TO LOW AND MODERATE INCOME ELDERLY AND INCAPACITATED PERSONS. MORE RECENTLY, THE OREGON BANKERS ASSOCIATION HAS ACTIVELY ENCOURAGED OTHER STATE BANKERS' ASSOCIATIONS THROUGHOUT THE COUNTRY TO DESIGN AND IMPLEMENT SIMILAR

PROGRAMS TO COMBAT FINANCIAL ABUSE OF ELDERLY AND INCAPACITATED PERSONS.

THE OREGON LEGISLATURE RESPONDED TO THIS PROBLEM IN 1995, WITH THE ENACTMENT OF ORS 124.110. THIS LAW ALLOWS ELDERLY AND INCAPACITATED PERSONS OR THEIR REPRESENTATIVES TO BRING CIVIL ACTIONS AGAINST THOSE WHO:

- WRONGFULLY TAKE MONEY OR PROPERTY OF AN ELDERLY OR INCAPACITATED PERSON; OR
- FAIL TO MAKE MONEY OR PROPERTY OF AN ELDERLY OR INCAPACITATED PERSON AVAILABLE TO THAT PERSON WITHOUT GOOD CAUSE.

THE OREGON BANKERS ASSOCIATION SUPPORTED THE ENACTMENT OF THIS LAW, AND, IN PARTNERSHIP WITH THE OREGON DEPARTMENT OF JUSTICE AND THE SENIOR AND DISABLED SERVICES DIVISION, THE O.B.A. ACTIVELY ENCOURAGES FINANCIAL INSTITUTIONS AND THEIR CUSTOMERS TO REPORT SUSPECTED INCIDENTS OF ABUSE TO APPROPRIATE AUTHORITIES, AND TO BE A SOURCE OF INFORMATION ON THIS PROBLEM FOR ELDERLY AND INCAPACITATED PERSONS, PARTICULARLY THOSE WHO HAVE LOW OR MODERATE INCOMES.

ONE OF THE THINGS WE HAVE LEARNED IN THIS AREA IS THAT THERE IS A SIGNIFICANT CHANCE OF CONFLICT BETWEEN A BANK'S DESIRE TO

PROTECT ITS CUSTOMER FROM FINANCIAL ABUSE AND THE BANK'S DUTY UNDER STATE AND FEDERAL LAW TO SAFEGUARD THE PRIVACY OF CUSTOMER FINANCIAL INFORMATION.

STATE AND FEDERAL LAW GENERALLY PROHIBIT THE DISCLOSURE OF CUSTOMER FINANCIAL INFORMATION TO LOCAL, STATE AND FEDERAL GOVERNMENTAL ENTITIES. HOWEVER, EXCEPTIONS WITHIN THESE LAWS ALLOW FINANCIAL INSTITUTIONS TO CONTACT GOVERNMENT ENTITIES AND DISCLOSE OTHERWISE PRIVATE CUSTOMER RECORDS AND INFORMATION CONCERNING SUSPECTED VIOLATIONS OF THE LAW. (SEE ATTACHED LETTER, DATED FEBRUARY 25, 2000, FROM O.B.A. GENERAL COUNSEL KENNETH SHERMAN, JR., CONCERNING THE IMPACT OF THE PRIVACY PROVISIONS OF THE FEDERAL FINANCIAL INSTITUTIONS MODERNIZATION ACT ON OREGON'S FINANCIAL ABUSE LAW). THANKS TO THESE EXCEPTIONS, THERE HAS BEEN A SIGNIFICANT AND DOCUMENTED INCREASE IN THE REPORTING OF SUSPECTED ABUSE BY OREGON BANKS.

THESE EXCEPTIONS TO THE PRIVACY LAWS GIVE FINANCIAL INSTITUTIONS SOME PROTECTION, BUT THEY DON'T BY ANY MEANS RESOLVE ALL THE CONCERNS IN THIS AREA. WHEN A BANK GAINS INFORMATION THAT ITS CUSTOMER MAY BE GETTING DRAWN INTO A SCAM BY A PROFESSIONAL CRIMINAL, THAT'S AN EASY CALL, AND THE BANK CAN AND SHOULD BRING ITS SUSPICIONS TO THE ATTENTION OF THE APPROPRIATE

AUTHORITY, AS WELL AS THE CUSTOMER.

WHAT IS MUCH MORE DIFFICULT TO DEAL WITH IS THE SITUATION WHERE THE POSSIBLE OR SUSPECTED ABUSE IS BEING CARRIED OUT BY A FAMILY MEMBER OR OTHER PERSON WHO IS CLOSE TO THE ELDERLY OR INCAPACITATED CUSTOMER. THESE SITUATIONS TAKE COUNTLESS DIFFERENT FORMS. SOMETIMES, A CHILD OR EVEN A SPOUSE (PARTICULARLY IN SECOND MARRIAGE SITUATIONS) WILL BE PRESSURING THE CUSTOMER TO TAKE SOME FINANCIAL ACTION THAT DOESN'T APPEAR TO BE IN THE CUSTOMER'S BEST INTERESTS. THERE MAY BE TWO OR MORE RELATIVES FIGHTING OVER WHAT'S BEST FOR THE ELDERLY OR INCAPACITATED CUSTOMER, EACH ACCUSING THE OTHER OF IMPROPER MOTIVES OR OBJECTIVES. OR THERE MAY BE SOME INDICATION OF DIMINISHED CAPACITY ON THE PART OF THE CUSTOMER. THESE ARE DIFFICULT SITUATIONS, WHERE FINANCIAL INSTITUTIONS HAVE TO MAKE TOUGH CALLS ON A CASE-BY-CASE BASIS, AND MAY INCUR RISK NO MATTER WHAT THEY DO.

OREGON'S LAW AND OUR PARTNERSHIP WITH THE OREGON DEPARTMENT OF JUSTICE AND THE OREGON SENIOR AND DISABLED SERVICES DIVISION TO ENCOURAGE REPORTING OF FINANCIAL ABUSE REPRESENT A GOOD BEGINNING IN THIS AREA, BUT MUCH MORE CAN AND SHOULD BE DONE, IN EDUCATING THE GENERAL PUBLIC AND IN

ENCOURAGING MEDICAL PROFESSIONALS, LANDLORDS, SENIOR SERVICE AGENCIES AND OTHERS WHO HAVE FREQUENT CONTACT WITH ELDERLY AND INCAPACITATED PERSONS TO RECOGNIZE AND REACT TO THE SIGNS OF POSSIBLE FINANCIAL ABUSE.

THE FEDERAL GOVERNMENT CAN PLAY AN ENHANCED ROLE IN THIS AREA, BY ENCOURAGING ITS AGENCIES TO BE ALERT TO THE SIGNS OF ABUSE, AND BY ENACTING LAWS AND REGULATIONS THAT INSULATE FROM LIABILITY THOSE WHO IN GOOD FAITH REPORT SUSPICIOUS ACTIVITY.

WE ARE PROUD OF THE WORK OREGON BANKERS ARE DOING TO HEIGHTEN AWARENESS OF AND RESPONSIVENESS TO FINANCIAL ABUSE, AND WE COMMEND YOUR EFFORTS IN THIS AREA.

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February 25, 2000

Tom Perrick, President
Oregon Bankers Association
Post Office Box 13429
Salem, Oregon 97309Re: **Fiduciary Abuse and Title V, Financial
Institutions Modernization Act**

Dear Tom:

You have asked me to comment on whether Title V of the Financial Institutions Modernization Act recently enacted by Congress prohibits financial institutions from reporting or otherwise acting with respect to suspected cases of fiduciary abuse, as defined under ORS 124.110 (1). As part of the effort to combat fiduciary abuse of elderly and incapacitated persons, the Oregon Bankers Association and the Oregon Department of Justice encourage financial institutions to report episodes of suspected abuse to appropriate law enforcement and other agencies for investigation and possible action.

As you know, ORS 192.550 *et seq* generally prohibit the disclosure of "customer financial records" (documents or information held by a financial institution that is identifiable as pertaining to one or more customers of the institution) to state or local governmental agencies. However, ORS 192.555 (2) (a) provides that the above general rule "does not preclude a financial institution, in its discretion, from initiating contact with, and thereafter communicating with and disclosing customer financial records to appropriate state or local agencies concerning any suspected violation of the law." Since fiduciary abuse is unlawful under ORS 124.110 (1), we have previously advised banks that they may contact state and local agencies and disclose customer financial information to such agencies where they suspect the occurrence of fiduciary abuse.

Now a question has been raised as to whether the provisions of Title V of the Financial Institutions Modernization Act might be construed to prohibit the reporting of suspected fiduciary abuse by financial institutions. After reviewing the provisions of this new federal act, I have reached the conclusion that it does not create an obstacle to such reporting.

Section 502 (b) of the new federal law (which will take effect six months after the adoption of implementing rules by the federal financial institution regulatory agencies) provides that as a general rule, a financial institution may not disclose "nonpublic personal information" (personally identifiable financial information obtained by an institution) to a "nonaffiliated third party" unless:

(A) the institution discloses to the consumer that the information may be disclosed; (B) the consumer is given the opportunity to "opt out" of disclosure; and (C) the consumer is given an explanation on how to opt out.

The type of information that a financial institution might disclose in reporting fiduciary abuse would almost certainly include "nonpublic personal information"; and the state or local agency to which the institution would report the abuse would clearly be a "nonaffiliated third party" under the definitions in the federal act. Thus, once the federal act takes effect, the reporting of fiduciary abuse to a state or local agency would be prohibited under the general rule of this section unless the institution has disclosed the possibility of such reporting and has given the consumer the opportunity to opt out.

However, section 502 (e) of the federal act establishes several exceptions. I believe that these exceptions, taken together, permit financial institutions to report fiduciary abuse without violating the federal act. The specific exceptions which I believe are applicable to the reporting of fiduciary abuse are:

- disclosure to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability [section 502 (e) (3) (B)]
- disclosure for required institution risk control, or for resolving customer disputes or inquiries (section 502 (e) (3) (C))
- disclosure to persons acting in a fiduciary or representative capacity for a consumer [section 502(e) (3) (E)]
- disclosure to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies, self-regulatory organizations or for an investigation on a matter related to public safety [section 502(e) (5)]
- disclosure to comply with federal, state or local laws, rules and other applicable legal requirements; to comply with a properly authorized civil, criminal or regulatory investigation or subpoena or summons by a federal, state or local authority; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance or other purposes as authorized by law. [section 502(e) (8)].

Please let me know if you have any questions regarding the opinions set forth above.

Very truly yours,

SHERMAN, SHERMAN, MURCH & JOHNNIE, LLP

By:


Kenneth Sherman, Jr.

The CHAIRMAN. That is a very important point and I want to make sure it is not lost. What you are saying is in sensitive situations you would require the person to opt in? You would contact them and they would specifically say, "Yes, you may use this information to go forward to try to help deal with the particular problem?"

Mr. PERRICK. Well, in our situation now, Senator, we contact—we have the ability to contact an agency directly and the individual perhaps secondarily.

The CHAIRMAN. Do you have the power to contact the individual?

Mr. PERRICK. Yes.

The CHAIRMAN. OK. The reason that that is so important is that right at the heart of the privacy debate is the discussion of what amounts to opting out versus opting in. As I say, I have the only bipartisan bill involving privacy.

Opting out is essentially when the person calls you or calls one of your banks and says, "I don't want my personal information used." That is a question of the person opting out. Opting in is what is under consideration for very, very sensitive information where, in effect, the person doesn't have to call you and say, "Don't use it," but, in effect, you have got to call them and get their explicit information.

I gather that the Oregon law takes the step that you are talking about that in really sensitive situations you have got to contact both the agency and the individual.

Mr. PERRICK. That is an accurate assessment. The Federal law—the Federal privacy language that is currently being debated comes out about May 12th, so we are anxious to see that final.

The CHAIRMAN. In connection with the Financial Services Bill?

Mr. PERRICK. Correct. And that really goes to really the heart of the sharing of information within the financial institution itself for more of a product and service type situation as opposed to specific sensitive types of information such as financial abuse of the elderly. So they do touch, they are interrelated, but within the current drafting of the financial privacy rules that is more commercially oriented as opposed to personal.

The CHAIRMAN. As you know, the lines do blur.

Mr. PERRICK. Yes, they do.

The CHAIRMAN. When you are talking about financial matters and when you are talking about medical matters, these are matters that people consider very personal very quickly. It is one thing if you subscribe to Newsweek magazine for 15 years, it is pretty ridiculous to require that Newsweek write you a letter saying, "Would it be OK if I write you another letter asking you if you want to sign up for a 16th year," which is sort of what a pure opt-in arrangement might require, that you actually have to do something like that.

When you are talking about people's sensitive personal information that relates to finances and health, they tend to feel very strongly about that very quickly. And you are right to be sensitive about the difference between commercial and personal and sense how that can blur very quickly as well.

Go ahead.

Mr. PERRICK. Thank you.

As I was mentioning before, it is because of these exceptions that we have seen in Oregon, as Roger pointed out, the significant and documented increase in the voluntary reporting of suspected abuse by Oregon banks.

These exceptions to the privacy laws give financial institutions some protections, certainly, but it is certainly not an end to the means. When a bank gains information that its customers might be getting drawn into a scam by a professional criminal, that often-times is a pretty easy call for the bank, first of all, to identify and then contact the appropriate agencies, but it is more difficult for us when the situation might involve suspected abuse by a family member, a spouse or a child, or perhaps bickering relatives fighting over what's best for an elder person, each may be accusing the other of either improper motives or objectives. There's also been some just individual indication of diminished capacity on the part of our customers. And these make for difficult situations and we have to really review them on a case-by-case basis and, frankly, incur risk really either way we go.

Oregon's law, however, and our partnership with the Oregon Department of Justice and the Senior and Disabled Services Division that encourages reporting of financial abuse does represent a good beginning in this area, but we would agree that much more can and should be done in educating and encouraging a lot of different industry groups—medical profession, landlords, senior service agencies and others who do have frequent contact with elder and incapacitated persons—to help us recognize and react to the signs of possible financial abuse.

In closing, I would suggest that the Federal Government might be able to play an enhanced role in this area by encouraging its agencies to be alert to the signs of abuse and by enacting laws and regulations that insulate from liability those who in good faith report such suspicious activity.

We are proud of the work that we have done, the Oregon Bankers have done in conjunction with our partners to heighten awareness of and responsiveness to financial abuse. We also would like to commend you on your own efforts.

Thank you for your time this morning, and that completes my testimony.

The CHAIRMAN. Tom, thank you. Do you need any extra time since I took some of your time to engage in that little soliloquy about opting out and opting in. Do you need any extra time?

Mr. PERRICK. No. I am fine. I appreciate the question. I am glad you brought that point out.

The CHAIRMAN. OK. Let me ask a few questions, if I might, of both of you. Roger, you give us pretty startling information about that big increase in the number of financial scams against seniors. What do you think is behind it? What is the rationale for this big and certainly statistically significant increase in the number of scams against seniors?

Mr. AUERBACH. Senator Wyden, I think it is opportunity. I think that one of the good things that we have done in our state is we have promoted seniors to be independent. And sometimes what that has meant is that they have been living alone in the Oregon community and have had, really, the need to rely upon other people

to help them with activities of daily living. Sometimes that means caregivers, sometimes that means family.

I think what we are seeing is that, in fact, some people see an aging person as an easy mark. And, again, this—while this represents a small fraction of the people who care for their loved ones, in fact, some people who may be involved in alcohol, in drugs. We have noted that some of the alleged perpetrators, in fact, have histories of substance abuse, other criminal activity. They are the most likely to be able to say that this is an easy way for us to be able to get some money. And, after all, this elderly person, how long are they going to be around? They can't take it with them. Why don't we relieve them of some of that—some of their financial assets?

The CHAIRMAN. You raise an interesting point. Oregon, really, going back now almost 25 years has been the leader in the country in trying to shift the services for older people away from institutions into a home-based kind of model. It seems to me what you are saying is in doing that, you may bring people into the home who might then try to take advantage of some extra opportunities to exploit older people. Is that something akin to what you are saying?

Mr. AUERBACH. What I am saying is that is a possible explanation, and that is one of the reasons why we have to do more about monitoring and checking in on people, whether it is an informal way in our—a gatekeeper type of program right here in Multnomah County, or if it is a more formal situation where we actually have state or local government employees going into those homes to actually check on the quality of care that is being delivered to an individual.

So it ranges quite candidly, based on vulnerability. How vulnerable, how frail is that individual? We are more actively involved with older adults who are more frail. So I think what that leaves is the opportunity of someone who is not as frail, can get around and obviously do things very, very well, but when it comes to their connection potentially with relatives, family members, there's a—there's still a dependence there and the dependence sometimes leads, again, to opportunities for victimization.

The CHAIRMAN. Now, I gather that you and perhaps this is going on with some of the leaders like yourself around the country are interested in some sort of national task force that would look at financial fraud against seniors. Why don't you describe how you would like to see that play out and what, if any, role would Congress have in that?

Mr. AUERBACH. Senator Wyden, I think that there's an opportunity to bring—and I am happy to say that I think Oregon has been a leader here, too—instead of looking across various sectors for law enforcement, for banks—I mean, especially when we are talking about financial, to bring people together. I look and think about electronic transactions and that we have just really not even started to be able to address that issue.

I think if we had an opportunity on a national level to do something, I would like to be able to get ahead of an issue to the extent that we can at this point. And that issue is the opportunities for financial fraud on the Internet, as you stated before.

So I think gathering together with Members of Congress, I don't know whether the select committee has an opportunity to convene people, but certainly I think that there is an opportunity to look at across various segments of government and the private sector on how we can address these issues together.

The CHAIRMAN. Why don't you see if you and your cohorts there who are pursuing this can get to Senators Grassley and Breaux and myself something on paper on this? I am very interested in the idea.

Mr. AUERBACH. We will.

The CHAIRMAN. What is striking is, as you say, there are going to be a host of areas where it is going to be important to look at the implications of what some of the changes involving particularly the on-line world are going to mean for seniors. Let me give you an example.

I am one of the principal sponsors of the Electronic Signatures Bill that is going forward in the Congress now. This is widely desired by a whole host of businesses and consumer groups. We started off with the fairly straightforward notion that the protections that apply for consumers off-line would essential apply on-line in things like warranties and the like. But late last week AARP called up my office and asked to meet with my staff and I to talk about some special issues with respect to how the Electronic Signatures Bill would affect seniors, because in some instances they were concerned that seniors might not get paper, might not actually get paper, a recorded document, attesting to their rights in a particular transaction. And that some seniors, if somebody came in and said, "Hey, I will download all this information on to your Palm Pilot for you, ma'am," and say, "Well, that takes care of your rights," that some seniors might not be protected.

So I think this question of a national task force is well worth exploring. Why don't you get down on paper how you would like to see it play out and we will get it to Chairman Grassley and Senator Breaux and take a look at it.

What is your opinion, Roger, in terms of how to reconcile expanded senior use of the Internet with at the same time being vigilant against potential rip-offs and sensitive privacy issues? I think there are going to be some surprised people when we put out the survey in terms of senior citizens centers and their use of the Internet in this state.

I mean, we have made a huge effort for some years now to wire the schools to ensure that they are on-line, and yet a lot of our senior programs have come to me and essentially said, "Ron we feel like we are in the Dark Ages with respect to the digital world and technology." So I really think it is going to be important to set out a set of policies that are going to ensure that there is expanded access for seniors to the Internet, particularly programs like Senior Senators and others where older people congregate, while at the same time being sensitive to the possibility of scams and privacy concerns.

Take a minute to tell me how one goes about reconciling those sort of at least disparate objectives. I don't think they are contradictory, but expanded access, protection against rip-off artists,

and sensitivity to privacy concerns. That is going to be a tall kind of order and—

Mr. AUERBACH. In fact, Senator, I appreciate—I have watched your work in electronic transactions not specifically in relation to seniors, but this is obviously an issue that you have been well in front of others in Congress. I congratulate you on that. I think what we want is, in fact, expanded access.

The technology keeps on just advancing at a tremendous rate. And there's no question that even people who are challenged by computers, you know, we are going to be able to sit in front of our television sets with our remote control and access the Internet. And if it is not going to happen before the end of this year, it will happen before the end of next year. It is already happening in some places today with Web TV. But, in fact, it is going to keep on expanding.

So I think that I watched—you know, I see my mother in front of the computer playing games and using E-mail. And I know that that is widely, widely becoming a normative factor in older adults' lives. And I think we should encourage that.

I think that there are things that can be done and I know that as I use my computer I get warning signs that say, "Warning: If you do this"—you know, "Do you really want to do this?" And somebody was smart in putting together the software that we are using in the state that has these warning prompts, as they call them, come up. And I think that is an opportunity at the Federal level to be able to say certain types of transactions, certain types of marketing has to be subject to a teleprompt that comes up that says, "Do you want to continue?", and you have to actively say, "Yes." Now that—again, that is something that I think has potential.

We don't want to interrupt people's flow of commerce in making transactions, but, in fact, if you just cause somebody to stop and say, "Is this what you really want to do?", sometimes that would be enough for someone to say, "Maybe this isn't what I want to do."

The CHAIRMAN. No. It is a good point. You shouldn't have to scroll through 13 kinds of screen offerings in order to get to it. It ought to come out and hit you quickly.

Get us your ideas for this national task force kind of approach. I think that the question of the model of the Violence Against Women Statute is an interesting one. It is a different law. I mean, the Violence Against Women Statute involves things that essentially involve battery, assault, murder, a variety of these kinds of crimes that are essentially against persons. So it is a little bit of a different model, but the national task force idea ought to look at it and see what, if any, parts of that statute would be applicable.

Mr. AUERBACH. Thank you, Senator. I welcome the opportunity. Thank you.

The CHAIRMAN. Good idea.

Tom, more banking is moving to the Internet. What are the implications of Internet banking for seniors?

Mr. PERRICK. Well, it is certainly a moving target, Senator. Banks are moving quickly to the delivery of—through those types of distribution channels. It is a significant challenge for us both in terms of privacy and delivery of banking product services.

It certainly, as Roger pointed out, is going to get bigger rather than smaller. It is going to get faster, not slower. So it represents a significant challenge for banking to balance its desire to serve the customers and continue with its fiduciary responsibilities, but also be a private-sector profit-making entity. And it really sometimes is a delicate balance between those competing factors.

The CHAIRMAN. Well, 5 years from now how many of Oregon's seniors are going to bank on-line?

Mr. PERRICK. Well, I don't know the answer to that question, but I would say a significant—I would say at least a majority, at least a majority. We think it certainly is going that way and as Oregon—the often-cited statistics. As we become greater and greater, we're 17th now and moving ahead quickly, I understand. Those are customers that have their funds in our banks and, therefore, as they migrate to banking on-line, we need to be ready for that.

The CHAIRMAN. What do you tell banking personnel to look out for in terms of financial abuse and the kind of fraud that we are talking about this morning? What do you tell them to keep their eyes open for?

Mr. PERRICK. Well, as part of our package that Roger introduced in his testimony we do have—half of that kit is specific banker training and what we think our bankers ought to be looking out for. Oftentimes our front line people really can identify odd or atypical transactions from customers they have known well. They can sense if a customer brings somebody in, body language or reactions to long-time customers. There's plenty of those kind of things that the bankers can key in on, certainly. And, really, that is what they are trained to do. We know the customers well and we want to protect them and protect their money.

But then we just get up against a fine line: Are we crossing the line on privacy? When should we report? Who to? And so forth. And that is all part of what we have been doing with the Oregon Department of Justice and Senior and Disabled Services.

The CHAIRMAN. So anybody who is going to be trained to be a banker in this state is going to be asked to review the kind of materials Roger has got out there?

Mr. PERRICK. It is certainly our intent. And a number of our banks have taken the opportunity to educate themselves, and we continue to advocate that they do so from the Bankers Association and through Roger's office and the people that he works with.

The CHAIRMAN. Well, gentlemen, I won't keep you any longer. You have been very helpful. Together with the private sector and state government mobilizing this way, you send a message to the people of Oregon that this is not something you are going to just kind of go through the motions on. You are going to take it in a very aggressive and proactive sort of way, and that is what we need.

I think one of Roger's points is very telling. There is an old aphorism in life, "No good deed goes unpunished." We don't want as a result of our focus in this state now for two decades putting an emphasis on in-home services, we do not want to see that very legitimate focus in terms of service for older people become yet another avenue to take advantage of people as a result of folks coming into the home. What you all are outlining are a number of ways to en-

sure that that doesn't happen. We can get the benefit of having older people more comfortable, happier in the home, A, the cost savings, B, because having them at home is certainly in many instances less expensive than institutional care, and, C, do it without the downside of making them more open to exploitation and scams of the nature we are talking about.

So we appreciate the good work you are doing and we are going to call on you often. We will await the paper on the national task force.

Mr. AUERBACH. I appreciate it. Thank you very much.

Mr. PERRICK. Thank you.

The CHAIRMAN. We appreciate your time.

Our next panel is Pete Shepherd, Noreen Millsap, and Lisa Nerenberg. If you all would come forward.

All right. We welcome all three of you.

Mr. Shepherd, we very much appreciate your coming. I don't know of an Attorney General in this country who has been more interested in the rights of seniors than ours, Hardy Myers. He very much wanted to be here, I know, and couldn't be here, and so you are trying to fill big shoes this morning. I really appreciate your coming.

We will make your prepared remarks part of the record, and why don't you just proceed as you see fit.

STATEMENT OF PETE SHEPHERD

Mr. SHEPHERD. Senator Wyden, thank you for inviting us. I will pass your words on to General Myers. He does apologize for not being here. He is presiding over the Department of Justice's Annual Organized Crime Conference in Bend today.

Four elements of General Myers' office are engaged in efforts to protect the elderly against exploitation and abuse. Before I describe briefly each of those areas, I would like to note at least two trends that will inevitably require us to redouble our efforts. One of those trends you have already mentioned. That is the Internet. Then the second is the aging of Oregon's population.

The Internet's explosive growth really doesn't need any more documentation. It is everywhere. The Internet will touch older Oregonians just as profoundly as it will affect the rest of the population. The establishment of web sites for and about seniors suggests that older Oregonians are, in fact, tapping the web's potential and thus also being exposed to its risk.

As one example, the AARP.org web site contains a step-by-step guide for Internet usage as well as many pages of useful consumer protection tips for safe web surfing. Some of the services available on the Internet include items that are likely to be of particular interest to retired Oregonians. For instance, sites selling travel have proliferated on the Internet and state regulators are increasing challenged by Internet-based sales of prescription drugs. Caution is well advised on the Internet highway.

The Internet's growth is reflected in consumer complaints the Oregon Department of Justice has received over the years. In 1997 we received only one complaint about an Internet retailer. In 1999 we recorded 286 Internet retailing-related complaints. In 1999 those 286 complaints represented the ninth most frequently reported con-

sumer complaint recorded by the Oregon Department of Justice. Unfortunately, just as nearly every business is developing an on-line presence, so has nearly every scam developed an on-line version.

The second major trend that I want to just briefly mention is the aging of our population. Today the Census Bureau estimates that 13.86 percent of Oregonians are over the age of 65. By 2015 that will grow to 18.56 percent, and by 2025 the bureau estimates that 24.23 percent of us will have reached the age of 65.

Many of us will enjoy loving families, good health and years of independent living after retirement, but some older Oregonians will become frail and more vulnerable to abuse. For these neighbors and friends, even a single act of abuse can be catastrophic.

Now, against the backdrop of these two trends, I would like to briefly mention four areas in which Attorney General Myers provides service to Oregon's older population.

The first is the Medicaid Fraud Unit. It is consistently rated amongst the most efficient of its kind in the country. And under the leadership of Attorney in Charge Ellyn Sternfield, this unit has magnified its impact by providing training statewide to police officers and prosecutors. A class about which you heard a little bit already today designed and taught by the unit's attorneys has now become a permanent part of the Oregon Police Academy's basic police officer training curriculum.

While we are proud of the achievements of this unit, our success has had the effect of increasing the number of reports of elder abuse that state and local law enforcement agencies are receiving. And that does tend to enhance and enlarge upon the perceived magnitude of the problem. As a result, we are now aware that there are many more cases than we have the resources to prosecute. And you have heard much about that already.

Second, the Financial Fraud/Consumer Protection Section conducts civil prosecutions under the state's elder abuse and consumer protection laws.

Third, the Attorney General's Task on Elder Abuse continues to serve as a central coordination point for the diverse institutions serving older Oregonians. We are indebted to Ted Kulongoski for establishing the task force in the first instance, and to the Senior and Disabled Services Division for being such a supportive partner in its continuing work.

Finally, we fund a variety of services for victims with money allocated to Oregon under the Federal Victims of Crime Act. Two grants we are proud to support address the needs of senior victims of violent acts. The Ombudsman for Victims of Elder Abuse, part of the Elders in Action program here in Multnomah County, recruits volunteers to provide individual support and assistance to older victims of crime. Cascade West Senior Services provides services to battered women over the age of 60 including safety planning, temporary restraining orders, and other information and referral services.

Again, thank you so much for the opportunity to be here. I appreciate the chance to be here on behalf of General Myers.

[The prepared statement of General Hardy Myers follows:]

TESTIMONY OF OREGON ATTORNEY GENERAL HARDY**MYERS**

I am grateful to Chairman Grassley, Senator Wyden, and to members of the committee for this opportunity to submit comments about the abuse of older Oregonians.

Four elements of my office are engaged in efforts to protect the vulnerable elderly against exploitation and abuse. Before I describe these efforts, and before offering a few suggestions for our federal partners, I would like to note two trends that will inevitably require us to redouble our efforts. The first is the Internet. The second is the aging of Oregon's population.

The Internet

The Internet's explosive growth will touch older Oregonians just as profoundly as it will affect the rest of the population. The emergence of the Internet is engulfing our communities with huge potential for good and for ill. It took 38 years for the telephone to reach a million users. It took half that time for the television to reach the same number. It took less than five years for the Internet to reach the same proportions. Today, an estimated 200 million people regularly use the Internet worldwide – 80 million of them

in the United States. A staggering 7.3 billion commercial emails are exchanged daily.

The establishment of web sites for and about seniors suggests that older Americans are tapping the web's potential – and being exposed to its risks. AARP.org, for example, contains a step-by-step guide for internet usage as well as many pages of useful consumer protection tips for safe surfing. Some of the services readily available on the Internet include items likely to be particularly interesting to retired citizens. For example, sites selling travel have proliferated, and state regulators are increasingly challenged by online sales of prescription drugs.

Caution is well advised on the information highway. The Internet's explosive growth is reflected in the consumer complaints received by the Department of Justice. We recorded only one complaint about an Internet retailer in 1997. In 1999, we recorded 286 Internet related complaints. In 1999 Internet-related complaints reached number nine on the list of most frequently reported complaints. Work-at-home schemes, get-rich-quick "opportunities," and pyramid scams are common on the Internet. Just as nearly every business is developing an online presence, so has nearly every scam developed an online version.

Oregon's Aging Population

The second trend is the aging of our population. Today, the Census Bureau estimates that 13.86% of Oregonians are over 65 years of age. By 2015, 18.56% of us will be over the age of 65, and by 2025, 24.23% will have reached the age of 65.

Many of us will enjoy loving families, good health, and years of independent living after retirement. But some older Oregonians will become frail and vulnerable to abuse. For these neighbors and friends, even a single act of abuse can be catastrophic.

Services of the Department of Justice

Against this backdrop, I will briefly mention four areas in which my office provides services directly to Oregon's older population.

First, the Medicaid Fraud Unit in Oregon is consistently rated among the most efficient of its kind in the country. Under the leadership of Attorney In Charge Ellyn Sternfield, this unit has magnified its impact by providing training statewide to police officers and prosecutors. A class designed and taught by the unit's attorneys has become a permanent part of the Oregon Police Academy's basic police officer training curriculum. While I am proud of the achievements of the men and women of the unit, our success has had the effect of increasing the number of cases of abuse

reported to state and local law enforcement. As a result, we are now aware that there are many more cases than we have the resources to prosecute.

Second, the Financial Fraud/Consumer Protection Section conducts civil prosecutions under the state's elder abuse and consumer protection laws. Owing to the sustained aggressive application of state laws by the Section, crooked telemarketing is today a rarity in Oregon. The Section also enforces our new "Oregon No Call" program which allows consumers more effectively to protect themselves against unwanted telephone solicitations.

Third, the Attorney General's Task Force on Elder Abuse continues to serve as a central coordination point for the diverse institutions serving older Oregonians. I am indebted to my predecessor, Ted Kulongoski, for establishing the Task Force, and to the Senior and Disabled Services Division for being a supportive partner in the work of the Task Force.

Finally, my office funds a variety of services for victims with money allocated to Oregon under the federal Victims of Crime Act. Two of the grants I'm proud to support address the needs of senior victims of violent acts. The *Ombudsman for Victims of Elder Abuse*, part of the Elders In Action program in Multnomah County, recruits volunteers to provide individual support and assistance to older victims of crime. *Cascade West Senior Services* serves battered women over the age of 60 with safety

planning, temporary restraining orders, and other information and referral services.

The Federal Government's Role

The borderless quality of the Internet, and the need to coordinate law enforcement responses across state and even international boundaries, cry out for federal assistance. At the same time, federal action must be very carefully crafted to avoid undermining creative state efforts.

For example, I applaud Attorney General Reno's ten-point plan for dealing with cybercrime. I hope that you will do all that you can to support the continuing efforts of the U.S. Department of Justice and the Federal Bureau of Investigation to work with state and local law enforcement officials to address the challenge of the Internet.

Continued funding for the Victims Of Crime Act is, of course, also important. During FY 2000 Oregon will receive \$4.6 million compared to \$3.0 million in the previous year. These funds are badly needed for victims of all ages.

I understand that Mr. Auerbach of the state's Senior and Disabled Services Division may suggest to you the creation of a federally funded model program to encourage state efforts to target resources on the problem of elder abuse. I support this concept.

I will conclude on a note of caution. Consumers – including older Oregonians – should be entitled to rely upon federal laws that establish minimum expectations of fair play in the new Internet marketplace. But the federal standard should merely be a floor. New federal laws aimed at elder abuse or dealing with the Internet should not preempt more protective state standards.

Thank you again for the opportunity to speak to you today.

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The CHAIRMAN. Thank you very much, Pete, and we will have some questions in a moment.

Ms. Millsap, welcome.

STATEMENT OF NOREEN MILLSAP

Ms. MILLSAP. Good morning, Senator Wyden. Thank you for asking me to testify today.

I have been asked today to focus on the TRIAD programs, of which we have five in Linn County.

TRIAD consists of a three-way effort among the sheriff, chief of police and AARP and retired leadership in the area. We agree to work together to reduce the criminal victimization of older citizens and to enhance the delivery of law enforcement services to this population. TRIAD provides an opportunity for exchange of information between law enforcement and senior citizens. It focuses on reducing unwarranted fears of crime and improving the quality of life for our seniors. A TRIAD is tailored to meet the needs of each town, city or county, and is governed by a senior advisory council which we refer to as SALT.

TRIADs are necessary, as you mentioned earlier, because our senior population is so rapidly increasing. TRIADs were started in 1988 when the American Association of Retired Persons, the International Association of Chiefs of Police, and the National Sheriffs Association signed a cooperative agreement to work together to reduce criminal victimization and unwarranted fear of crime affecting older people.

The three national organizations agreed that police chiefs, sheriffs, older leaders, and those who work with seniors working together could devise better ways to reduce crime against the elderly and enhance law enforcement services to them. This, they believe, is true community policing and provides better services to a population which appreciates, respects, and supports law enforcement.

TRIADs are carried out by the senior council, often called SALT, which is the key component of the success of a TRIAD. In each community the SALT Council acts as an advisory group and provides a forum for the exchange of information between seniors and law enforcement.

Council members are selected and invited by the chiefs, by the sheriff and someone from the Agency on Aging, AARP, RSVP or a ministerial association.

Council members can be and are a valuable source of input. They can assist in determining concerns of the community's elderly persons, assess the availability of existing services and programs for the elderly, and recommend additional strategies. SALT Council members also take part in the crime prevention and victim assistance portions of the TRIAD program, and to help identify potential volunteers to carry out TRIAD activities.

What can TRIAD do? TRIAD is a way to involve law enforcement and older Americans. The focus is determined by assessing the needs of particular communities. Areas with more serious crime problems may focus on crime prevention and victim assistance. Places where older persons are not often targets for crime may decide to concentrate on reassurance programs, training for law enforcement and volunteers within the law enforcement agencies.

The SALT Advisory Council plans activities and programs which involve and benefit both law enforcement and seniors. Some of our TRIAD sponsors are listed in my handouts.

In Linn County our five TRIADs either have or soon will be involved in nearly all of the activities and programs listed in the TRIAD executive summary handout. Early in our program volunteers from our SALT groups were actively recruited to assist in law enforcement agencies in such activities as clerical assistant, receptionist, computer data entry, traffic radar operators at traffic areas where we have problems, court watch and personnel providing direction and information to courthouse visitors. We have implemented senior call-in programs, refrigerator cards with emergency medical information, home security assessment, and disabled parking patrols who can and do cite able-bodied persons parking in disabled parking, just to name a few.

We provide training in frauds and scams and emergency disaster preparedness, how and when to report real and suspected crime, victims assistance information, safe and affordable housing, health care, and how to detect senior abuse, both physical and financial.

It has been my observation that our seniors are far more knowledgeable and supportive of law enforcement in Linn County than ever before. They appear to have a renewed sense of ownership in their community and about themselves. And when asked, they are more than willing to do whatever they can to help in any way they can. They do not want to be shut out and shut away. They have supported this community and deserve to live out their lives in peace and harmony and not in fear and want.

Crime and abuse against seniors everywhere is woefully underreported for a variety of reasons: fear, shame, pride, lack of knowledge or resources. I believe education is the key and needs to keep up with technology. Our seniors are faced with ever increasing fraud and scams brought on by this technology. Most agencies do not have the funding or the personnel to keep up with it, and we need your help. Education, information, and public service announcements are prevention tools that are vitally important not just to our seniors, but to every one of us entrusted to assist and respond. If we are to have any success in the prevention of crimes of fraud and abuse directed at our senior population, we must all work together.

Thank you very much.

[The prepared statement of Ms. Millsap follows:]



LINN COUNTY SHERIFF'S OFFICE

David K. Burright, Sheriff
 P.O. Box 100
 Albany, Oregon 97321

Thank you for asking me to testify before the Senate Special Committee on Aging. As a Community Services Specialist with the Linn County Sheriff's Office, a large part of my daily activities involve speaking to, and listening to, seniors in our communities as I attend various functions and meeting's relating to community policing.

Today I have been asked to focus on TRIAD programs. What is it? How does it work and what effect has the program had in Linn County.

A TRIAD consists of a three-way effort among - a sheriff, the police chief or chiefs in the county, and AARP or older / retired leadership in the area. We agree to work together to reduce the criminal victimization of older citizens and to enhance the delivery of law enforcement services to this population. TRIAD provides the opportunity for the exchange of information between law enforcement and senior citizens. It focuses on reducing unwarranted fears of crime and improving the quality of life for seniors. A TRIAD is tailored to meet the needs of each town / city / county and is governed by a senior advisory council which we refer to as S.A.L.T., Seniors and Law Enforcement Together.

TRIAD's are necessary because older Americans comprise the most rapidly growing segment of the population. One in every eight Americans is already age 65 or older (32.3 million in 1992). Increased life expectancy is leading to new issues and problems for the criminal justice system as most communities experience a dramatic increase in the number of older persons. Calls for service, crimes, victims- all are changing.

TRIAD got started in 1988 when the American Association of Retired Persons, the International Association of Chiefs of Police and the National Sheriff's Association signed a cooperative agreement to work together to reduce both criminal victimization and unwarranted fear of crime affecting older persons.

MEMBER



Civil
 Division
 (541) 967-3907
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Corrections
 Division
 (541) 967-3901
 Fax: (541) 967-8250

Criminal
 Division
 (541) 967-3911

Records
 Fax: (541) 967-8169

Parole and Probation
 Division
 (541) 924-1147
 Fax: (541) 924-1333

The three national organizations agreed that police chiefs, sheriffs, older leaders, and those who work with seniors, working together, could devise better ways to reduce crimes against the elderly and enhance law enforcement services to them. This, they believe, is true community policing, providing better service to a population which appreciates, respects, and supports law enforcement.

TRIAD activities are carried out by a senior council, often called S.A.L.T. which is the key component for the success of a TRIAD. In each community the S.A.L.T. Council acts as an advisory group and provides a forum for the exchange of information between seniors and law enforcement.

Council members are selected and invited by the chief(s) of police, the sheriff, and someone from the Agency on Aging, AARP, RSVP, or a ministerial association.

Council members can be a valuable source of input. They can assist in determining the concerns of the community's elderly persons, assess the availability of existing services and programs for the elderly, and recommend additional strategies. S.A.L.T. Council members may also take part in the crime prevention and victim assistance portions of the TRIAD program, and help to identify potential volunteers to carry out TRIAD activities.

What can TRIAD do? TRIAD is a way to involve law enforcement and older Americans. The focus is determined by assessing the needs of the particular community. Areas with more serious crime problems may focus on crime prevention and victim assistance. Places where older persons are not often targets for crime may decide to concentrate on reassurance programs, training for law enforcement, and involving volunteers within the law enforcement agencies.

The S.A.L.T. advisory council plans activities and programs which will involve and benefit both law enforcement and seniors. Some of the programs our TRIAD sponsor are listed in the handout.

In Linn County our five TRIAD's either have or soon will be involved in nearly all of the activities and programs listed in the TRIAD executive summary handout. Early in our program volunteers from our S.A.L.T. groups were actively recruited to assist law enforcement agencies in such activities as, clerical assistants, receptionists, computer data entry, traffic radar operator's at traffic speed zones, court watch and personnel providing directions and information to courthouse visitors. We have implemented senior call-in programs, refrigerator cards with emergency medical information, home security assessment and disabled parking patrols who can and do cite able bodied persons parking in disabled parking just of name a few.

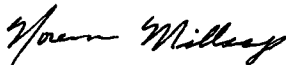
We provide training in frauds and scams, emergency disaster preparedness, how and when to report real or suspected crimes, victims assistance information, safe and affordable housing, health care and how to detect senior abuse both physical and financial.

It has been my observation our seniors are far more knowledgeable and supportive of law enforcement in Linn County then ever before. They appear to have a renewed sense of ownership in their communities and about themselves. When asked, they are willing to help. They do not, want to be shut out and shut away. They have supported this country and deserve to live out their lives in peace and harmony not in fear and want.

Crime and abuse against seniors everywhere is woefully under reported for a variety of reasons. Fear, shame, pride, lack of knowledge or resources. I believe educational is the key and needs to keep up with technology. Our senior are faced with ever increasing fraud and scams brought on by technology. Most agencies do not have the funding or personnel to keep up with all of it. We need your help. Education, information and public service announcements are prevention tools that are vitally important not just for our seniors, but for everyone of us intrusted to assist or respond. If we are to have any success in the prevention of crimes of fraud and abuse directed at our senior populations we must all work together.

I have included a number of handouts for the panel. Hopefully these provide useful information for you. Thank you again for inviting me today.

Respectfully submitted,

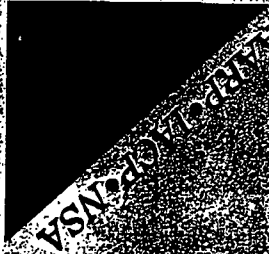
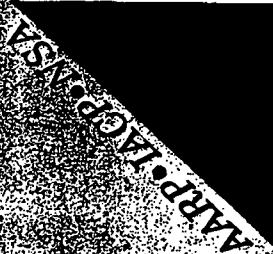


Noreen Millsap,
Community Services Specialist
Linn County Sheriff's Office

**TRIAD IN BRIEF
EXECUTIVE SUMMARY**



TRIAD



**Law Enforcement
and
Seniors
Working Together**

Triad Information

Triads consist of a three-way effort among sheriff departments, the police department and RSVP and AARP in Linn and Benton counties who have agreed to work together to reduce the criminal victimization of older citizens and enhance the delivery of law enforcement services to this population. Triads provide the opportunity for the exchange of information between law enforcement and senior citizens. They focus on reducing unwarranted fear of crime and improving the quality of life for seniors. Triads are tailored to meet the needs of each town, city, county and are governed by a senior advisory council (S.A.L.T.) in each community. Triads were set up in Albany, Lebanon, Sweet Home, Scio and Corvallis in 1994, the first year of the project. Mill City, Harrisburg and Brownsville were soon added to the list of participating communities.

Why are Triads Necessary?

We all know that older Americans comprise the most rapidly growing segment of the population. One in every eight Americans is already age 65 or older (32.3 million in 1992). Increased life expectancy is leading to new issues and problems for the criminal justice system as most communities experience a dramatic increase in the number of older persons. Calls for service, crimes, victims all are changing.

How Did Triad Get Started?

The American Association of Retired Persons (AARP), the International Association of Chiefs of Police (IACP), and the National Sheriffs' Association (NSA) signed a cooperative agreement in 1988 to work together to reduce both criminal victimization and unwarranted fear of crime affecting older persons.

The three national organizations agreed that police chiefs, sheriffs, older leaders, and those who work with seniors, working together, could devise better ways to reduce crimes against the elderly and enhance law enforcement services to older citizens. This, they believe, is true community policing, providing better service to a population which appreciates, respects, and supports law enforcement.

Who Will Carry Out Triad Activities?

The senior advisory council, often called S.A.L.T. (Seniors and Law Enforcement Together) is the key component for the success of a Triad. In each community the S.A.L.T. Council will act as an advocacy advisory group and provide a forum for the exchange of information between seniors and law enforcement.

In each community Council members are selected and invited by the chief of police, the sheriff, a representative from RSVP and AARP.

Council members are a valuable source of input. They assist in determining the concerns of the community's elderly persons, assess the availability of existing services and programs for the elderly, and recommend additional strategies. S.A.L.T. Council members may also take part in the crime prevention and victims' assistance portions of the Triad program, and help to identify potential volunteers to carry out Triad activities.

What Can Triad Do?

Triad in Linn and Benton counties has been an effective way to involve law enforcement and older Americans in the fight against crime. The focus is determined by both, assessing the needs of each community. Areas with more serious crime problems may focus on crime prevention and victim assistance. Places where older persons are not often targets for crime may decide to concentrate on reassurance programs, training for law enforcement, and involving volunteers within the law enforcement agencies.

Our S.A.L.T. advisory councils plan and assist in carrying out activities and programs which will involve and benefit both law enforcement and seniors. The following is a partial list of programs to be developed or are under development.

- * Lock Inspection Programs
- * Adopt-a-senior visits for shut-ins
- * Buddy system for shut-ins
- * Telephone call-in programs by and for seniors
- * Automated call-up systems for shut-ins
- * Radar Readerboard Speeder Videotaping Programs
- * Fingerprint Card Programs
- * Community Drug Education Programs
- * Handicapped Parking Patrols
- * Crime prevention programs for older persons
- * Information on how to avoid criminal victimization
- * Expanded involvement in Neighborhood Watch
- * Home security information and inspections
- * Personal safety tips

- Knowledge of current frauds and scams
- Training in coping with telephone solicitations and door-to-door salesmen
- Elder abuse prevention, recognition and reporting information
- Training for deputies and officers in communication with and assisting older persons
- Reassurance programs for older citizens
- Emergency preparedness plans by and for seniors
- Senior walks at parks or malls
- Senior safe shopping trips for groceries
- Victim assistance by and for seniors
- Court watch activities
- Refrigerator cards with emergency medical information
- Older persons volunteering within law enforcement agencies

Activities which the S.A.L.T. Councils agree will be beneficial to citizens in that area will be determined by surveys of local citizens and at public meetings.

Triad Plan of Action

- I. Police and Sheriffs departments, RSVP and AARP will meet to discuss:
 - A. Crimes against seniors
 - B. Possible areas of Triad involvement
 - C. Composition of a senior council (S.A.L.T. Council)
 - D. Selection of S.A.L.T. chairman
- II. S.A.L.T. group is chosen
 - A. Topics for discussion for S.A.L.T. Council:
 1. Demographics of aging
 2. Countywide senior statistics
 - a. Numbers of older persons
 - b. Crimes against seniors
 - c. Problems faced by Seniors
 - d. Fears of older persons
 3. Programs currently available
 4. Possible unmet needs
 - B. Subcommittees assigned, such as:
 1. Survey Fears, concerns, needs, interest of older citizens determined and Triad volunteers indicated
 2. Crime Prevention
 3. Volunteers
 4. Speakers' publicity
 5. Law enforcement training
- III. Crime prevention education launched
 - A. Senior events such as sponsored breakfast or lunch, senior fair
 - B. Programs for and by seniors at
 1. Senior housing
 2. Neighborhood Watch groups
 3. Senior centers
 4. Churches
 5. Mall walks
 - C. Topics
 1. Update on current crimes affection older persons
 2. Combat unwarranted fear of crime with facts
 3. Plan programs on fraud, scams, home security, marking of valuable property, etc.
- IV. Victim assistance program, initiated or expanded
 - A. Volunteers to work with senior victims
 - B. Tactics to increase victim reporting

- V. Training for law enforcement officers
 - A. Concerns of elderly citizens
 - B. Effective communicating with older persons
 - C. Possibility of older persons conducting parts of training
- VI. Expansion
 - A. Evaluating activities and success periodically
 - B. Volunteer responsibilities increase

S.A.L.T. Council Mission Statement

The Mission of Seniors and Law Enforcement Together (S.A.L.T.) Is to

Provide a collaborative partnership and open communication among Police, Sheriff, AARP and RSVP

Assist in identifying community priorities for allocation of law enforcement resources for issues of concern to seniors

Assist in educating the public and peers about crime prevention and law enforcement

Assist in identifying volunteer opportunities for older citizens with law enforcement agencies

Bring forth and discuss issues of concern for senior citizens in Linn County Communities

Advocacy for the senior community on identified issues

Provide information to law enforcement about the senior community

**ALBANY
Triad S.A.L.T. Council Bylaws**

ARTICLE I NAME

The name of this organization shall be the Senior Advisory Council (S.A.L.T.) Of the Albany Triad.

ARTICLE II PURPOSE

The purpose of the S.A.L.T. Council shall be to further goals and objectives of the Triad, a joint venture between the Linn County Sheriff's Office, the Albany Police Department and the Retired Senior Volunteer Program to reduce the criminal victimization of older persons.

ARTICLE III. MEMBERSHIP

- A. The S.A.L.T. Council shall consist of up to fifteen but not fewer than six members.
- B. Membership shall be ex-officio and at-large
 - 1. Ex-officio members shall be the designated representatives of each of the Triad organizations:
 - a. Retired Senior Volunteer Program
 - b. Linn County Sheriff's Office
 - c. Albany Police Department
- C. Selection of S.A.L.T. Council members-at-large
Shall be made by a membership committee consisting of the elected officers and two members selected at the October meeting. Recommendations for membership may be made to the committee in writing.
- D. The regular terms of office for members-at-large
Shall be three years. Membership shall be staggered so that one-third of the members complete their terms each year. Term of membership shall begin January 1 and end December 31. Members unable to attend meetings regularly shall be automatically resigned and the vacancy filled by the membership committee.

ARTICLE IV. OFFICERS AND THEIR ELECTION

- A. The elected officers of the S.A.L.T. Council shall be the Chairman, Vice-Chairman, and Secretary/Treasurer.
- B. A three-member nominating committee shall be elected at the July meeting and shall present a slate of candidates for office at the October meeting. The committee shall elect its own chairman.
- C. The officers shall be elected from within the Council for a one-year term. The election shall be held at the October meeting with those elected assuming office January 1. Officers may be re-elected to the same office for one succeeding term.

ARTICLE V. DUTIES OF OFFICERS AND MEMBERS

- A. Duties of officers:
 - 1. The Chairman shall preside at all meetings of the Council, shall appoint committee chairman as needed, and shall serve as an ex-officio member of all committees with the exception of the nominating committee.
 - 2. The vice-Chairman shall preside in the absence of the Chairman, and shall assume such other duties as may be requested.
 - 3. The Secretary/Treasurer shall maintain a membership list, ensure that minutes are kept of each meeting, send timely notification of all meetings to each member, and keep accurate records of any moneys under the jurisdiction of this Council.
- A. Duties of members:
 - 1. Each member shall be familiar with the purpose of the S.A.L.T. Council, shall attend all regular and special meetings of the Council, and shall serve on at least one standing committee.

ARTICLE VI STEERING COMMITTEE

The Steering Committee shall be comprised of the elected officers, the chairman of the standing committees, and the immediate past chairman of the Council. The Steering Committee shall have the authority to conduct the business of the Council between meetings and to fill by appointment any vacancy in office, pending the approval of the membership.

ARTICLE VII. COMMITTEES

- A. Standing committees of the S.A.L.T. Council may be:
 - 1. Advisory
 - 2. Crime Prevention
 - 3. Legislation
 - 4. Resource Coordination
 - 5. Training
 - 6. Victim Assistance
 - 7. Volunteers
 - 8. Membership
 - 9. Nomination
- B. Special committees may be appointed by the Council Chairman as needed
- C. Committees shall consist of the committee chairman, at least two Council members, and others as appointed by the committee chairman.

ARTICLE VIII. MEETINGS

- A. The S.A.L.T. Council shall meet the second Tuesday of the month unless otherwise ordered by the Chairman with the approval of the Steering Committee.
- B. Special Meetings may be called at the request of the Council Chairman.
- C. A quorum shall consist of one-third of the current membership. A simple majority of the voting members present shall be the voting rule.

**TRIAD COOPERATIVE AGREEMENT
OF LINN COUNTY OREGON**

**American Association of Retired Persons
Linn County Sheriff's Office
Albany, Lebanon and Sweet Home Police Departments
Retired Senior Volunteer Program**

Preamble

Nation wide, crime and the fear of crime impact severely on older Americans. Recognizing the challenging situation presented by an increasing number of older persons in the Communities of Linn County, we desire to identify strategies and offer solutions to deal more effectively with many of the problems faced by older citizens.

Because of the aging of the population and the increasing demands placed on law enforcement agencies to meet the needs of older citizens, it is important that law enforcement agencies devote special attention to the needs of older citizens.

Statement of Agreement

In light of the above, the American Association of Retired Persons, The retired Senior Volunteer Program, The Albany, Lebanon and Sweet Home Police Chiefs and the Linn County Sheriff are committed to effecting change. These groups agree that our older population has special needs with respect to victimization and fear of crime, perceived and actual loss, and the sense of being alone and unprotected. We agree that these needs can and should be met through cooperative efforts by law enforcement agencies and the city

and the county's organizations of older citizens, working together at all levels.

We hereby commit to work together to enhance the quality of life of older persons. Our purpose is to heighten awareness among law enforcement practitioners of older persons' need for dignity and security and to focus our efforts on reducing criminal victimization through cooperative strategies, planning and programming. This initiative is designed to build partnerships to mobilize community resources to continually ascertain the needs and concerns of older citizens and to provide mechanisms for meeting those identified needs.

The sharing of resources is the first step in achieving an effective means of identifying available programs. The process will involve law enforcement practitioners as well as citizens of all ages in the development, implementation and evaluation of strategies.

Together, we will strive for a renewed sense of responsibility for the security and well-being of older citizens through public awareness training and provision of criminal justice services.

Therefore, by agreement, the Triad will initiate the appropriate actions to achieve these goals.

Accepted:

S.A.L.T. COUNCIL

Steering Committee

A Steering Committee composed of representatives from LCSO, APD, LPD, SHPD, AARP, RSVP and other interested senior citizens will meet on a regular basis to discuss law enforcement and crime prevention concerns for older citizens. This group will organize programs and presentations for larger groups to address those concerns. The larger group meetings will be considered the S.A.L.T. Council and will be an ad hoc organization whose activities are directed by the steering committee. Membership on the steering committee will be members of the organizations and agencies signing the TRIAD agreement who have the desire and ability to work on the identified issues. Volunteers and other participants would be recruited from participants in the S.A.L.T. Council programs. Sub-Committees to address specific concerns would be appointed and at least one member of the Steering Committee will serve on each sub-committee.

The Steering Committee will have a Chair and Vice Chair and will Be a small group, no more than 10 members. It will be responsible for setting the agendas for the large group meetings and will help shape delivery of law enforcement services in regarded to senior citizens in Albany, Lebanon, Sweet Home, other participating communities such as, Scio, Harrisburg, Mill City and Linn County. No more than 50% of the steering committee will be agency representatives.



Sheriff Art Martinak



Chairman Richard Gohl



Acting Chief Robert Burford

**SENIORS AND LAW ENFORCEMENT TOGETHER
(S.A.L.T.)
COMMUNITY ACTION SURVEY**

We need your help to assist us in taking positive steps to improve our community. Please answer each question by placing a check in the column that best describes your views. To what extent do each of the following effect your life?

	MAJOR CONCERN	MINOR CONCERN	VERY LITTLE CONCERN
1. Fear of going out after dark?	_____	_____	_____
2. Fear of scam artists?	_____	_____	_____
3. Vandalism in the neighborhood?	_____	_____	_____
4. Lack of public transportation?	_____	_____	_____
5. Sense of personal isolation?	_____	_____	_____
6. Fear of robbery?	_____	_____	_____
7. Fear of residential burglary?	_____	_____	_____
8. Vendors knocking at the door?	_____	_____	_____
9. Traffic problems in your neighborhood?	_____	_____	_____
10. Neglect by family or friends?	_____	_____	_____
11. Fear of personal abuse?	_____	_____	_____

(OVER)

Below are a few suggested improvements in the Sweet Home area. Would these changes improve your life?

	MAJOR CONCERN	MINOR CONCERN	VERY LITTLE CONCERN
1. Street lighting improvements?	_____	_____	_____
2. Expanded neighborhood watch?	_____	_____	_____
3. Public transportation?	_____	_____	_____
4. Home security surveys?	_____	_____	_____
5. Daily reassurance phone calls?	_____	_____	_____

ADDITIONAL COMMENTS OR CONCERNS:

Are you _____ Male? _____ Female? Your age? 55-65 _____; 65-75 _____; Over 75 _____

OPTIONAL INFORMATION: Your name and address might be helpful, but it is not required.

NAME _____ **PHONE #** _____

ADDRESS _____

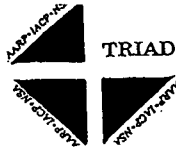
Would you like to be notified of future meeting dates? Yes _____ No _____

COMPLETED SURVEYS CAN BE RETURNED TO DROP BOXES AT THE FOLLOWING LOCATIONS:

Sweet Home Police Dept. 1140 12th Avenue Sweet Home, Or 97386	Sweet Home Senior Ctr. 1214 Long Street Sweet Home, Or 97386	Linn County Sheriff's Office P.O. Box 100 Albany, Or 97321
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Sheriff Dave Burright



Chairman Al Gassner



Chief Walt Richmond

The Lebanon SALT Program was started about a year-and-a-half ago. Many of you completed the community action survey, which helped to determine the concerns of the senior community. This survey will help to evaluate the program, so far, and to determine the future direction of SALT in our community.

1. Have you been attending the monthly SALT meetings? Yes No .
If you have not been attending, would you please tell us why you have not attended? _____
2. Have you found the field trips to the County jail and to Circuit Court informative and worthwhile?
Yes No .
3. Do you feel that the police are more accessible to you? Yes No . Are you more comfortable in your relationship with the police? Yes No .
4. In the original survey (when we started SALT), you targeted some of your concerns. Please indicate whether you feel more at ease with them at this time:
 - A. Fear of residential burglary? Yes No . Have you had a home security check? Yes No . Would you be interested in having a home security check? Yes No .
 - B. Fear of going out after dark? Yes No .
 - C. Fear of vandalism in the neighborhood? Yes No .
5. Some ideas for future projects are listed below. Please indicate your interest by checking the projects which you would like to see us pursue:
 - A. Fire protection for your home.
 - B. Reflective numbers for quick identification should you have to call an ambulance or fire truck.
 - C. Daily calls for those who live alone or are disabled.
 - D. Reader board monitoring of traffic speeders.
 - E. Distributing SEND HELP signs to seniors for use in their homes and cars.

5. (Continued)

F. Checking handicapped parking places.

G. What suggestions do you have for SALT programs and projects?

Please return the completed survey to:

SALT Survey
Lebanon Senior Center
585 Park Street
Lebanon OR 97355

or, bring it with you to the next SALT meeting.

**SENIORS AND LAW ENFORCEMENT TOGETHER
(S.A.L.T.)
COMMUNITY ACTION SURVEY FOR ALBANY CITIZENS 55 & OVER**

We need your assistance in taking positive steps to improve our community for seniors. Please answer each question by placing a check in the column that best describes your views. (Please complete this survey only once). To what extent do each of the following affect your life?

	Major Concern	Minor Concern	Very Little Concern
1. Traffic problems in your neighborhood	_____	_____	_____
If so, what is the concern?	_____		
2. Fraud or con artists	_____	_____	_____
What is your concern?	_____		
3. Vandalism in the neighborhood	_____	_____	_____
4. Identification theft (i.e. SS#, bank info, etc.)	_____	_____	_____
5. Robbery (i.e. purse snatching)	_____	_____	_____
6. Burglary (home invasion)	_____	_____	_____
7. Vehicle theft	_____	_____	_____
8. Having your vehicle broken into	_____	_____	_____
9. Door to door solicitation	_____	_____	_____
10. Fear of elder abuse	_____	_____	_____
11. Need for companionship	_____	_____	_____
12. Street lighting	_____	_____	_____
13. Neighborhood Watch	_____	_____	_____
14. Available services for seniors	_____	_____	_____
Which services would be of help to you?	_____		
15. Other?	_____		

1. Do you live alone? Yes No
2. Indicate in order of importance (1 being most important) the top 5 crime-related concerns in your area.

Burglary Solicitors/vendors Vandalism Assault

Vacant/abandoned house Purse snatching Animal Problems

Traffic concerns Rape Victimization Fraud/con artists

Abuse/neglect Neighborhood junk & trash Murder

Other: _____

Comments: _____

3. Would you be interested in any of the following crime prevention programs?

Neighborhood Watch Home security inspection

Personal safety skills Daily reassurance phone calls

Comments: _____

4. Would you be interested in participating in a volunteer program to assist law enforcement? Yes No Please specify areas of interest:

Seniors & Law Enforcement Together (SALT) Reassurance visits

Office work Victim assistance program Home security program

OPTIONAL INFORMATION, helpful but not required:

Name: _____ Phone #: _____

Address: _____

Sex: Male Female Age: 55-65 65-75 Over 75

Thank you for taking time to complete this survey. This survey will help your S.A.L.T. Council (Seniors and Law Enforcement Together) to help you.

Please return this survey to the Albany Police Department, the Linn County Sheriff's Office, the Albany Senior Center or either branch of the Albany Public Library. You may also mail the survey to the Albany Police Department, Attn: Lynn Hinrichs P.O. Box 490 Albany, OR 97321. Please return the completed surveys by March 31st. Thank you.

Scams in Linn County

1. Roofing scams (the will solicit you and say they will fix roof and either will get a down payment and then leave and do nothing or get money and start project without finishing. They will always ask for money up front for supplies or of they do the project it will be over priced and with poor workmanship.
2. Paving scams (the will solicit you and say they will treat the pavement and either will get a down payment and then leave and do nothing or get money and start project without finishing. They will always ask for money up front for supplies or of they do the project it will be over priced and with poor workmanship.
3. Construction scams (the will solicit you and say they will fix whatever and either will get a down payment and then leave and do nothing or get money and start project without finishing. They will always ask for money up front for supplies or of they do the project it will be over priced and with poor workmanship.
4. Mobile home or siding scam (the will solicitate you and say they will wash the house or siding and will get a down payment and then leave and do nothing or get money and start project without finishing. They will always ask for money up front for supplies or of they do the project it will be over priced and with poor workmanship.
5. Add scams
Pyramids, Hi-tech, Telemarketing, prize, Medicaid, and Identity theft.
See hand outs.

\$\$\$ NEED CASH QUICKLY? \$\$\$

THIS PLAN IS THE FAST ONE... IT DELIVERS WHILE YOU'RE WAITING FOR OTHER PLANS TO WORK!
No kidding...you should have \$7,000 in 2 weeks, investing only about \$12.00 to \$14.00 total and 1 HOUR OF WORK.
(IT'S SO EASY... YOU DON'T EVEN NEED TO BUY MAILING LISTS!)

PLEASE READ TO FIND OUT HOW!

If you want to make a few thousand really quickly, then please take a moment to read and understand the **MONITORED SLIM** program I am sharing with you. No, it is **NOT** what you think **YOU WILL NOT** have to send \$5.00 to five people to buy a report, a recipe or any other product, nor will you have to invest more money later to get things going.

THIS IS THE FASTEST, EASIEST PROGRAM you will ever do. Complete it in **ONE HOUR** and you will never forget the day you first received it in the mail. If you are working other programs, by all means stay with them. The more the merrier! But, **PLEASE READ ON!** This program is **100% LEGAL**. Refer to IRS Pub. 448 and Title 18, Sec. 1302 & 1342 of the US Postal and Lottery Laws.

First of all, there are only **THREE LEVELS**, not four or six like many other programs. This three-level program is more realistic and much, much faster. Because it is so easy, the response rate for this program is **VERY HIGH** and **VERY FAST**. And you receive your reward in **14 DAYS!** That's only **TWO WEEKS**—not three months. **JUST IN TIME FOR NEXT MONTH'S BILLS!**

Secondly, this program is **TRULY MONITORED** to get rid of cheaters who only want to get something for nothing. This assures **CONTINUITY** of this program at a very minimal cost!

A TRUE STORY... Joan Monroe tells me how she ran this loan summation four times last year. The first time she received \$3,000 in cash in two weeks and \$7,000 in cash the next three times. When this letter is continued as it should be, **EVERYONE PROFITS!**

HERE ARE THE SIMPLE DETAILS. You only mail out 20 copies (not 200 or more as in other programs). You should send them to people who send you their programs, because they are already believers—and this program is better and faster. Even if you are already in a program, continue, stay with it, but **DO YOURSELF A FAVOR** and do this one as well, right now! It is simple and takes a very small investment, not hundreds of dollars. And it will pay you before the letters from other programs even begin to trickle in!

JUST LOAN ONE PERSON \$5.00 plus **MONITORING FEE** of ONLY \$2.00. That's it. That's all! Follow the simple instructions, and in **TWO WEEKS** you should have at least \$7,000 because most people will respond due to the **LOW INVESTMENT, SPEED AND HIGH PROFIT POTENTIAL**. And we are now at **50% response rate!** Really! So let's all keep it going, and **HELP EACH OTHER** in these tough times. This is not guaranteed to work **ALL** the time. But hey, the possibility is great. So let's get the ball rolling!

Step 1. Fill in your name, address and phone number below.

Step 2. Copy the whole page and fold it around a **FIVE-DOLLAR** and **TWO (2) ONE-DOLLAR BILLS** (NO CHECK OR MONEY ORDER PLS.)

Step 3. Insert wrapped **7-DOLLAR BILLS** and a Long Self-addressed and Stamped Envelope (LSASE) in an envelope and mail to monitor.

Step 4. Monitor mails the **\$5.00 LOAN** to the #1 person on the list, and in return for your loan, instructs him or her to add your name to his or her exclusive mailing list. **ONLY THE #1 PERSON ON THE LIST GETS YOUR NAME AND THE \$5.00 LOAN.**

Step 5. Monitor mails you a Master Copy with your name and code number in the #3 position and the #1 person's address and phone number, if available. The #1 person's name is taken out and the #2 person moves to #1.

Step 6. You make 20 copies of the master copy to send out immediately to 20 prospects. Excellent sources of names are people who send you other programs, and the names listed on the letters that they send you. Do it right away. Don't mull it over. **ONE HOUR! THAT'S ALL IT TAKES TO PUT THIS EASY PLAN TO ACTION!**

THERE IS MORE TO DO. When your name reaches the first position in a few days, it will be your turn to collect your **LOANS**. The **LOANS** will be sent to you through the monitor by over 1,500 people like yourself who are willing to invest \$7.00 and one hour to receive \$7,000 in cash. Your entire investment will be about \$12.00 to \$14.00 including the **\$5.00 LOAN** you sent to name #1, the \$2.00 monitoring fee, the 21 copies, 21 envelopes and 21 stamps. That's all! There will be a total of \$7,000 in \$5.00 bills in your mailbox in two weeks. **CONSIDER THAT!**

CAN I DO IT AGAIN? OF COURSE...no mailing list to buy and wait for. **NO** more trips to the printer and copiers. And you can do it again and again, with your regular group of loaners. Why not? It **keeps working!** Each time you receive an offer in the mail, respond with this letter! Your name will climb to the number 1 position at **DEZZYING** geometric rates. I just spent two weeks in Manhattan at the Plaza seeing every show and attending every concert I wanted to—and haven't worked in three months.

Some people may want to purchase a mailing list of opportunity seekers and send out 200 or more names. That's fine. You can if you want. I'll leave that decision to you. The possibilities are great. We are enjoying a **50% response rate** on this letter. Think about that! **50%!** Not interested? C'mon! Isn't the prospect of an easy \$7,000 in **TWO WEEKS** worth a little experimentation, one hour of your time and about \$12.00 to \$14.00?

ACT FAST AND GET MONEY FAST! Fill out the form below right now, make a copy, wrap \$7.00 with it, insert it into an envelope with an **LSASE** and mail to **MONITOR** at: **ROYAL PRESTIGE VENTURES, 41-53 71 Street, Woodside, New York 11377.**

ROYAL PRESTIGE VENTURES 41-53 71 Street Woodside, New York 11377		1. Marion Brooks 635762388	DATE
		2. Gloria W. Shreheart 922403929	
		3. Flora Palmer 802217519	
YES! Here's my \$5.00 LOAN to Marion Brooks and \$2.00 for monitoring service. In return, please instruct him/her to add my name to his/her exclusive mailing list and RUSH me my Master Copy with my name and code at the #3 position. Thank you.			
Name	Tel. No.		Code (Leave Blank)
Address	City		State Zip Code

Lottery winner just a scam artist

A 63-year-old woman is bilked of \$5,600.

BY ANGELA POTTER
Statesman Journal

Someone says they've just won the lottery, and they're offering you part of the payoff if you'll do them a quick favor.

Don't buy it.

Salem police say it's the latest scam to defraud someone.

A 63-year-old woman was recently scammed out of \$5,600 outside the Wal-Mart parking lot on Lancaster

Drive NE.

The woman was approached by a Hispanic woman who spoke in broken English and claimed she had won the lottery and needed help claiming her prize.

A Hispanic man noticed the language barrier and came over to help translate.

The man got the phone number to the "Lottery office" and gave it to the victim to dial the number.

When she called, the man on the other end of the line explained a new procedure for claiming lottery winnings, which included fronting \$15,000 cash before

ARTISTS ARE GOOD. THEY PLAY ON SOMEONE'S WILLINGNESS TO HELP SOMEONE IN NEED."

LT. BILL KOHLMAYER
SALEM POLICE
DEPARTMENT

receiving the \$100,000 prize.

In truth, the lottery does not require a winner to front any money.

The Hispanic woman asked the victim if she would help raise the money. In return, she would be given \$15,000 of the payoff for her efforts. The three went to the bank and the woman withdrew \$5,600.

She gave it to the

SCAM / 8C

SCAM

CONTINUED FROM 1C

supposed lottery winner, who then slipped it in a purse. She then asked if they could stop by Rite Aid to get some medicine before going to the lottery office.

The victim, who went into the store, was given the purse and told to hold onto it for safekeeping.

When she came out with the medicine, the two suspects were gone. She looked into the purse only to find it empty.

"These con artists are good," said Lt. Bill Kohlmeyer of the Salem Police Department. "They play on someone's willingness to help someone in need."

This is the first report police have received on this particular

scam.

There are several steps a person should take when approached by others requesting money.

First, call a friend or family member immediately before proceeding.

This usually scares off con artists because most family members are likely to question the person's intentions, he said.

It's also a good idea to call the attorney general consumer protection hot line (378-4320) and check out the validity of the person's claim.

Chances are it's a scam, Kohlmeyer said.

"If it sounds too good to be true, it probably is," he said.

"There's a lot of different scams that go on. A lot of times, people lose their whole life's savings."

TELEMARKETING FRAUD



SCAM OF THE MONTH

June, 1999

Unknowing Customers Get 'Slammed'...Are You My Phone Company?

Phone rates appeared to be higher before the break-up of Ma Bell, but at least you knew who your long distance carrier was.

Today, fierce competition among long distance carriers such as AT&T, MCI, Sprint and a couple hundred smaller companies has led to beyond shady practices to attract new customers.

It has become so outrageous that some customers have been surprised when opening their monthly phone bills to find that they have been switched to another long distance carrier. This bizarre phenomenon is known as 'slamming'.

Slamming is against the law. Federal law prohibits a company from switching your long distance carrier without your consent, in written or oral form, so many companies have stooped to new, obscure methods to get you to sign up.

You should watch for the following:

- **The check in the mail.** If you get a check from a long distance telephone carrier, it may look as though no strings are attached. But, don't cash it unless you want to be switched to that company.

- **The fine print.** Some offers for magazine subscriptions or free samples now contain a fine-print statement obligating you to switch to a different phone company if you return the offer.

-The worthy-cause scam. Don't sign up for a raffle or donate to a charity in a mall or at a festival. These are often tied to long distance switch schemes. It works like this: A phone company sponsors the charity. The charity keeps the money you donate, but the company gets your name, phone number and an authorization to switch you.

If you're concerned about potential slamming, you can send your local phone company a letter, or ask them to send you a form, directing it not to change your long distance carrier unless it receives a letter from you.

If you do get slammed, pick up your phone. Call you local phone company immediately. Ask that the switching charge be dropped; the company should agree. Then call the long distance carrier you want to use and ask to be returned. Next, call the company that slammed you and insist that any charges be recalculated according to your original company's rates.

Finally, file a complaint with your state's public utilities agency and the Federal Communications Commission. A phone company can lose its government licenses for consistently fraudulent behavior.

If you have a story of a scam you have seen lately or one you think should be considered for the Scam of the Month, please write to Doug Shadel, AARP, 9750 3rd Avenue, Suite 400, Seattle, Washington 98115 or fax it to (206) 523-8138.

Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

Online Auctions: Going, Going, Gone

If you're looking for a hot collectible or simply a good deal, online auctions may appeal to you. But before you place a cyber-bid, consider how online auction houses work. Like a traditional "live" auction, the highest bidder "wins." That's where the similarity ends. Because an online auction house doesn't have the merchandise, the highest bidder deals directly with the seller to complete the sale.

If you're the highest bidder, the seller typically will contact you by e-mail to arrange for payment and delivery. Most sellers accept credit cards, or use a third-party escrow agent to collect your payment, the product you're buying, and process delivery of each. Be cautious, however, if the seller asks you to pay by certified check or money order.

Some online sellers have put items up for auction, taken the highest bidder's money, and never delivered the merchandise. What's more, consumers who paid by certified check or money order had little recourse when it came to getting their money back.

Follow these tips before you bid in an online auction:

- **Try to pay by credit card.** If you don't get the merchandise, you can challenge the charges with your credit card issuer.
- **Ask about using an escrow agent, or paying by COD.** Most escrow services charge a fee, so you may want to consider this option only for larger purchases.
- **Verify the seller's identity.** If you can't, consider this a red flag and avoid doing business with the seller. Some sellers may use a forged e-mail header, making it impossible to contact them if you need to.
- **Ask how you'll get follow up service, if you need it.** Many sellers don't have the expertise or facilities to provide service for the goods they sell. Is this important to you?
- **Avoid impulse bids and purchases.** Online auctions may be enticing, but are you really getting the best price?
- **Ask about return policies.** Returning merchandise to an online seller may be difficult.

For more information about fraud on the Internet, visit the Federal Trade Commission at www.ftc.gov.

April 1998

Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

Identity Crisis... What to Do If Your Identity is Stolen

"I don't remember charging those items. I've never even been in that store."

Maybe you never charged those items, but someone else did... someone who used your name and personal information to commit fraud. When an imposter co-opts your name, your Social Security number, your credit card number, or some other piece of your personal information for their use — in short, when someone appropriates your personal information without your knowledge — it's a crime, pure and simple.

The biggest problem? You may not know your identity's been stolen until you notice that something's amiss: you may get bills for a credit card account you never opened, your credit report may include debts you never knew you had, a billing cycle may pass without your receiving a statement, or you may see charges on your bills that you didn't sign for, didn't authorize, and don't know anything about.

First Things First

If someone has stolen your identity, the Federal Trade Commission recommends that you take three actions immediately.

First, contact the fraud departments of each of the three major credit bureaus. Tell them to flag your file with a fraud alert including a statement that creditors should call you for permission before they open any new accounts in your name.

	<u>Report fraud</u>	<u>Order credit report</u>	<u>Web site</u>
Equifax:	(800) 525-6285	(800) 685-1111	www.equifax.com
Experian:	(888) EXPERIAN (397-3742)	(888) EXPERIAN	www.experian.com
Trans Union:	(800) 680-7289	(800) 916-8800	www.tuc.com

It's a good idea to order a copy of your credit report from the three credit bureaus every year to check on their accuracy and whether they include only those debts and loans you've incurred. This could be very important if you're considering a major purchase, such as a house or a car. A credit bureau may charge you up to \$8 for a copy of your report.

The CHAIRMAN. Well, well said. I think TRIAD is an exciting concept.

Ms. MILLSAP. It is.

The CHAIRMAN. Brings together the right people in the right way. And we'll have some questions in a moment.

Ms. Nerenberg, welcome. I note that you have come from the beautiful city of San Francisco. Glad you are here.

STATEMENT OF LISA NERENBERG

Ms. NERENBERG. Good morning and thank you, Senator Wyden, for the opportunity to address the committee.

My name is Lisa Nerenberg and I have served for the last 16 years as Director of the San Francisco Consortium for Elder Abuse Prevention at the Goldman Institution on Aging.

The Goldman Institute is also a partner in the National Center on Elder Abuse and my remarks today draw from a report that I wrote last year for the center that summarizes the proceedings of a series of roundtable discussions that we held last year in 1998.

The roundtables brought together individuals with hands-on experience: representatives from state and local law enforcement agencies, the civil justice system, and victim advocates. Our purpose was to try to clarify the roles of these different entities, describe some of the challenges that they face, and proposed needed changes.

In the few minutes that I have today what I wanted to do is describe just a few of the issues that rose to the top. I have provided a more extensive summary as my written testimony and the full report is available on the national center's web site.

In talking about all kinds of financial abuse ranging from confidence schemes to sweetheart scams to the misuse of documents, the most frequent complaint that we heard concerned the sheer number and complexity of these cases. Offenders reoffend and many of the victims are repeatedly victimized. The pioneering professionals who are taking on these cases, and it really varies a lot across the country, are really being deluged.

Proving financial crimes, as you have heard, is extremely time-consuming and often requires knowledge about topics that aren't traditionally covered in law enforcement training programs: contract law, trust, real estate, guardianship, and mental capacity.

There is also a lack of jurisdiction. There's been a tendency to view abuse involving civil instruments like powers of attorney and trusts as civil matters, not recognizing that they may also be criminal. Even when it is clear that a crime has been committed, it may not be clear whether or not it falls under State or Federal jurisdiction. Depending on the facts of a given case, it may fall under the jurisdiction of local law enforcement, a Medicaid fraud and control unit, the FBI, the FTC, the Secret Service, the US Attorney's Office, and many others.

Proving financial abuse also requires an understanding of mental capacity. It often involves establishing what someone understood when they signed a contract, gave a gift, or got married. Some offenders gain control over competent victims through undue influence using techniques not unlike those used by cults. We still have

a lot to learn about mental capacity, undue influence, and how to evaluate these factors in relation to financial crime.

A variety of problems with restitution were also cited, ranging from the fact that many perpetrators are indigent to the failure of judges to order restitution, problems with enforcement and overly complicated processes we expect victims to follow. The restitution is so critical in creating incentives for victims to report and also disincentives for perpetrators.

A very common frustration that was voiced was the pervasive belief among professionals and the public that financial crime is less serious than violent crime. Those who work, though, with victims of financial crime really understand the devastation, physical decline, dependency, and despair.

Our groups came up with about 12 pages of recommendations, so again I would like to refer you to the full report, but I'll mention just a few.

All of the groups called for more information. We need studies to assess patterns and profiles that can aid both in prosecution and in designing preventive interventions. We need data on the costs of this kind of abuse that will justify the expenditure of resources. We need models to guide us in developing programs and services. We need to know what works. And we need clearinghouses to disseminate information about promising practices and model legislation.

You have heard about a number of good ideas, and they are—here today, and they really are surfacing in all parts of the country, but we need to know more about what works and we need mechanisms for communities to share their experiences.

We also need more services for victims: counselling, restitution advocacy, legal assistance, and financial crisis intervention to circumvent catastrophic events like evictions and homelessness that sometimes results from this kind of abuse.

We need centralized points of entry into the legal system staffed by experts so that when financial abuse is reported, it is referred to the most appropriate agency in a timely manner. And time is really of essence in these cases because as we're investigating, the money is often being dissipated.

Clearly the best remedy is prevention and early detection. Because the most vulnerable seniors are those with trouble managing their finances, we need daily money management programs, or for the severely impaired, more public guardians. Adult Protective Service units are the first responders in many cases, and these programs are also shamefully underfunded in many communities.

Other preventive approaches include better monitoring of and background checks on attendants, home care workers and financial managers. These individuals have access to the seniors' homes, often their financial records, and they're in positions of trust and intimacy. We need much better controls and tracking mechanisms.

But most of all we need clear leadership and a strong voice at the Federal level sending out a clear message that society isn't going to tolerate these predators who prey upon our most vulnerable citizens.

So I think this hearing today is a very important first step and I would like to congratulate the committee for taking on this com-

plex and critical issue and to offer my help in whatever way that I can.

[The prepared statement of Lisa Nerenberg follows]

FORGOTTEN VICTIMS OF FINANCIAL CRIME AND ABUSE:
FACING THE CHALLENGE¹
Lisa Nerenberg MSW, MPH²

ABSTRACT. This article summarizes the proceedings of four roundtable discussions, which were sponsored by the National Center on Elder Abuse, and held in conjunction with a conference on financial crime and abuse. The discussions focused on four components of the legal system: local law enforcement, federal investigative and regulatory agencies, the civil justice system, and victim witness assistance programs. Participants were asked to describe their role in preventing financial crime and the challenges they face in doing so.

KEY WORDS: Criminal Justice System, Civil Justice System, Victim Witness Assistance, Restitution, Investigative Agency, Elder Abuse, Undue Influence, Mental Capacity

Cases of elder financial abuse, which range from telemarketing scams to illegal transfers of property, pose myriad challenges to professionals. Many of these cases challenge society's basic understanding of such complex matters as cognitive functioning, mental capacity, and undue influence as workers attempt to interpret victims' ability to understand complex financial transactions and withstand increasingly sophisticated forms of persuasion. Further complicating matters is the fact that financial abuse exceeds the boundaries of any single discipline or jurisdiction. The lines between criminal conduct and "civil matters" are often unclear, which sometimes results in law enforcement personnel referring to the civil system cases involving the misuse of civil instruments (e.g. powers of attorney) even though the conduct may also be criminal. Because the roles and relationships between the two systems are not well understood, coordination between them is often poor. Even in cases that are clearly criminal, a lack of clarity may exist with respect to where jurisdiction lies as financial crimes may cross county, state, and federal boundaries. Depending on the nature of the offense, financial crimes may be handled by police, Medicaid fraud and control units, the Federal Bureau of Investigation, the Federal Trade Commission, the Secret Service, or others.

In addition to this lack of clarity with respect to the appropriate systems or jurisdictions for handling abuse cases, a variety of additional obstacles prevent many victims from getting the help they need and perpetrators from being brought to justice. Physical or cognitive disability prevents some victims from participating in the justice system. Particularly frail individuals are likely to decline, become incapacitated, or even die during the course of protracted proceedings; and it is not uncommon for cases to continue for many years, particularly when defendants must be extradited. Victims with diminished mental capacity who are unable to recall details of a crime or explain the impact it had on them may be poor witnesses. Although victim advocates could have a significant role in addressing these barriers to the legal system, many advocates lack

¹ This article will appear in the *Journal of Elder Abuse Abuse & Neglect*, Volume 12, Number 2, 2000 (Haworth Maltreatment & Trauma Press).

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familiarity with financial crime and abuse and their potential role has not yet been fully recognized or realized.

Finally, public and professional perceptions and attitudes about financial crime and abuse also impede efforts to prevent it. Many victims fail to perceive financial crimes as crimes. A study on telemarketing fraud conducted by AARP showed that although victims felt that what had been done to them was wrong, the majority did not understand it also was criminal. Some victims fail to report because they distrust the system, fear retaliation, or believe offenders might sue them while others lack confidence in the system's ability to help them. Many victims simply want to recover what they have lost and do not believe that reporting to the police will accomplish this.

To achieve a clearer understanding of the roles and interrelationships between all of the systems involved in stopping and preventing financial crime, the remedies and resources they offer, and the challenges that those working within them face, a series of roundtable discussions was conducted in San Francisco on October 29, 1998. The discussions were sponsored by the National Center on Elder Abuse (NCEA) and convened in conjunction with the *Forgotten Victims of Financial Crimes* conference. The conference, which drew an audience of well over two hundred professionals from a wide range of disciplines, was co-sponsored by the Northern California Office of the U.S. Attorney's Office, the San Francisco Consortium for Elder Abuse Prevention at the Goldman Institute on Aging, the San Francisco District Attorney's Office, and San Francisco SAFE.

Each roundtable discussion focused on one of four systems: the criminal justice system, the civil justice system, the victim witness assistance network, and federal investigative and regulatory agencies. Participants included local, state, and national experts. The sessions followed similar formats: Participants were asked to introduce themselves and the organizations they represented and briefly describe the challenges they face in handling financial crime and abuse cases. Following introductions and opening comments, the groups engaged in lively discussions about common areas of concern and promising approaches to addressing problems. The groups were also asked to offer recommendations for new services and public policy reform that would improve systemic responses to the problem. This article summarizes the issues and challenges defined by the participants. The content, therefore, reflects the views and opinions of the participants.

Challenges Faced by Local Law Enforcement in Stopping Elder Financial Crime

Members of the local law enforcement roundtable included police officers, sheriffs, prosecutors, and social service providers. Foremost among the challenges the group members cited was the critical lack of available training for all levels of law enforcement personnel in handling financial abuse cases. Proving financial crimes frequently requires familiarity with such diverse topics as contract law, real estate, guardianship, and mental capacity. Investigators and prosecutors may need to decipher civil contracts and financial documents, prove what victims did and did not understand (often at earlier points in time), and determine what defendants knew or reasonably should have known about victims' levels of understanding. Because these topics are not covered in traditional law enforcement training curricula or programs, few police officers within local precincts, even command staff, possess this expertise. Similarly, prosecutors are unlikely to have received training in these areas. Those officers and prosecutors with this type of expertise are likely to be so inundated with cases that they are forced to prioritize those that involve a large number

of victims and large losses. Without training, law enforcement personnel who come into contact with financial crimes are forced to pick up needed skills "on the run." Exacerbating the problem further is the fact that law enforcement agencies typically rotate staff through their various units. By the time fraud investigation personnel have acquired the expertise that is needed, they are likely to be transferred back to other divisions, or may be ready for retirement.

Lacking adequate training, law enforcement personnel may fail to recognize financial crimes or respond to them in a timely manner. In particular, crimes involving the misuse of civil instruments (e.g., the forging of wills or powers of attorney or inducing mentally incapacitated persons to transfer titles of their homes), are likely to be viewed as civil matters and referred to attorneys. Even when law enforcement personnel do get involved, they are apt to miss the "broader picture" or the direction in which cases are likely to proceed. For example, lacking knowledge about common patterns, investigators may be well into cases before it occurs to them to find out if victims are being overmedicated or under-medicated (homicide cases involving victims who are poisoned or deprived of nourishment for financial gain are becoming increasingly common). Unless these patterns are recognized, victims may be dead and cremated before the investigator makes the connection.

Further frustrating law enforcement personnel is the fact that financial crimes are often repetitive in nature. Victims are likely to be repeatedly targeted and re-victimized, while perpetrators are likely to re-offend many times. This recycling of cases, which creates a significant drain on already limited resources, has been attributed to characteristics of both victims and perpetrators.

In the case of impaired victims, many never realize that they are being victimized. As a result, protective mechanisms or supervision are not put into place and the abuse continues unchecked. The recycling of cases can also be attributed to the lack of systems in place for tracking suspects or convicted offenders. Offenders can (and do) relocate to avoid arrest and those who are caught and prosecuted often simply relocate and start operating again after they have completed their sentences. It has been frequently observed that many ex-convicts become paid caregivers for vulnerable individuals. This practice continues because most states still do not require criminal background checks and do not prohibit persons who have been convicted of certain crimes from working with the elderly. The relatively light sentences that are typically imposed on perpetrators also fail to deter perpetrators from re-offending.

Investigating financial crimes is extremely complex and labor intensive. Pertinent documents are frequently in the hands of offenders or they have been destroyed. When perpetrators and/or victims are members of immigrant groups and do not speak English, it can further complicate investigations. Proving cases may also involve proving that perpetrators had special relationships with their victims (e.g., relationships of trust); establishing the existence or nature of these relationships can be extremely difficult. In addition, many victims do not make good witnesses owing to the same attributes or conditions (e.g., dementias) that render them susceptible to this type of abuse in the first place.

Problems with jurisdiction further complicate matters. In many cases, victims reside in different jurisdictions from perpetrators and evidence may exist in still other jurisdictions. For example, bank records that are needed to prove a case may be stored in a different state from that in which the crime occurred, requiring law enforcement officers to work through another jurisdiction to obtain a search warrant. Even within a single law enforcement agency, it may not

be clear which unit is the most appropriate for handling financial crimes that occur in concert with other types of crime including assault, neglect, false imprisonment, or homicide.

Another common frustration voiced by members of the group is the likelihood that assets will be depleted or dissipated by the time cases are prosecuted. While investigations are in progress, suspects often continue to exercise legal control over victims' assets and influence and control over victims themselves. Many states have inadequate laws to freeze victims' assets or keep suspects away from their victims while investigations are in progress.

The fact that costly and complex criminal investigations could have been avoided is also a source of frustration to law enforcement personnel. Many financial crimes or abuse could have been prevented or circumvented if adequate "front end" protections had been in place. For example, perpetrators often commit crimes using documents such as powers of attorney. Despite the fact that these instruments can be used to take over someone's life savings, transfer the title of their home, or cash out their stocks or CDs, there is very little tracking or accountability for fiduciaries.

Investigating financial abuse cases are particularly time-consuming and may exceed the statutes of limitation typically applied to them. Many crimes are discovered long after they have been committed and securing needed evidence can be extremely time consuming. Banks are typically reluctant to release records to law enforcement for fear of breaching confidentiality or exposing themselves to lawsuits. The turn-around time for getting search warrants and serving financial institutions can be significant, particularly since banks' records are likely to be stored in other states. Cases involving highly technical issues of disclosure and fraudulent misrepresentation require extensive fact-finding and background work that may take months to complete.

Most police and prosecutors' offices lack adequate resources for handling these complex cases. Some police and prosecutors divide their time between elder abuse, domestic violence, general fraud and theft, and child abuse cases. In addition to insufficient in-house staff, prosecutors' offices often lack funds to hire expert witnesses, including experts in geropsychiatry (to evaluate mental capacity and undue influence), whose testimony is often critical. Some units lack resources to even pay for simple services like researching bank files or duplicating bank records. When a law enforcement agency cannot pay these costs, they may simply give up an investigation.

Members of the law enforcement roundtable attributed the lack of sufficient resources that have traditionally been devoted to this type of crime as stemming from the low priority placed on them by most police agencies and prosecutors' offices. Often "property crimes" are seen as less serious than violent crimes. Because law enforcement agencies are "statistic-driven," it is not surprising that, when faced with having to choose between financial crimes and those that can be resolved more quickly, law enforcement personnel are likely to assign a lower priority to financial crimes. Without "buy-in" from chiefs, sheriffs, city managers, mayors, Boards of Supervisors, and City Councils, agencies are unlikely to provide sufficient resources.

The Role of the Civil System in Elder Financial Crime and Abuse Prevention

Participants in the civil system roundtable included private attorneys, private professional guardians, probate court personnel, an expert in undue influence, and social service providers.

Civil courts and attorneys become involved in elder abuse cases under a variety of circumstances, Guardianships (called conservatorships or committeeships in some states), which is

the court appointment of an individual to supervise and make decisions for an impaired individual), are often sought as a vehicle for preventing exploitation. Civil attorneys may become involved in initiating lawsuits to recover stolen or misappropriated money or assets, challenging bogus marriages, contesting guardianships, and petitioning courts for accountings of expenditures by attorneys in fact. More importantly, civil attorneys can help prevent abuse by designing protective legal mechanisms like trusts and durable powers of attorney. Civil actions can also be an effective means for recovering victims' losses.

Mental Capacity and Undue Influence

In developing protective interventions and assessing whether abuse has occurred, those working within the civil system are often called upon to assess older persons' ability to understand transactions and withstand undue influence. For that reason, members of the civil roundtable focused considerable attention on the complexities of these determinations. They called for clearer definitions, better instruments to measure these functions, and greater guidance for court personnel in making determinations based on these factors.

Mental capacity is the collection of mental skills required to perform everyday tasks, including memory, reason, the ability to calculate, the ability to modulate emotions, etc. Different tasks require different mental skills. Paying bills, for example, requires that the bill payer remember when the bills need to be paid and be able to perform simple calculations. Financial abuse frequently involves the transfer of assets through instruments like wills and powers and attorneys. Although these documents are improper or illegal if the older person lacks the mental capacity to understand what they are signing, the nature or standards of capacity that are needed for certain transactions are better understood than it is for others. For example, there is general agreement about testamentary capacity, or the degree of capacity necessary to make a will, but less agreement about the level of capacity needed for other common contractual agreements, such as giving gifts or getting married.

Undue influence, which is the concerted, deliberate effort to assume control over another person's decision making, is another concept that is fundamental to understanding and responding to financial abuse against vulnerable persons. Just as transactions made by persons who lack mental capacity are not legal, transactions by persons who are victims of undue influence are also illegal. Several legal standards exist for defining undue influence, and, not surprisingly, there is disagreement over which standard should be used in specific instances. The broad definition, which has its roots back to the time of Sir Francis Bacon, defines undue influence as one person taking unfair advantage of another. A much narrower interpretation, and one which has been used by appellate courts in California, characterizes undue influence as "substituting the will" of the victim for that of the perpetrator, a standard that is extremely vague and difficult to prove.

Although persons with diminished mental capacity are vulnerable to undue influence, mentally competent persons can also be unduly influenced. Commonly used mental status exams, even those administered by capable neuropsychologists, fail to assess susceptibility to undue influence. Part of the difficulty in identifying and defining undue influence stems from the fact that it is a process as opposed to a discrete action, event, or condition. It involves what is often a series of interactions by powerful influencers who use their power and authority to play upon the vulnerable person's fears, loneliness, and disability. In order to prove that undue influence has been exercised, courts and advocates need to understand these processes. Courts are increasingly

relying upon expert witnesses to trace these patterns and help attorneys and judges understand what has happened.

Probate Guardianship: Balancing Protection and Civil Liberties

The benefits and limitations of guardianship figured prominently in the civil roundtable participants' discussion. As described earlier, guardianship is a mechanism by which courts appoint persons to handle the financial and/or personal affairs of individuals who are unable to protect themselves as the result of disability. Guardianships are typically granted to stop abuse when severely impaired victims are unable to grasp the severity of their situations and refuse needed services. It can be an effective remedy when family members are quarreling over the custody or assets of impaired elders or when adult children want to claim inheritances prematurely or influence their elder family members to make new wills. Guardianship may also be appropriate when less restrictive legal devices, such as durable powers of attorney or trusts, have been misused.

Controversy has historically surrounded guardianship owing to the profound implications of stripping individuals of their most basic civil liberties. Although guardianship can be a powerful vehicle for stopping or preventing financial abuse, it can further become a license to steal if granted to untrustworthy individuals. In the mid 1970s, the Associated Press published a national exposé on guardianships which revealed rampant abuse, including situations in which court appointed guardians stole money from those they were charged to protect. The study also revealed widespread disregard for the civil liberties of seniors citing, for example, instances in which guardianships were granted solely on the basis of a single physician's judgment that a person was mentally incapacitated (regardless of whether the physician had expertise in making this type of assessment). These revelations led to Congressional hearings and major reforms in some states, including California. Despite the progress that has been made, the system is still vastly inadequate nationwide. Most courts throughout the country lack the resources to provide adequate investigation and ongoing monitoring of guardianships. In addition, most states do not have public guardians.

The civil roundtable participants' discussion highlighted many of the repercussions of California's guardianship reform initiatives. Although the state's system is among the most progressive in the nation, it has come at a high price, which is often borne by those it is charged to serve. For example, in California, the costs of investigating proposed conservatorships are charged to the incapacitated person's estate whenever possible. Because the process is already costly and complex, the recently added requirement that proposed guardians try less restrictive alternatives prior to filing has led to some criticism. Critics believe that these added responsibilities might potentially discourage trustworthy family members from becoming guardians or that they create an additional burden for public guardians who already lack sufficient resources.

Courts are also increasingly appointing separate counsel for alleged incapacitated persons, and there is discussion as to whether courts should routinely do so in all cases. Much of this debate stems from the fact that fees for court appointed lawyers come from the incapacitated person's estate, which may create hardships for persons with limited estates. Some jurisdictions are able to pay court appointed attorneys from public funds although it is usually at a lower hourly rate than attorney's typical charge.

Members of the civil roundtable further cited the shortage of affordable guardians as a critical problem. Although the overwhelming majority of guardians are family members, many vulnerable seniors do not have trusted family members or friends available to serve in this capacity. Public guardianship programs were created to serve these individuals, but most communities do not have public guardians. In communities in which they exist, the demand often far exceeds the supply.

This shortage of guardians has fostered the emergence of the relatively new field of private professional guardians and fiduciaries. Several private non-profit agencies across the country have also started guardianship programs. Ironically, this development has had a negative impact on public guardians' ability to serve low income and indigent clients. Although public guardians are publicly funded, they have historically lacked adequate resources to accept all clients in need. Like private guardians, public guardians are authorized to charge fees to the estates of clients who can afford to pay and have depended upon these fees to supplement public funds. With increased numbers of private professional guardians, public guardians find themselves in competition with private professionals and agencies for clients who have assets, thereby reducing public guardians' resources for serving the poor.

Ensuring accountability by private, professional guardians and fiduciaries is also problematic. At present, this rapidly growing new profession is unregulated; the sole requirement for becoming a private professional guardian in most states is to be over the age of 18. (In California, private professional conservators must register with the court in the jurisdiction in which they practice. They are fingerprinted and a criminal background check is done.) This is in spite of the fact that fiduciaries control a huge amount of wealth (a survey conducted by the Southern Region of the California Association of Private Professional Fiduciaries revealed that its members alone handled over \$5 billion dollars in assets).

This lack of regulation and oversight is troubling to responsible members of the profession as well as to outsiders. In California, private professionals have repeatedly initiated efforts to regulate their profession by creating oversight mechanisms and certification requirements but these efforts have been unsuccessful. One motivation behind the initiatives has been to reduce some of the risks that have prevented private professional fiduciaries from securing malpractice insurance. It was only after a long struggle that private fiduciaries in California were finally able to purchase malpractice coverage, but the price is still prohibitively high.

Finally, the negative stigma attached to guardianship has historically made it the alternative of last resort for most families. To some seniors, the threat of being placed under guardianship is as terrifying as the threat of nursing home placement.

Shortage of Attorneys to Handle Elder Abuse Cases

Civil attorneys play a significant role in elder abuse cases by helping victims recover misappropriated assets, challenging bogus marriages, filing for accountings by attorneys in fact, contesting guardianships, etc. There is, however, at present, a critical shortage of attorneys to handle these cases in most communities.

Private attorneys have few incentives to take abuse cases, which are risky from a financial perspective. Many cases are extremely time consuming and if the victim dies before the case is resolved, lawyers may not get paid. California's Elder and Dependent Adult Protection Act (EADACPA) was created to address these problems by providing for treble damages, post

mortem recoveries, and enhanced penalties. Many observers believe, however that the law has failed to achieve the desired effect. Attorneys' fees are often difficult if not impossible to collect and courts have failed to offer much support in requiring perpetrators to pay. Perpetrators are often "judgment proof," that is, they have no assets from which victims can be reimbursed and attorney fees paid. It has also been observed that civil judges who handle abuse cases, unlike judges who routinely handle personal injury litigation, are reluctant to award attorneys' fees, especially in cases in which the damage is small and the fees are high by comparison. When defense attorneys offer to settle, the first thing that often gets struck from the settlement is attorneys' fees.

Although publicly funded legal assistance programs are increasingly receiving referrals for abuse cases, these programs have experienced severe retrenchments in recent years and lack the resources to meet the existing demand, particularly since abuse cases tend to be extremely complex and labor intensive. Some communities have started programs, many of which are sponsored by Bar Associations, to enlist private attorneys to provide pro bono service.

Members of the civil roundtable observed that effectively handling complex financial abuse (e.g., contesting guardianships or wills) requires skills that are unlikely to be found in the same person. Personal injury and medical malpractice attorneys who are skilled in litigation are rarely versed in estate planning. Conversely, estate planners are not typically skilled in litigation.

Finally, the standard of proof typically applied to abuse cases in the civil system was cited as a cause of concern to some members of the group. Some believe that the "clear and convincing" standard of proof is too high to meet in many cases, preferring instead the "preponderance of evidence" standard.

Lack of Accountability With Powers of Attorney

Members of the civil roundtable also discussed the benefits and risks of powers of attorney. A general power of attorney is a legal document through which one individual (called the "principal") appoints another individual (called the "agent" or "attorney in fact") to act in place of, or on behalf of, the principal. Older persons who cannot get to the bank because of physical disability, for example, may grant a power of attorney to someone they trust to perform the task for them. A durable power of attorney (DPA) is a type of power of attorney that "endures" after the onset of incapacity. A DPA must contain certain words indicating that it is intended to be durable (e.g., "this power of attorney shall not be affected by the subsequent incapacity of the principal"). Without this provision, the power of attorney is nondurable and terminates once the principal becomes incapacitated. Executing a DPA allows a competent elder to choose a trustworthy person to handle his or her affairs and continue to do so even in the event that the principal becomes incapacitated. The power may become effective at the time it is signed or, in the case of a "springing power of attorney," at a specified future time, or on the occurrence of a specified future event or contingency (e.g., the subsequent incapacity of the principal). DPAs provide a simple, inexpensive tool for financial management and planning for the future.

Like other devices that were created to provide protection, powers of attorney can also become "licenses to steal" if the authority is given to or taken by untrustworthy individuals. Common abuses include inducing persons with cognitive impairments to sign powers of attorney (this is illegal, regardless of the type of power), using the power after it has terminated (e.g., the

principal becomes incapacitated and the power is not a durable one), or using the power for purposes other than those for which it was intended.

At present, there is little oversight to protect against abuses by attorneys in fact. Few states require any type of registration and most do not require lawyers' involvement in drafting the documents or witnesses to ensure that the agent has mental capacity and is not being coerced into signing. (Although notary publics are typically required to witness the signing of powers of attorneys, it is not the role of notaries to assess mental capacity (see the following section). Without guidance, many elders do not realize the extent of the authority they are assigning to their chosen agents. Because few states have formal procedures for revoking the powers, attorneys in fact can, and often do, continue to use them even after they have been revoked. Because there is no requirement that the principal be notified when a power of attorney is used, competent principals are unable to monitor the actions of attorneys in fact.

When abuses occur, they are difficult to prove or rectify. For example, courts frequently encounter situations in which it appears that a principal lacked capacity at the time (s)he signed a document. These situations, however, raise ethical dilemmas for court personnel; although the appropriate course of action would seem to be to revoke the power, the principal must possess mental capacity to do so. A temporary guardianship could be established to suspend the power, but initiation of a guardianship is relatively expensive and burdensome if the sole intent is to accomplish a single action.

Although some states have explored ways to bring more accountability into the system, these efforts have met with mixed success. For example, California passed legislation allowing for court monitoring of powers of attorney but some court personnel are dissatisfied with the new law, which places them in the position of being asked to monitor attorneys in fact with insufficient information or resources. Because the law does not provide for courts to receive inventories and appraisals when the powers are first enacted, accountings at a later point in time have little meaning.

Lack of Clarity Regarding "Key Players" in the Civil Process

Members of the civil roundtable further discussed the lack of clarity by the public and professionals regarding key players in the civil process. This includes a lack of understanding regarding the role of notary publics who witness the signing of certain documents such as powers of attorney. It was observed that the witnessing of document-signing may create a false sense of security by creating the illusion that there is greater oversight and accountability than actually exists. The witnessing by notaries is, in fact, simply to ensure that the signer is the person s(he) claims to be. Notaries are not trained in assessing mental impairment nor are they typically required to report problems.

The roles and functions of attorneys in certain civil proceedings is also poorly understood by the public and even some professionals. Until recently, family lawyers sometimes represented both the alleged incapacitated person and the proposed guardian in guardianship proceedings, posing an apparent conflict of interest. The public and many professionals still need to be alerted to these potential conflicts.

The precise role of court appointed counsel is also unclear. Although in most civil proceedings, the role of attorneys is to represent their clients' wishes (as well as advising them in legal matters), this may not be possible when a client has a mental impairment. Consequently, there is disagreement as to whether

the role of court appointed attorneys is to defend their clients' wishes to the extent possible, advocate for what they believe clients would have wanted if they did not have a mental impairment (substituted judgment), or advocate for what they believe is in the "best interest" of their clients.

The Role of Federal Agencies in Stopping Financial Crime Against the Elderly

Participants in the law enforcement roundtable included representatives from the Federal Trade Commission (FTC), the Federal Bureau of Investigation, the United States Attorney's Office, the Secret Service, and other interested service providers.

Among the primary challenges cited by federal agencies in handling financial crimes were the number of agencies involved and the lack of clarity regarding the specific roles and jurisdictions of each. Financial crimes are federal if they involve the use of the mail, interstate transfers, the use of the telephone, or the misappropriation of federal benefits. Federal financial crimes that are commonly committed against the elderly include telemarketing fraud, the theft of Social Security or Supplemental Security Income checks, pension fraud, and crimes involving the use of credit cards or the Internet. The responsibility for investigating and prosecuting federal crimes may fall under the jurisdiction of the Federal Trade Commission (FTC), the U.S. Immigration Service, the Secret Service, the Federal Bureau of Investigation (FBI), the Department of Justice (through the U.S. Attorneys Offices and its other divisions), the Social Security Administration, and many others.

Further complicating matters is the fact that some financial crimes fall under more than one jurisdiction. An example is the sale of fraudulent "Medicaid qualifying trusts," a multi-million dollar business in which victims are told that anything contained within the trust is not counted as an asset by Medicaid in determining eligibility. These false claims could be prosecuted by district attorneys, Medicaid fraud control units, or federal agencies (because perpetrators typically mail "instruction kits" to salespersons showing them how to sell the products). Because there is often disagreement or a lack of clarity regarding the appropriate jurisdiction in a particular case or type of crime, many cases "fall between the cracks."

With so many agencies handling financial crime cases, victims are unlikely to know to whom they should report. Service providers and advocates are also unlikely to know which agencies handle specific crimes. Even personnel from federal agencies may be unclear about jurisdiction in particular cases. For example, a crime involving a credit card could constitute both mail fraud and credit card fraud and could, therefore, fall under the jurisdiction of the Postal Service or the Secret Service.

Another primary cause of frustration cited by members of the group was the sheer number of victims affected. Cases of telemarketing or credit card fraud, for example, may involve hundreds or even thousands of victims. In addition, offenders seek out the same victims repeatedly or sell their names to others. The tendency for victims of financial crime to be re-victimized is so common in the fraudulent telemarketing business, for example, that "sucker" or "mooch" lists (lists of individuals who have been victimized in the past) are valuable commodities in and of themselves.

Further contributing to the problem is the fact that new crime trends emerge more quickly than federal response systems can be designed. Because new crimes are identified on an almost monthly basis and developing response systems may involve enacting new laws or changing policies, there is often a lag between the time a new crime is discovered and the point at which

systems are set into place to address it. Examples include identity theft and Internet fraud, which recently became federal crimes years after the first cases were identified.

Further contributing to the magnitude of the problem is the high rate of offender recidivism. Because federal agencies lack the resources or mechanisms needed to track offenders, even those who have been prosecuted or restrained often resume business in other communities. Owing to inconsistent enforcement across the country (federal regulatory agencies have regional branches that set their own priorities), the same federal crime may be handled differently in one part of the country than in another. There is also significant variation across the country in how local district attorneys prioritize and handle cases. Owing to these inconsistencies in enforcement, certain geographic areas have become "safe havens" for perpetrators.

Members of the roundtable cited the dearth of information about the extent of the problem as an obstacle to securing adequate resources for prosecuting federal financial crimes and ensuring the rights of victims. At present, there is a lack of reliable and compelling statistics to demonstrate the incidence of the problem, patterns of victimization, and losses. Financial crime, for example, has never been included in the United States Department of Justice's National Crime Victimization Survey, the major survey of its kind.

Problems in documenting the actual incidence of financial crime go beyond the limitations of existing reporting mechanisms. Victims are often reluctant to report financial crime out of shame or fear. Others are incapable of reporting as the result of disability. As described earlier, many victims do not know to whom they should make reports. Some do not know the extent of their losses. Many older people fail to report because they do not perceive certain types of fraud as crime.

The Limited Impact of Prevention Efforts

Members of the group expressed frustration with traditional approaches to preventing financial crime, which have tended to focus on alerting potential victims to common scams and fraudulent practices. The results of these efforts have often been disappointing because this type of outreach is virtually ineffective with many of the most vulnerable individuals, including those with mental impairments, those who are isolated, and individuals who are desperately in need of cash. Persons who are subjected to intense pressure or undue influence are also often impervious to warnings. Even knowing that the schemes are likely to be fraudulent, many victims continue to participate in hopes of recouping their losses.

White Collar Crime is seen as Less Serious than Other Types of Crime

Members of the federal crime roundtable shared with their local law enforcement counterparts the perception that financial crime is viewed as less serious than violent crime. They noted that although many advocates believe that current sentencing guidelines for financial crimes are not stringent enough, public opinion polls have revealed that most responders were satisfied with the existing guidelines. Competing demands on law enforcement personnel's time and resources, as well as the difficulties inherent in these cases, further contribute to the low priority that these cases are typically assigned.

The Victim Service Network's Role in Elder Financial Crime and Abuse Cases

Members of the victim services roundtable included victim advocates from the local, state, and national levels; an expert in restitution reform; and other interested service providers.

In the last three decades, the role of victims within the criminal justice system has expanded significantly. Traditionally, the system viewed criminal acts as offenses against society and little attention was paid toward understanding or responding to the impact that crime had on victims or toward their psychological or service needs. Those who suffered financial losses were not compensated for their losses or assisted in recovering them.

In recent years, criminal justice personnel and victims' advocates have fought aggressively to acknowledge victims' right to participate in the criminal justice process. The Victims of Crimes Act (VOCA) of 1984 provided for new services and compensation to victims. Most states have enacted victims' rights amendments and statutes which give victims the right to be informed when offenders are released from custody, to tell courts how they were affected by the crime, and to have a voice in sentencing decisions. A national victims' rights amendment has been introduced in Congress which would set national standards for ensuring victims' rights.

Although these trends have significantly raised the status of victims, they have focused on victims of violent crimes, largely ignoring the needs of victims of financial crimes. Until very recently, VOCA victim assistance grants could not be used to fund services for victims of financial crime. Recent changes in VOCA regulations provide for assistance to financial crime victims but many advocates and victims are unaware of these changes. Victims of financial crimes are still not eligible to receive VOCA funded compensation.

Problems With Restitution

Members of the Victim Assistance Roundtable identified problems with the restitution recovery system as being among the most pressing challenges they face. Restitution, which is the monetary compensation that courts can require offenders to pay victims, is perhaps the right which is most valued by financial crime victims. All states offer some form of restitution and the federal government requires perpetrators of federal crimes to pay restitution in most cases. Many judges, however, fail to order restitution and prosecutors seldom ask for it. Other judges order restitution but fail to list victims' names on judgments, which makes it virtually impossible for victims to enforce the orders, use them to declare losses on their taxes, or seek recovery funds.

Members of the group observed that the failure to order restitution may be attributed to the fact that many judges and prosecutors believe that victims can seek civil remedies for recovering their assets or that offenders are unlikely to have assets with which to repay victims. Hiring civil attorneys to help them recover their losses, however, is beyond the financial reach of many victims.

Even at its best, the current system of restitution only serves some victims. Many offenders are never apprehended and an estimated 90 percent of all criminal defendants are indigent. Victims who suffer losses at the hands of these perpetrators have no recourse for recovering their losses. The current system also fails to consider the full value of victims' financial losses, which may continue to accrue long after sentencing has taken place. When perpetrators are charged with multiple counts, many counts are discharged in the course of plea negotiations and victims whose cases are dropped are often not considered eligible for restitution. In cases

involving multiple victims, there is often no system in place or consideration given to determining who gets restitution or the order of priority. Owing to the difficulties involved in collecting restitution, those most likely to collect are victims who have the financial resources to hire attorneys. As a result, those in greatest need seldom receive restitution.

Victims may not receive restitution because they do not know they are entitled to it. Those who are not kept apprised of the continuing status of their cases are unlikely to be told that they are entitled to restitution. Some victims are not told to keep the criminal justice system notified of address changes; as a result, the U.S. Clerk of Court, or other agencies that distribute restitution, are not able to find them. In the federal system, restitution orders are enforceable for twenty years, which may exceed victims' life spans. Many victims and their families, however, are unaware that payments can be applied to victims' estates.

The failures of the restitution system can, in part, be attributed to the absence of a designated agency to oversee enforcement. There is currently disagreement over what agency is, or should be, responsible for the collection and enforcement of restitution. Some advocates feel that the responsibility should rest with probation departments, while law enforcement tends to view the collection of restitution as the responsibility of victims. With limited staffing, most probation personnel believe that their primary role is to supervise offenders and ensure the safety of the community.

Fragmentation within the recovery system makes it impossible to track the disbursement of restitution or ensure that the system is working properly. Restitution payments are collected by clerk's offices, financial litigation offices, or the U.S. Attorney's Office. Victim/Witness Assistance programs, which have ongoing contact with victims, may not have access to information about who is getting paid.

When restitution is ordered, victims are often unable to collect it. As a result of physical or cognitive impairment, severe depression, or stress, many victims are unable to do what is necessary to collect restitution. Some feel that recovering restitution should not be their responsibility. Others mistakenly believe that once restitution is ordered, it will be immediately available or collected for them.

Even victims who want to collect restitution and have the mental and physical ability to do so, face formidable obstacles. Once restitution is ordered, information about the process, and even about their own cases, is often not readily available. Copies of judgments are often not provided to victims and securing information about their offenders may be difficult. Some victims do not know who their offenders are, where they live, or their status within the criminal justice system. The remedies available to victims differ depending on whether the perpetrator was prosecuted in the federal or local system and on the agencies involved. Even victim advocates, whose job it is to assist victims, are often ill informed about these processes.

A primary obstacle to restitution is the lack of effective mechanisms for preserving assets. Because financial crime investigations often take months or years, perpetrators' assets are often dissipated or hidden during the process, leaving little or nothing left for victims to collect. Time lags in collecting restitution also reduce the amount that is available.

Members of the victim services roundtable echoed many of the same concerns and frustrations voiced by members of the two law enforcement groups. These include the difficulties inherent in serving multiple victims, the pervasive belief that economic crime is less serious than violent crime (and with it, the corresponding lack of resources and low priority placed on these cases), and the limited effectiveness of traditional approaches to outreach.

As described earlier, some cases of elder financial abuse involve dozens, hundreds, or even thousands of victims. For that reason, the existing system for ensuring victims' rights cannot begin to meet the need. Even notifying victims about the status of their cases is often impossible. With inadequate technology, some victim advocates still manually stuff thousands of letters to send out notices about hearings. Although most victims' services offices have toll free numbers, responding to individual requests or questions in a timely fashion is virtually impossible for advocates, particularly in light of variations in time zones and the complexity of the information that needs to be conveyed.

Beyond their need for information, victims also need services to help them recover from emotional, financial, and physical trauma. Mental health services are often needed to address the emotional impact of financial crime, which may include depression, thoughts of suicide, and hopelessness. Other needed services include legal assistance to recover assets, help in finding new housing as a result of crime-related home foreclosure or eviction, assistance in finding attendants to replace abusive individuals, financial assistance for necessities that the victim cannot afford as a result of the crime, and assistance in securing benefits. Victims are also likely to need help tracking down resources like "recovery funds" (e.g., California's Department of Real Estate's fund for victims who have been defrauded by licensed realtors acting within the scope of their licenses).

Even when services exist, victims may lack information or access to them. Physical, cognitive, and attitudinal impediments limit financial crime victims' access to services and avenues for exercising their rights. Most victims' services are only available to victims who agree to participate in the criminal justice system and, as described earlier, many victims are unable or unwilling to do so as a result of fear, shame, disability, and cognitive impairment. Some believe that their efforts will prove futile. Others are unaware that they have been victimized or refuse to see themselves as victims. Although service providers who work with the elderly and are likely to encounter financial crimes and abuse could play an important role in providing liaison to the criminal justice system and victim assistance programs, many are unfamiliar with these systems. Even many adult protective service (APS) workers, who are often the first people to discover financial crimes, are unfamiliar with these networks. In addition, with large caseloads, APS workers may not have sufficient time to establish the level of trust and confidence that is frequently needed to encourage victims to accept help.

Members of the roundtable attributed the lack of resources for financial crime victims, in part, to the lack of information available on which to design services and programs. As noted earlier, little is known about the extent or nature of financial crime. Apart from a few studies on telemarketing fraud, very little is known about other types of financial crime, including fraud by family members. Even less is known about the impact of financial crime on its victims, victims' services needs, and promising approaches to meeting those needs. Commonly accepted perceptions or stereotypes assume the worst. For example, although it is commonly believed that efforts to collect restitution are futile, little has actually been done to explore promising approaches to improving restitution recovery. Even less is known about victims' mental health or social service needs and effective approaches to addressing them. Without this information about best practices and promising approaches to service delivery, it is unlikely that new resources will be forthcoming.

The pervasive belief that financial crime is less serious than other crimes has clearly affected the treatment of victims of financial crimes, who have not historically been afforded the

same rights as other victims. For example, in some districts, victims of federal financial crimes are not permitted to speak about the impact the crime had on them at sentencing hearings. The proposed federal victims rights constitutional amendment does not include provisions for protecting the rights of financial crime victims. Although national and state organizations have emerged to advocate on behalf of victims of violent crime, including victims of domestic violence and sexual assault, there are no comparable organizations advocating for victims of financial crimes. As a result, the interests of elderly victims of financial crimes are not effectively being voiced or defended.

The challenges of providing outreach to financial crime victims were also discussed. It was noted that victims of financial crime and abuse are unlikely to self-report and service providers who are likely to encounter these situations are also unlikely to contact law enforcement or victim service programs. As a result, if victims are to receive services, victims' rights programs need to find ways to reach them. Effective outreach to victims and vulnerable seniors is particularly challenging owing to the enormous size of the vulnerable population and the complexity of the information that needs to be conveyed. In addition, many of the most vulnerable seniors are particularly hard to reach as a result of cognitive impairment, physical disability, isolation, and language barriers.

Language and cultural barriers further impede access to information and services. Owing to the fact that many financial scams target elderly members of specific cultural groups, language barriers, negative experiences with the criminal justice system, and immigrants' fears about being deported further discourage many victims from seeking out or accepting help. Others are simply uninformed about the system and do not know about available services or how to access them. Additionally, research has shown wide variations in how members of different cultural communities perceive financial crime and abuse, creating additional challenges to victim advocates.

Members of the group suggested that traditional approaches to outreach, which have focused on alerting vulnerable seniors to potential risks, have inadvertently conveyed the message that victims of financial crimes are at least in part to blame for their victimization. They cite examples of outreach materials that ostensibly promote prevention while, in fact, subtly suggesting that victimization results from greed or gullibility, and that this type of crime can be avoided through prudence. These materials de-emphasize perpetrators' culpability, fail to communicate the fact that perpetrators are highly skilled and predatory manipulators, and further fail to acknowledge that the problem can be attributed in part to the shortcomings of the current systems of enforcement. Although it is clear that circumventing abuse before it occurs is preferable to intervening after a crime has been committed, there is no research to show that preventative techniques, such as outreach brochures that caution victims against falling for scams, are effective with crimes like telemarketing scams or investment fraud. Further research into effective intervention and prevention techniques is clearly indicated.

Finally, lack of coordination and cooperation among agencies serving victims has further impeded victims from getting help. Although victim witness assistance programs are receiving increasing numbers of referrals from other entities within the criminal justice system, most of these referrals involve victims of violent crimes. Police and prosecutors still frequently fail to recognize that victims of financial crimes may also benefit from these programs.

Promoting collaboration and coordination between victim assistance programs and other agencies in the community has also been difficult. Victim advocates have not traditionally worked closely with social service providers and the two groups lack familiarity with each other's

approaches, resources, policies, or procedures. "Territoriality" may further discourage some agencies from cross-referring cases.

Summary and Conclusion

The four roundtable discussions provided extremely valuable insight into the challenges and obstacles inherent in combating financial crimes and abuse against the elderly. These range from public attitudes about culpability, to the lack of training available to those charged to respond, to the sheer volume of persons affected.

Although there was widespread variation between the groups, several common themes emerged. Members of the two law enforcement and victim advocates' groups shared the perception that financial crime is viewed as less devastating than other types of crime. They further agreed that this pervasive attitude accounts for the low priority and insufficient resources that have historically been devoted toward apprehending perpetrators, recovering losses, ensuring victims' rights, and providing services to victims.

The extent and complexity of the problem has clearly frustrated efforts to control it. The fact that a single crime can involve hundreds or thousands of victims makes these cases particularly overwhelming in terms of the time and resources they demand. The lack of clarity with respect to jurisdiction, overlapping jurisdictions, and poor coordination between jurisdictions further impede efforts to contain the problem. The need for greater clarity and consensus about how to define and measure mental capacity and undue influence was also repeatedly addressed.

The roundtable participants offered dozens of recommendations for improving the criminal justice and civil legal systems' responses to financial crimes and abuse. These ranged from approaches to removing obstacles and creating incentives for victims to participate in the criminal justice process, reforming restitution, offering training to persons at all levels within the systems, to appointing a federal "czar" to create a focus attention on the problem and serve as a focal point for coordinating a national response to the problem. The recommendations have been published in a report published by the National Center on Elder Abuse, *The Forgotten Victims of Financial Crime and Abuse: A Report and Recommendations*, which is being disseminated to policy makers, advocates, and service providers at the local, state, and national levels.³

³ The report is available at the National Center on Elder Abuse's website at www.gwjapan.com/NCEA.

The CHAIRMAN. Well, thank you, Ms. Nerenberg. I also note that you are the author of what is considered the preeminent paper publication in this area, and we just appreciate you coming and being here with us.

Question for you, Mr. Shepherd, and you, Ms. Nerenberg. It seems to me both of you were saying that better quality data and statistics are needed in the area of assessing financial exploitation. Is that right?

Mr. SHEPHERD. Senator Wyden, correct. I think that is true.

You asked an earlier witness, Mr. Auerbach, about the rates of victimization. I think we don't know fully the answers to that question. Certainly the statistics available to the Oregon Department of Justice can't—don't fully answer the question that you are raising.

The CHAIRMAN. Ms. Nerenberg, you're essentially the author of that thesis, so I guess I'm just sort of restating the obvious.

Ms. NERENBERG. Information on a lot of things. As I mentioned, just the incidence of the problem so that we can respond with services, profiles of victims, profiles of the abusers so that we know what we are looking for. That information is critical in proving cases.

I think there is also just a lot we need to know about the effectiveness of programs. As I mentioned, one of the concerns of our groups was around restitution. And I think it is generally assumed that you are not going to get restitution in these kinds of cases, and yet I don't think that there has ever—There have been very few exploratory studies and really model programs in looking at restitution recovery programs. I think we need to put forth some money to test models to see what works and use that as guidance in developing new services.

The CHAIRMAN. How much—Again, for you Mr. Shepherd. Actually, for all three of you, if you want to, all three of you. How much of the challenge both with respect to getting good data and delivering better services in terms of prevention and addressing financial fraud against seniors is due to the fragmentation of services and government in this area?

It looks to me based on this morning that we have got Adult Protective Services involved, we have got Medicaid fraud units involved, we have got local police and local law enforcement folks involved, all of whom might be part in a given community of an effective response.

How much of the challenge here is due to the fragmentation of both data collection and services, just for all three of you? Start with you, Mr. Shepherd.

Mr. SHEPHERD. Senator Wyden, I think that's a very significant contributor both to the data question that you have asked and also to the efficiency and effectiveness of our response to these problems. Our experience with the Attorney General's Task Force on Elder Abuse is I think a good example. That really was the first time that most of the players that you have listed and some additional ones have been brought together in a single forum to exchange ideas and information. And what we discovered was all of us had little pieces of the puzzle and that we need to put those together. And those kinds of efforts I think are critical from my perspective.

The CHAIRMAN. Ms. Millsap.

Ms. MILLSAP. I quite agree. And part of that problem is the fact that most of us just don't have the time to just take the time to listen to these people. We're running on to one meeting after another. And I have found, especially going to my SALT meetings, that I allow an extra hour just to be there for those who want to wait until everything is over and come up and get my ear and tell me about their particular problem; otherwise it's never voiced. Many times these people never speak out.

The CHAIRMAN. Ms. Nerenberg.

Ms. NERENBERG. I absolutely agree that it is the fragmentation of services that has been a big part of the problem in getting a grasp on it. I have been in this field, as I said, for 16 years and it is only recently that I have become aware—relatively recently, of some of the agencies, Federal regulatory agencies that become involved in some of these kinds of financial abuse cases.

What we found in our roundtable discussions were that some of the representatives from the Federal regulatory and law enforcement agencies weren't clear on jurisdictions between themselves. And so I think that's definitely a first step both in terms of getting data, but also filling some of the gaps that cases are falling between.

The CHAIRMAN. Well, then a question for you, Mr. Shepherd, and you, Ms. Millsap. Ms. Nerenberg basically said what was needed was some model programs and some model efforts in terms of areas like restitution and that sort of thing. Are the attorneys general working on any kind of model programs or model statutes, things of that nature, to—

Mr. SHEPHERD. Senator Wyden, I'm not aware of any particular effort by the attorneys general as a group to do that.

I would answer your question this way, however: I have some personal experience as a criminal prosecutor in Oregon in working with various kinds of task forces and then with our Elder Abuse Task Force. I would echo something that Mr. Auerbach alluded to, and that is the need for us to experiment with teams of prosecutors and investigators who focus on these issues. Prosecutors and investigators working as teams, in my experience, can be much more effective than individual prosecutors who are not aware of how to handle these cases or individual investigators who are not. And very often those kinds of pilot programs can be stimulated by assistance, state and local, partnerships with the Federal Government.

I would encourage you, Senator Wyden, to help us explore those kinds of models.

The CHAIRMAN. Ms. Millsap, would models be helpful to you as you go about your work in Linn County?

Ms. MILLSAP. They certainly would be, because, again, as I mentioned earlier, the TRIADs are set up to kind of accommodate each individual city or area where we're working with these groups, so a lot of times we stray from what little structure we have in this. And I think it will be very, very helpful.

The CHAIRMAN. What would you think if the focus in terms of looking at models—and Mr. Auerbach told us a bit ago that there's under discussion some kind of national task force—that the first

model was trying to help deal with the Internet and seniors? I mean, if ever there was something that was appropriate for the Federal Government to focus on, it is the Internet, because the Internet is borderless, as if you don't think the Internet should be tackled on a Federal basis, you might as well get rid of Article 1 of the Constitution because it personifies interstate and, in fact, global kind of commerce.

So, Pete, what's your reaction to a model program involving restitution or a model program looking at even some statutory efforts involving the Internet that might come out of a task force like Roger was talking about?

Mr. SHEPHERD. Senator Wyden, I think that would be an excellent place to start and perhaps would be an opportunity to try and get ahead of that developing impact of that technology on older Oregonians and older citizens.

I would encourage you to consider a couple of things about those kinds—that model, that particular area. First would be to find ways for the Federal Government to capitalize on the partnership that it has had with state attorneys general around the country. In the area of telemarketing, for example, legislation, with which I know you were involved, opened the Federal courthouse doors to enforcement actions by attorneys general to, in effect, export their consumer protection efforts to other jurisdictions. In the borderless environment of the Internet it seems to me that would be worth addressing and considering as a model.

In addition to that, Attorney General Reno has been aggressively pursuing what she characterizes as a cyber crime agenda and elements of that also involve partnerships with local attorneys general. And I think those would be very fruitful for such a task force to explore.

The CHAIRMAN. OK.

Ms. MILLSAP. I think we have already seen the impact of person-to-person opportunity for fraud and crime with our elders. And the Internet, to me, and cyber crime is just a kettle of worms that really frightens me and I know it frightens many of the seniors because they ask me about it. And I am one of those people who is not knowledgeable about cyber technology and a lot of times I can't answer their questions, so any help we can get from a Federal level is certainly going to help to alleviate this problem. I see it as becoming huge.

The CHAIRMAN. OK. Questions for you, Ms. Millsap, and I guess you really touched on the one that struck me in terms of local government and community services. You said you would like some information so you would be in a position to get out in front of the curve.

Ms. MILLSAP. Absolutely.

The CHAIRMAN. So, right now, you already feel a little bit strapped in terms of trying to deal with it. If there were good training materials, you might have a chance to stay in front of the curve.

Ms. MILLSAP. Yes.

The CHAIRMAN. How do you get information right now about telemarketing and Internet scams?

Ms. MILLSAP. AARP is one of my best sources. I keep in contact with them almost on a daily basis. I talk to our detectives because they give me updates on what's going on in our county, the types of fraud and crime that we are seeing. And then I also on a daily basis talk to the deputies that work out of the facility that I work out of to try to keep updated on what they are seeing out there, because I am not a professional.

The CHAIRMAN. A couple of questions for you, Ms. Nerenberg. What do you sense is the challenge with respect to identity theft and older people? We're gathering that this is likely to be one of the more prevalent sort of crimes of the future. What does your research showed with respect to identity theft in seniors and how that would particularly cause them a hardship?

Ms. NERENBERG. I'm not aware that there has been any research done on identity theft. It was certainly an issue that came up in our roundtable discussions. Very much concerned because one of our seniors' primary assets is their credit ratings, so they certainly are being targeted for this kind of abuse.

I guess in some ways it just poses the same challenges that the other types of crime against—financial crimes against the elderly pose, and that is dealing with an enormous number of victims and trying to—I think that public awareness is a real challenge and I think that it is very, very important, but I think there also needs to be done in—there are other pieces that also need to be worked on. One is really tightening the penalties for the perpetrators. We need to get these guys' attention, because if they are just going to take up business in one place after they have been apprehended in another one, we are just going to be running circles around ourselves.

The CHAIRMAN. That goes back to the point we heard from Mitch Copp 2 hours ago that he wants to make sure that there are decent lists of these repeat offenders—

Ms. NERENBERG. Absolutely.

The CHAIRMAN [continuing.] Out there so that they don't just set up in shop in Coos Bay and you track them in Coos Bay and run them out of town and off they go to Gresham. I think that's a good point.

Ms. NERENBERG. I think it also really speaks to the need for the task force kind of approach that you mentioned earlier of bringing together people from the different jurisdictions and different entities around the country. It really has to be dealt with at the national level.

The CHAIRMAN. The only other question I had for you is in the technology area. We saw it to some extent in the debate about encryption. The fear is always that there will be a lag between the time in which Congress sets up a program or deals with a statute and the time in which there are new threats and new problems as a result of the inventiveness and ingenuity of the people involved.

How do you deal with the time lag to try to stay current and stay out in front of the curve?

Ms. NERENBERG. I don't know how to respond to that question. The whole issue of banking on-line and all the on-line services is troubling to me because I think we have seen that even in situations where lawyers get together and sit down with a client and try

to understand what the client understands and doesn't understand and what—and whether or not there has been undue influence is very difficult even in a face-to-face interview. And to think about people making decisions on-line without any kind of checks and balances about issues of mental capacity or what persuasion is being exercised against people is staggering.

The CHAIRMAN. Let me try an idea out on you because I brought this up in the discussion about encryption and got a pretty good reaction from all sides. It seems to me that people on the front lines in these technology firms are the first to see coming through their systems the sort of state-of-the-art in terms of both advancement in services and new rip-offs and new problems.

It seems to me that if nothing else was done but to set up a way in which government and law enforcement could hear from these people in a fashion that wouldn't be proprietary, that wouldn't be giving up any of their secrets, but so that law enforcement would hear from Microsoft, Intel, all of the various leaders in this field "This is what we're picking up in terms of our systems and we want you to know about it because we think that if you start keeping your eyes open for this, you are going to be able to head off some of these frauds and rip-offs that hurt people and, by the way, also hurt companies and industry." That that pipeline alone, that kind of relationship, you almost could call it kind of advisory council, like an advisory council from leaders in the industry, that that alone would give us a chance to stay out in front of this sort of lag time that always seems to be plaguing our ability to deal with this.

I mean, these people are not technological simpletons. These are people who are very, very savvy at scrambling data and all of the things that go into being able to stay one step ahead of good programs and good authorities.

I hope that you will think as you go forward in your work about some models to use the people who are on the front lines and use them as a kind of pipeline for law enforcement, for the TRIADS of—And you look, for example, TRIAD is in the valley very close to a lot of these extraordinarily successful technology companies. If they see things in their work, for example, that might be used to rip off seniors and the like and nothing else was done but to have them get on the phone and call you up and say, you know, "We know you're the specialist in terms of seniors, you might keep your eyes open because in the last 2 weeks we have seen the following sort of threats start to emerge as something we're watchful for."

I think that would be very useful. It goes right to your point in terms of you don't have a lot of time and you're juggling right now trying to keep up your responsibilities. And, to your credit, you said, "Look, I am not the biggest computer"—Don't worry about that.

I like to tell this story. A couple of magazines recently have named me one of the most Internet-savvy Members of Congress, so I was all puffed up about myself and really impressed. And I went home and told Lydia Wyden, age ten, brightest red hair on the plant, that her dad was one of the Members of Congress who is supposed to be a big hot shot in terms of technology and the Internet. And my daughter couldn't stop laughing. She thought it was hilarious. She called all her friends to make sure that the ridicule

was shared just as widely as she possibly could. And after a couple of days ago, she said, "We have talked about it, Dad. We want to know what the other bozos in the Senate are like." [Laughter.]

Ms. MILLSAP. Senator, I can certainly relate to that because when I have a question, I go straight to my 14 and 11 year old granddaughters.

The CHAIRMAN. You've got it.

Well, listen, if you all don't have anything to add, we've been at it 2½ hours. This has been an extraordinarily helpful hearing. This is exactly the kind of information that the U.S. Senate needs to have. We have got the bipartisan staff here, and they and I will be presenting this to Chairman Grassley and Senator Breaux.

And we will look at the idea of this national task force. We are going to look at ways to better collect information, to deal with the fragmentation of services, to make sure that people like Ms. Millsap, who are on the front lines doing good work, have materials that are in a straightforward and understandable way.

And what's nice and touched on with Mr. Auerbach is that we take great pride in this state in terms of our firsts, our firsts in the environment, land use and protecting beaches and things of that nature, and we also take pride in our firsts in terms of helping people. And if they are—we see particularly in the area of seniors that we have a chance to make a real difference and we are going to be following up on this. And unless you all have anything to add further, we are going to adjourn.

Anything else you would like to add?

Mr. SHEPHERD. Thank you again, Senator Wyden.

The CHAIRMAN. All right. The meeting is adjourned.

[Whereupon, at 11:44 a.m., the committee adjourned.]

A P P E N D I X

Submission to

U. S. Senate Special Committee on Aging

for the Field Hearing in Portland, Oregon

March 15, 2000

on

"Elder Fraud and Abuse: New Challenges in the Digital Economy"

By

Mary Lou Ritter, Director
Grady Tarbutton, Program Development Manager
Department of Aging and Veterans' Services
Washington County, Oregon

In addition to the excellent testimony given in panel before Senator Wyden, we wish to highlight the following as supplemental testimony:

- I. The efficacy of a County Elder Abuse Multi-Disciplinary Team increases the safety of elderly and persons with disabilities through the collaboration of the County Sheriff, all police departments in the county, the County Attorney General's Office, the Adult Protective Service of the County Department of Aging and Veteran's Affairs, other mental health and social service agencies, business professionals and private individuals,
- II. The need to find means of enabling compliance of various state and private retirement fund administrators to comply with court conservatorship orders,
- III. The need to facilitate cooperation with criminal investigations by out-of-state banks in order to access an alleged victim's bank records,
- IV. Development of model legislation for states to enact that attends to provision of services for victims of elder abuse to provide short term care, and

- V. Amending the rules of TANF (Temporary Assistance for Needy Families), which waives citizenship requirements for victims of domestic violence, to allow eligibility for TANF and Medicaid to elders who are victims of domestic violence, without there being a 19 year old or younger child in the household.

The law as it stands does not help these elder immigrants, who are frequently completely financially dependant on family members.

