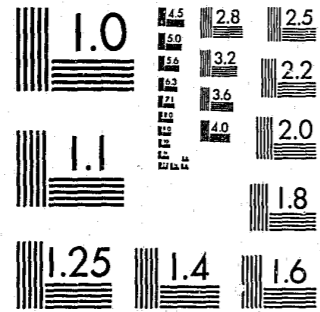


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# MAIL ORDER FRAUD

HEARING  
BEFORE THE  
SUBCOMMITTEE ON INVESTIGATIONS  
OF THE  
COMMITTEE ON  
POST OFFICE AND CIVIL SERVICE  
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

NOVEMBER 7, 1979

**Serial 96-69**

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ACQUISITIONS

## MAIL ORDER FRAUD

WEDNESDAY, NOVEMBER 7, 1979

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INVESTIGATIONS,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, D.C.*

The subcommittee convened at 9:40 a.m., pursuant to call, in room 311, Cannon House Office Building, Hon. James M. Hanley (chairman of the subcommittee) presiding.

Mr. HANLEY. The mail order industry is an American giant, with an annual gross income of \$60 billion a year. It is an industry that relies heavily on public trust and confidence. Fortunately, the overwhelming number of mail order and direct mail enterprises are honest and legitimate.

However, a very small number of promoters in this industry regularly violate that public trust, and by clever schemes of false representation and fraud, take up to \$600 million a year from American consumers.

While this is only 1 percent of the total revenue of the industry, it is enough to do serious damage to its image. In the first 6 months of this year, the National Council of Better Business Bureaus reports there were 45,000 mail order complaints—45,000—which is an astonishing 43-percent increase over last year.

The purpose of today's hearing is to obtain some firsthand information from the business community and the Postal Service on what needs to be done to reverse the rising trend of mail order fraud.

The U.S. Postal Inspection Service, which is primarily responsible for investigating and preventing these abuses, is certainly one of the best law enforcement agencies in the world.

However, even the postal inspectors admit that in many cases they are powerless to prevent what is clearly a scheme to defraud the public until it is too late.

We congratulate the Postmaster General, the Honorable William F. Bolger, for his recent pledge to make every possible resource available to the Inspection Service to protect the public from mail fraud.

Prior to the introduction of the witnesses I will ask of my colleagues if they choose to make any comments. Mr. Leach.

Mr. LEACH. No, sir.

Mr. HANLEY. Mr. Stenholm.

Mr. STENHOLM. No, sir.

Mr. HANLEY. Our first witness is Mr. Arthur Startz, senior vice president of the Council of Better Business Bureaus, Inc.

STATEMENT OF ARTHUR STARTZ, SENIOR VICE PRESIDENT,  
COUNCIL OF BETTER BUSINESS BUREAUS, INC.

Mr. HANLEY. Mr. Startz, we are pleased to have you with us this morning and look forward to your testimony.

Mr. STARTZ. Mr. Chairman, I am Arthur Startz, senior vice president of the Council of Better Business Bureaus.

I appreciate the opportunity to accept your invitation to speak briefly—and it will be very briefly—about problems of the mail order industry as far as American consumers are concerned.

At the outset and not in my prepared statement, I would like to echo your sentiments about the Postal Inspection Service. It is a highly effective and efficient, a cooperative group, and Better Business Bureaus have had a long and excellent relationship with them.

I was very happy to meet the Chief Inspector here this morning and which reminded me that approximately 32 years ago I was serving as a postal inspector working specifically on fraud cases.

Mr. HANLEY. If the gentleman will yield, certainly with that background, to use the vernacular, you have a good handle on the problem.

Mr. STARTZ. Mr. Chairman, my comments are based on experience by the National Council of Better Business Bureaus and the 146 affiliated Better Business Bureaus and satellites around the country.

The Better Business Bureaus have been serving American consumers and business for 67 years. BBB's are the primary organization to which consumers turn when they have problems in the marketplace. Last year, approximately 8 million inquiries and complaints about a variety of businesses were handled by Better Business Bureaus. Most of them were inquiries, I am happy to say.

The mail order industry is a legitimate and needed type of business serving the American public and doing a huge volume of business. So the facts I am about to relate should be considered from that perspective. By the way, the Better Business Bureaus and the council do not take positions on legislation except in very unusual circumstances, and the comments that I make will be purely factual from our point of view.

Looking at it from the perspective of huge volume of business and the necessity of this type of business, nevertheless from the standpoint of American consumers, there are very serious problems to which the mail order industry must address itself without delay. In the first 6 months of this year consumer complaints to Better Business Bureaus about mail order purchases jumped 43 percent—a huge increase over the comparable period of 1978.

This 43-percent increase compares with an 8 percent increase in consumer complaints received by Bureaus during the first 6 months of 1979 on all of the 87 different categories of business on which we keep statistics.

From January through June of this year Better Business Bureaus have processed over 45,000 complaints involving general mail order companies. Not included in that 45,000 complaint figure are almost 6,000 additional complaints concerning magazine subscriptions ordered by mail.

Mail order problems have been at the top of the Better Business Bureau complaint list for many years, but never before amounted to such a large percentage of the total—21.3 percent for the first 6 months of 1979 compared to 16.6 percent for the same period in 1978.

I do want to state at the outset as I stated in a letter to you, Mr. Chairman, that any simplistic approach to solution which relates solely to mail fraud or misrepresentation is not the answer to the problem. We have done a computer analysis of the types of complaints received and very few deal with fraud and misrepresentation.

That is not meant to denigrate the importance of mail fraud and misrepresentation—on the contrary, everything possible should be done to prevent it from arising and to put a halt to it as quickly as possible when it does arise in order to protect the American public from being bilked.

But to get a more realistic picture, here is a summary of the types of complaints about mail order companies received from American consumers during the first 6 months of this year.

Mr. Chairman, the statistics are in the written testimony and I won't go over them in any detail.

Mr. HANLEY. If the gentleman will yield, your entire text will be inserted in the minutes of this record, without objection.

Mr. STARTZ. Thank you, Mr. Chairman.

The great majority of complaints continue to be delayed deliveries or nondelivery, but it is interesting to note that this type of complaint has dropped considerably in percentage terms from the comparable period last year.

One-sixth of the complaints relate to failure to provide refunds and this percentage has increased significantly. Credit and billing complaints have also increased.

A significant cause of the increase in mail order complaints is the recent bankruptcy of several nationally operating firms. Thousands of orders were left unfilled when these companies went out of business. But complaints were also up for many other companies as well. It is difficult to isolate a single reason for the dramatic 43 percent upsurge but a major factor may well be that some marginal companies were caught in a cost bind brought on by inflation.

This meant that they weren't always readily filling incoming orders.

Mr. Chairman, in your own home city, Syracuse, N.Y., mail order complaints lead the list as they do nationally—comprising 14.6 percent of all complaints handled by BBB/Syracuse during the first 5 months of this year.

And finally, after a couple of years, a get-rich-quick scheme operating out of Syracuse by mail, has been brought to a halt just last month by a mail fraud conviction—but only after people had invested over half a million dollars.

This conviction followed actions 2 years ago by the Securities and Exchange Commission and by State securities agencies in Texas, Michigan and Arkansas. Nevertheless, the company continued to make substantial profits.

Three Better Business Bureaus have reported serious bankruptcies of mail order companies with huge sums of money paid by American consumers in jeopardy.

In Atlanta, one of these companies has caused over 2,500 consumer complaints to the Better Business Bureau. BBB/Atlanta feels doubtful of recovery being made for the 19,000 consumer refund requests. Initial examination by the receiver indicated a total debt of between \$4 million to \$6 million, with assets of only \$700,000 to \$800,000.

A year and a half ago, BBB/Atlanta was visited by a Government representative to discuss his agency's purview and was asked what the agency planned to do about this company. Answer: "Nothing, they're OK."

In Denver, a mail order company filed for bankruptcy last May. In the first 6 months of the year, BBB/Denver handled over 2,000 complaints against this company alone. At the time of bankruptcy, there were \$1,800,000 in liabilities and only \$575,000 in assets. According to news reports, 70,000 to 100,000 American consumers may never be repaid.

In this case, too, the BBB reports that it tried to get action by both local and Federal agencies but was unsuccessful.

In Chicago, a mail order firm filed for bankruptcy last June. According to BBB/Chicago, this firm has debts of \$32 million and \$10 million in assets. There were one-half million creditors in the United States and other countries.

I digress from my statement to suggest that the figures we have received for complaints about fraud and misrepresentation are not necessarily valid figures to test how much fraud and misrepresentation there is and particularly in cases of bankruptcy—and I know that the Postal Inspection Service already is doing this—these ought to be investigated thoroughly in connection with the Federal fraud statutes.

At the outset I mentioned the typical complaint by mail order customers around the country relates to problems of delivery. Too frequently, the time which elapses between placing an order along with a check and getting the merchandise or a refund, is inordinately long.

A Knoxville, Tenn., consumer complains to the BBB on September 28, saying, "I have never received my merchandise I ordered in February nor any type of refund. I want a cash refund only." A \$65 refund was subsequently received but only after 7 months and three complaint letters.

An Asheville, N.C., consumer complains to the BBB on June 27 about an order of January 25:

I have written letters every month since this order was placed \* \* \* I spent \$3 for copies of various correspondence to return. I have been promised a refund but have never received the amount due me—\$21.88.

Five-and-a-half months after the date of the transaction and intervention by the BBB, a refund was sent.

And so on and on, with Better Business Bureaus around the Nation called upon to handle almost 100,000 complaints a year with exceptionally small financial support from the mail order industry. The council and affiliated local Bureaus are able to serve

the consuming public only as a result of memberships by reputable companies in a variety of industries.

As we handle the thousands of mail order complaints from American consumers, Better Business Bureaus are keeping alert to continuing mail order promotions. Right now they range from growing your own plants for fuel to heat your home and power your car, to pills which are guaranteed to remove all the pounds you want to lose with, "no regimen to follow, no calories to count, no exercise, nothing but a tiny pill to take." The latter continues to flood the mails from outside the country.

During the past few months, Better Business Bureaus have reported an upsurge of phony work-at-home schemes which prey upon low income, aging and handicapped persons who want desperately to supplement their incomes.

These schemes have one thing in common: You must buy something by mail and despite the huge profit or pay you are promised without any required experience, chances are you will end up losing money instead of making any.

As inflation and unemployment continue, these unconscionable promotions will expand. The council, working with BBB's around the country, is right now in the process of investigating several dozen of these. And you may be sure we will cooperate fully with the Postal Inspection Service. This type of promotion does not lend itself to self-regulation.

Where there is evidence of fraud in these or other promotions, we shall continue to work closely with the postal inspectors with whom BBB's have had an excellent relationship over the years. Where there is evidence that the same principals who have been stopped in one phony promotion have moved on to another—a continuing problem—this, too, will be turned over to the inspectors.

The postal inspectors have been a highly efficient, professional and cooperative group and they should be given every reasonable assistance in stamping out fraud more expeditiously than they now can.

A final note. You will recall that I cited a mail order complaint figure of 21.3 percent of all complaints received by IBBS. During the first 6 months of this year, Better Business Bureaus handled 97,100 inquiries about mail order companies—this constitutes only 3.7 percent of all inquiries. Many more thousands of problems could be avoided by calling BBB's for factual information about companies before doing business.

Mr. Chairman, thank you again for the opportunity to be here. Please be assured of our full cooperation.

Mr. HANLEY. Thank you very much, Mr. Startz, for your excellent testimony. We are most appreciative for what the Better Business Bureaus attempts to do in assisting in solving this problem.

It would appear on the basis of some of the case histories that you have mentioned that it may well be a lucrative business just to go into business with the absolute intent of fraud, that is, picking up a lot of consumers' money with the intent to ultimately go bankrupt. What you have told us is very interesting.

Can you tell us the nature of the mail fraud scheme for which a mail fraud conviction was obtained in the Federal court in Syracuse last month as you referred to on page 4 of your testimony?

Can you tell us a bit about that?

Mr. STARTZ. Mr. Chairman, I would prefer not to get into that one in Syracuse only because the Better Business Bureau is being sued currently and the suit has not been withdrawn, despite the conviction, for public statements that were made about it.

I think you will find in the testimony of the Chief Inspector that there is a good description of that case.

Mr. HANLEY. All right. Fine. Will you describe the types of work-at-home schemes and what has caused the organization to concentrate on this type of mail fraud as opposed to the classic fraud situations?

Mr. STARTZ. The real problem, Mr. Chairman, is that there has been a vast increase in this type of fraud. This is not something new, by the way. Work-at-home schemes have been going on for a number of years. According to reports that we get from all around this country there has been a real upsurge in this. These are the kinds of schemes which advertise usually in classified columns but elsewhere, too, and sometimes under help wanted, and that, of course, is completely erroneous, and make fantastic claims of earning money at home by stuffing envelopes or whatever it might be.

The only thing that really happens is that the unscrupulous promoter of this makes the money and despite any guarantee that he gives you about how much you are going to get paid for products that you may make and which he is going to buy back, that never happens. That is the reason that the council has just started an investigation of over 60 of these work-at-home schemes.

As I indicated in the statement, it seems to us that particularly the emphasis on combating the problems of inflation with a relatively high rate of unemployment, with the elderly scraping to keep things together, it is well worth an expenditure of our money to get some facts which, where fraud is then indicated, will be turned over to the postal inspectors.

Mr. HANLEY. Given the significant increase in the problem which you have alluded to, I assume that you would concur that perhaps the Postal Service should move in the direction of tightening up on its regulations.

Mr. STARTZ. If I understand you correctly, I would agree. It is a general comment and I am not sure I completely understand.

Mr. HANLEY. What I am saying is that apparently the recognition of the significant increase in fraud where people fail to be reimbursed, to be disappointed, it would appear to me that the Postal Service has an obligation to be more protective of the general mailing public.

Mr. STARTZ. Mr. Chairman, I would agree completely, as I indicated, I think the Postal Inspection Service does do an excellent job within the existing statutes and within the appropriations which they receive.

I do want to reemphasize that our figures really do not show any great upsurge in fraud. We have a big upsurge in complaints and still the vast majority of those relate to delayed delivery, close to two-thirds of them, and as you just indicated, a significant figure, too, on not refunding money. But the money usually in the absence of bankruptcy finally is refunded, but the mail order industry

generally owes the American public more than waiting 3 to 6 months to get a refund on something they did not receive.

That, I would say, is not a basic problem that the Post Office Department has to confront nor should confront. I would rather see the Postal Service appropriations, as limited as they always are, expended on expeditious handling of fraud cases. Even those, as you know, almost necessarily take a couple of years.

One of the answers to this problem is to try to inform and educate the American public about this type of scheme and about all mail fraud. As a matter of fact, the Council of Better Business Bureaus has produced a pamphlet just on this thing called Tips on Work-at-Home Schemes. We have a vast network, radio and television, of consumer information spots that attempts to inform the American public about this.

But, obviously, it is a continuing problem and appears to be getting worse rather than better.

Mr. HANLEY. You allude to the shortage of funding for the Postal Service to do what it should be doing. You are aware, of course, of the congressional efforts to improve upon this situation.

Mr. STARTZ. I agree. I am aware of it, and I simply meant, Mr. Chairman, that over the years I have known of the Postal Service and many other agencies of Government that are necessarily limited in their funds.

I would like to see with that limitation emphasis on what their basic job is as far as the mail order industry is concerned and that is a speedy prosecution of any mail fraud and stopping it just as quickly as possible.

Mr. HANLEY. Thank you.

Mr. Stenholm.

Mr. STENHOLM. To follow up on your last statement, I noted in your statement you said you believe the Post Office is doing a good job and an adequate job. You come back and question—at least in what I heard you say—whether or not the post office had the resources to do the job the BBB's would like to see done.

Is there any area of cooperation with the Postal Service and the Better Business Bureaus which you would like to see improved dramatically?

Mr. STARTZ. Not at all. First of all, I have evidently left an erroneous impression. I cannot comment specifically about the appropriations the Postal Inspection Service or the Post Office generally gets. I do know that it always has been limited. I do know that it takes a long time to get mail frauds investigated and finally stopped.

We have an excellent relationship with the Postal Inspection Service. The Post Office Department goes out of its way to designate people to work closely with us at the council. Better Business Bureaus around the country frequently single out the Postal Inspection Service—when they do this, this is in relation to the many other fine civil servants of the Federal Government—single them out as people who are effective and cooperative in their work.

By the way, in my written testimony when I mention the problem of a couple of Better Business Bureaus bringing to the attention of governmental authorities, Federal and State, certain situa-

tions which were then not handled properly, I was not referring to the Postal Inspection Service.

Mr. STENHOLM. In those areas where fraud has been proven, convictions have been received, in your opinion, has the punishment been adequate?

Mr. STARTZ. I am not as interested in the punishment. That would be much too general a question for me to be able to answer, Congressman. I am interested in a couple of things. One of them is making sure that the very same people who were perpetrating that fraud are not able to go out and do a similar thing again. That kind of thing happens day in and day out and is happening right now.

I am interested also in the Postal Inspection Service trying to get the cases solved quickly. I am not competent, really, to talk about the adequacy of the punishment but rather what happens to the American consumer.

Mr. STENHOLM. How do you see that those who continually perpetuate this type of crime on the American public are unable to continue it if the punishment does not fit the crime?

Mr. STARTZ. I would assume that the committee and others might want to look at the statutes as well as the rules and regulations that are imposed.

Mr. STENHOLM. I guess that is my next question. Is there a need for improvement in the statute that deals with this type of crime, in your opinion?

Mr. STARTZ. Let me preface this by saying I am not commenting on any specific bill that may be pending or will be pending. But everything possible should be done to make sure that someone who has been convicted on mail fraud cannot go out and do the same thing again.

The statute ought to be strengthened in every possible way to prevent that.

Mr. STENHOLM. In your opinion, why do you believe that the mail order business has the bad record of shipments and deliveries and refunds? What is the cause of that?

Mr. STARTZ. I think that there are a lot of causes of it. One of the causes is that there are a lot of companies in the mail order industry who have not shown the same public presence and concern about the American consumer as many other companies in other industries do. This rubs off on the so-called reputable companies which have shown that concern.

Second, the American consumer, who is located in Washington, D.C., and buys from a Los Angeles mail order firm, really can only deal long distance with that firm, and it is much easier to give him the run around.

We met just last week with the president and other representatives of the Direct Mail Marketing Association, who recognized the importance of the problem. We hope to work with them in trying to get it ameliorated at the very least. So there are quite a number of reasons for this increase, it seems to me.

I hesitate to mention that one of the possible reasons is that there are sometimes delays in mail which causes some of the mail order problems.

Mr. STENHOLM. Thank you. No further questions.

Mr. HANLEY. Mr. Startz, have you had many instances called to your attention where businesses were instituted as direct mail businesses, were in existence for a relatively short period of time, and then went out of business and generally you received complaints from people who responded, sent money in?

Mr. STARTZ. Yes, Mr. Chairman, that is a significant problem. Following your own line of reasoning a little bit earlier, it seems to me that there may well be in some of these cases evidence of intent to defraud as a possibility.

While it is apparent that there are many companies which do go bankrupt, I suppose most companies that go bankrupt basically because of bad business practices rather than intent surely, particularly where a business goes out of business pretty quickly and leaves American consumers stranded, and particularly if the same principals then go into another business, there is some fairly clear evidence.

Mr. HANLEY. Have you encountered that sort of situation where this particular business goes defunct, you do get complaints, and then subsequently a new business is instituted and you find that those who have instituted it are essentially the same principals who once headed up the first business?

Mr. STARTZ. Yes, we have, Mr. Chairman.

Mr. HANLEY. You do find that.

Mr. STARTZ. Yes.

Mr. HANLEY. Mr. Cavanaugh.

Mr. CAVANAUGH. Thank you, Mr. Chairman.

My understanding is that the Better Business Bureaus does seek to expose by advertising or public notoriety unethical fraudulent business practices.

You indicate you were subject to a lawsuit in Syracuse. Was that as a result of those types of activities?

Mr. STARTZ. Yes, it was.

Mr. CAVANAUGH. Does that give pause to the Better Business Bureau to continue to advise the public?

Mr. STARTZ. No. It doesn't give us pause at all. As a matter of fact, the easiest way for us to avoid lawsuits is to put a lock on our doors and not do what we are set up to do, but the one thing that it does do, and rightfully so, is to make sure that we have the facts and the proper backup before we characterize any business or individual as being fraudulent, phony or not in the public interest.

Generally, we don't even do that. What we do is simply issue a report or sometimes a news release that states the facts of what has been happening so that the consumer can make up his or her own mind.

Mr. CAVANAUGH. You are the only entity that does that.

Mr. STARTZ. I don't know whether that is correct. We think we probably are the only self-regulatory body that answers consumers not only about business practices generally but when they call about a specific company. We will tell the consumer how long the company has been in business, what the complaint picture looks like, whether the company has resolved the complaint satisfactorily or not and whether there have been governmental actions, what they have been.



Mr. CAVANAUGH. Do you have any direct mail businesses who are members or subscribers of the Better Business Bureau?

Mr. STARTZ. When you say the Better Business Bureau, there are 146 of them around the country. I do not know how many there are which are members. I do know that there are very few mail order companies which are members.

Mr. CAVANAUGH. You have indicated that you have just begun some negotiations—what is the name of the national organization?

Mr. STARTZ. We invited the president of the Direct Mail Marketing Association, which is the trade group of mail order companies, to a several hour discussion last week, to try to figure out how we are going to handle these problems better than they have been handled in the past.

Mr. CAVANAUGH. Did they have any specific recommendations for cleaning up their own industry?

Mr. STARTZ. Well, I am sure that they do but it hasn't gotten to that point as far as cooperation between the two groups are concerned, but I would think that the president of the Direct Mail Marketing Association can speak better to that than I can.

Mr. CAVANAUGH. Thank you, Mr. Chairman.

Mr. HANLEY. Mrs. Spellman.

Mrs. SPELLMAN. I hesitate to ask questions for fear they have already been asked. Stop me if I am repeating so I can check the record.

Is the frequency of complaints about mail order companies far greater than those of the normal business?

Mr. STARTZ. Yes. Mail order complaints lead the list of the 87 different categories that we keep statistics on, and one of the reasons I think for my having been invited by the chairman, was an article in the New York Times quoting our statistics showing that not only do they lead the list but the tremendous upsurge in complaints during the first 6 months of this year.

Mrs. SPELLMAN. I don't know whether mail order firms can be singled out but if they could be, would it make sense for them to have to post a bond to take care of the going-out-of-business types?

Mr. STARTZ. I don't think I could answer that question at this point.

Mrs. SPELLMAN. If I wanted to know something about a firm that is operating out of San Francisco, could I call the local Better Business Bureau? Do you have a network?

Mr. STARTZ. Yes. We have a network and they would find out for you.

Mrs. SPELLMAN. I think I will hold off at that point. Thank you very much, Mr. Chairman.

Mr. HANLEY. Thank you, Mrs. Spellman.

Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. STARTZ. I am sorry that I was unavoidably delayed getting here to hear your testimony. I will look forward to reading it. I just would like to say I appreciate very much the Council of Better Business Bureaus and what your organization has done on a voluntary basis to protect the consumers in this country.

I think you are one of the first consumer advocates and first consumer protective groups we had in this Nation. I know over the

years you have an enviable record of service to not only consumers but to legitimate businesses in this Nation, and I want to thank you very much for your taking the time to be with our subcommittee this morning.

Mr. STARTZ. Thank you, Congressman.

Mrs. SPELLMAN. Mr. Chairman, I do recall there was one other thing.

Mr. HANLEY. Mrs. Spellman.

Mrs. SPELLMAN. I dare say you already have been asked about the work-at-home schemes. Of all the people who can least afford to be fleeced it is those people who are trying to pick up a little extra money by working at home. I guess most of the schemes are phony, aren't they?

Mr. STARTZ. Well, most of them are phony, without question. I think I had indicated a little earlier in my testimony that most of these do not lend themselves to self-regulation. As the result of our investigation of approximately 60 of them, wherever they show fraud we will be in touch with the postal inspectors rather than trying to deal with this on a voluntary basis.

To me this kind of fraud is a particularly unconscionable one. I have seen a lot of them over the years, starting back when I was on Governor Harriman's staff as deputy to the first consumer counsel of the country. I have seen many of these consumer-type problems but this type, while it may not be a really large sum of money involved, the people upon whom it preys needs that amount of money and they don't need the false hope of being able to make a lot of money when they are not going to.

Mrs. SPELLMAN. They advertise in various publications, don't they?

Mr. STARTZ. Yes, they do.

Mrs. SPELLMAN. Can't the publication be held liable?

Mr. STARTZ. I rather doubt that. I am not an attorney; but normally a publication is not liable.

By the way, not only do they advertise in publications but the mails are flooded with direct mail promotions of work-at-home schemes.

Mrs. SPELLMAN. It seems to me we ought to be able to take care of that.

Mr. STARTZ. I would think so.

Mrs. SPELLMAN. Thank you, Mr. Chairman.

Mr. HANLEY. Thank you, Mrs. Spellman.

Is it a fair statement to say that by and large most of the direct mail merchandisers are responsible entities?

Mr. STARTZ. Mr. Chairman, I don't think there is any question about that. The great majority of direct mail entrepreneurs are completely responsible. Those are not the companies about which we get all of these complaints. As I indicated to you earlier—and I don't have the figures; I am sure others who will testify do—the amount of business that is done by mail is a huge one and, second, mail order cuts across all product lines. We are not talking about complaints about one or two products. We are talking about all product lines.

So it is almost like saying that we ought to compare the number of mail order complaints to all complaints in stores our people find.

But to me that kind of comparison is not necessary. I am sure not here to blast the mail order industry. It is a reputable industry. But I am here to indicate there is a serious problem due to an upsurge of complaints, and that here is what some of the specific problems are in terms of types of complaints, and we are going to do our best in the private sector to try to do something about them, and I am sure that the Government, through the post office and other agencies, will be doing likewise.

Mr. HANLEY. Are there any further questions?

If not, Mr. Startz, in behalf of the committee, our deep appreciation for your appearance here this morning. You have contributed measurably. Thank you.

Mr. STARTZ. Thank you, Mr. Chairman.

Mr. HANLEY. Our next witness is Mr. Kenneth H. Fletcher, Deputy Chief Postal Inspector of the United States Postal Inspection Service.

Mr. Fletcher, we are delighted to have you with us this morning. If I may take the liberty of congratulating you in advance, I understand that come the 17th day of this month you will drop the word deputy in association with your title and become the Chief Inspector.

**STATEMENT OF KENNETH H. FLETCHER, DEPUTY CHIEF POSTAL INSPECTOR, U.S. POSTAL INSPECTION SERVICE, ACCOMPANIED BY GEORGE DAVIS, ASSISTANT GENERAL COUNSEL, CONSUMER PROTECTION DIVISION, LAW DEPARTMENT, U.S. POSTAL SERVICE**

Mr. FLETCHER. Thank you very much.

Mr. HANLEY. With that thought in mind, my heartiest congratulations. We are delighted to have you here and if, for the purpose of the record, you would introduce your associate.

Mr. FLETCHER. Thank you.

As the chairman has indicated, I am Kenneth H. Fletcher, the Deputy Chief Postal Inspector. With me this morning is George Davis, who heads the Consumer Protection Division of the Law Department of the Postal Service.

Mr. HANLEY. Mr. Davis, nice to have you with us.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. HANLEY. If you will proceed.

Mr. FLETCHER. Thank you.

Mr. HANLEY. Thank you.

Mr. FLETCHER. I appreciate the opportunity to appear before the subcommittee this morning to discuss mail fraud. I would like to begin by telling about the overall duties and responsibilities of the Postal Inspection Service before I outline our efforts to combat mail fraud.

The Postal Inspection Service is the investigative arm of the U.S. Postal Service. We are the oldest Federal investigative agency in the country, with investigative jurisdiction over all violations of Federal criminal laws relating to the Postal Service. The postal crimes with which the Inspection Service must contend fall into two broad categories: First, those actions which involve a criminal attack upon the Postal Service or its employees, such as armed robberies, burglaries, theft of mail, and assaults on postal employ-

ees; and second, those which involve criminal misuse of the postal system itself, such as the mailing of bombs or pornography and, of course, mail fraud.

The magnitude of these responsibilities is in direct proportion to the size of the Postal Service itself, which last year handled just under a hundred billion pieces of mail, and has about 650,000 postal employees, over 40,000 postal facilities, and cash receipts of around \$22 billion.

The Inspection Service also has the functions of performing the internal audits in the Postal Service and providing protection to postal facilities and postal employees. To meet all of these responsibilities, the Inspection Service has a nationwide complement of about 2,000 postal inspectors; a uniformed postal security force of approximately 2,500 people, and a variety of other support and administrative personnel, including five crime laboratories strategically located throughout the United States. Our overall complement is about 5,500 people.

With that brief background, let me move to outlining our activities in the area of mail fraud. The mail fraud statute, title 18, U.S. Code, section 1341, was enacted in 1872 as a Federal effort to protect the public from the far-reaching schemes of swindlers using the mails in their fraudulent operations. Prior to the passage of the mail fraud statute, which is certainly one of this Nation's oldest consumer protection laws, con artists used the mails to swindle people throughout the land, virtually safe from prosecution because local law enforcement officials were unable to obtain jurisdiction over the distant swindler.

The mail fraud statute is, at its essence, quite simple, and yet at the same time quite broad in its application. It states that "whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises," uses the mails for the "purpose of executing or attempting to execute such scheme," is guilty of mail fraud. Use of the mail includes not only mailing by the fraudulent operator to execute the scheme but also any actions which would cause other people to use the mails, such as by mailing in orders.

As interpreted by the courts over the years, this relatively simple statute has proven to be very effective in dealing with a broad variety of frauds. In the over 100 years that the Inspection Service has been enforcing this statute, it has easily kept pace with new schemes and the resurgence of old schemes.

In addition to more traditional mail fraud schemes involving misrepresentations of products sold through the mails, or the failure to furnish products sold through the mails, the mail fraud statute has been used to prosecute complex financial swindles, a wide variety of investment frauds, insurance swindles, land frauds, advance fee frauds, credit card frauds, phony job opportunity schemes, diploma mills, phony solicitation operations, and even political corruption cases. The key to all of these cases is simply the use of the mails in the furtherance or in the execution of these schemes.

There is today increasing emphasis on white-collar crime, both within the law enforcement community and among the public at

large. Any effort to place a dollar value on the amount of white-collar crime in its many forms, or fraud in general, is at best a guess, the size of the estimated loss being dependent upon a variety of assumptions.

Notwithstanding the uncertainty over the exact magnitude of the problem, there is no doubt that it is a serious problem which deserves serious attention. During the fiscal year which ended September 30, 1979, the Inspection Service received approximately 195,000 complaints alleging mail fraud, conducted nearly 5,500 such investigations and effected over 2,300 arrests.

This year, fiscal year 1980, the Inspection Service will be concentrating on those mail fraud schemes which most affect the elderly, the disadvantaged, and minorities; those fraudulent schemes involving medical quackery, and of course fraudulent schemes directed against the Postal Service.

On September 19, 1979, Postmaster General Bolger announced that the Postal Inspection Service would be initiating a new consumer protection program during the coming year.

In brief, this program will involve an effort by the Postal Inspection Service to alert the public to mail fraud schemes that may be on the rise across the country in an attempt to protect the public from being swindled by these schemes. We feel that the Inspection Service is in a unique position to do this by virtue of the fact that we already receive complaints from the public concerning these alleged mail fraud schemes, and over the years have built up liaison with other consumer protection groups—Federal, State, and local, and, I might add, especially the Better Business Bureau.

In addition to attempting to protect the public from being victimized by these schemes in the first place, we feel the program will help us to more quickly receive complaints from the public and thus be in a position to take faster action.

As I mentioned, we are targeting specific areas of mail fraud during this fiscal year. Typical of cases which affect senior citizens on fixed incomes, those who are shut in, or others who are disadvantaged, are the work-at-home schemes. Victims are enticed by the prospect of earning additional income through some type of work which they can do within their own home. The endeavor may range from addressing envelopes to knitting baby clothes which the promoter guarantees to buy back. Unfortunately, in all too many cases, the promises of additional income never materialize and the fees paid to the promoters are never recovered.

An example of such a scheme was one recently operated out of Syracuse, N.Y., by an individual who offered to set people up in their own mail order business in the comfort of their own homes. We have a poster here, Mr. Chairman, to my immediate right. For investments which averaged in excess of \$100, and ranged on up to \$7,000 in one case, the victims received a supply of proven circulars advertising a book written by the promoter, envelopes, and a guaranteed list of mail order buyers. All the homemaker supposedly had to do was mail out the material and wait for the money to roll in.

The victims of the scheme had been guaranteed a minimum return of \$3,000 within 30 days by using the promoter's proven sales methods. However, most made no more than a handful of

sales and lost their entire investment. Thousands of persons were victimized and losses totaled in excess of \$1 million. The operator was indicted in July of this year on 34 counts of mail fraud and was found guilty of all charges on October 3.

While we feel criminal action such as in this case will serve as a deterrent to future operators, the fact remains that the victims of the scheme still lost their investment. The ideal solution is, of course, to prevent the individual from being victimized in the first place. To this end we are testing a pilot program whereby we, the Inspection Service, place advertisements in publications normally utilized by the operators of this type of scheme. These advertisements contain wording typical of fraudulent work-at-home offers and use a fictitious firm name. Persons responding to the ad are those who are most susceptible to being exploited by this type of blatant scheme.

We send these individuals a letter from the inspector in charge of that division, together with their postage, pointing out some of the warning signs that they should look for in reviewing to this type of proposal. We have reached several hundred potential victims during our test period and the response has been very favorable. While we have no definite statistics, I am sure we have prevented a good number of these individuals from becoming victimized by a similar scheme. It is likely we will be implementing this program on a nationwide basis in the near future.

Medical fraud is another area of concern and one that has been with us for a long period of time. That concern extends beyond the advertisement for products such as alleged cancer cures which hold a real potential for harm to the victim and which we have and will continue to vigorously prosecute.

Our years of dealing with the problem of medical fraud have led us to believe that a great portion of this fraud is perpetrated and controlled by a rather small number of enterprising operators. Investigative efforts are being directed at these individuals and we feel these efforts will be productive. In fact, just last month a Federal grand jury at Memphis indicted 6 individuals on 100 counts of mail fraud. That indictment alleges a scheme to defraud over 7,000 individuals through the sale of a worthless diet pill.

A growing problem area that is receiving investigative attention by the Postal Inspection Service today relates to the broad area of investment swindles. This encompasses a variety of schemes, including fraudulent franchise operations, investments in coins and gems, land sales, animal breeding schemes, and a host of others.

We feel that the increase in investment-related schemes has a relationship to the economic situation of today. During times of inflation people are looking to invest their savings in ways that will keep up with inflation. Those on fixed or low incomes are seeking ways to supplement that income.

Often the victims of these schemes are the people hardest hit by inflation. We frequently find that the victims are elderly people who have been persuaded to invest their nest eggs. Obviously, there are many legitimate investment opportunities available in all of the areas that I mentioned earlier and the preponderance of these opportunities are legitimate. However, this only serves to

give the mail fraud operator a better climate within which to conduct his fraudulent promotion.

A scheme typical of this type swindle was conducted by two Denver, Colo., men who offered worm-growing franchises under a variety of firm names. We have a poster on this also, Mr. Chairman; to my left. They misrepresented the profit potential of such a venture by saying that one could make up to \$1,200 a month growing earthworms at home. They also made many misrepresentations concerning the growing methods that could be used.

For example, they said that the use of cardboard bins was the most effective way of getting earthworms to grow fast and large. But the most significant misrepresentations were made concerning the available market. They stated demand for earthworms far exceeded the supply, both here and abroad. The promoters maintained that there were unlimited markets for earthworms, including land reclamation, sewage sludge control, research projects, organic waste conversion, organic gardening, food supplements, and fish bait.

They further represented that one of their companies was established in these markets and desperately needed people to grow earthworms to sell to these markets. They actually did buy some of the earthworms back from some of the victims. However, the only use to which they put them was to sell the earthworms to other victims.

Based on these misrepresentations, the two operators of this scheme persuaded over 1,300 people to invest amounts ranging from \$825 to more than \$8,400, depending on the size of the package offered. The total known loss to the public was over \$2 million. Both men entered guilty pleas to mail fraud counts on September 7.

On September 13, 1979, four individuals were indicted in Tennessee for operating a similar worm-farm scheme. Alleged losses in that case totaled almost \$3.5 million and involved over 2,000 victims.

In another investment type investigation recently concluded, three men in Dallas, Tex., entered pleas of guilty on August 10, 1979, to mail fraud in connection with the operation of a restaurant franchise scheme. From August 1 to December 12, 1978, the operators of this scheme obtained more than \$700,000 from at least 100 people who were promised 20-percent ownership in a restaurant and a position of manager at a salary of \$24,000 per year, neither of which promises ever materialized.

The major misrepresentations here were in connection with the past success of similar franchises, the financing of the restaurants, the expertise required of employees, and so on. In fact, there were no restaurants under construction and no financing was available. At the time of indictment these operators were receiving about \$250,000 a month.

Another area that remains a problem is that of fraudulent land schemes. In one such classic case of land fraud, the operator purchased 1,500 acres of west Texas land at \$60 an acre and resold it to investors in 5-acre parcels at \$1,100 an acre or \$5,500 a parcel, a profit of \$5,200 on each parcel. The operator promoted the land through direct mail advertisements representing the land to be in

an oil-producing area with a high agricultural potential a few miles west of Lubbock, Tex.

We have a depiction on the far right here of some of the materials that the promoter sent through the mails. The depictions in the brochures sent through the mails were much different from photographs of what the land actually looked like, which are also displayed on the poster. In fact, the land is 72 miles from Lubbock, has no agricultural potential, and is not in an oil-producing area.

The promoter was convicted and sentenced to 3 years in prison. Two of his associates were also convicted. There has been some reimbursement to the purchasers, but unfortunately, most will never see their money again.

In another type of land fraud, five people were indicated on August 15, 1979, on mail fraud and conspiracy charges concerning resort land in the Poconos. The misrepresentations here involve such claims as that custom-built homes were available on 1-acre lots for a total price of \$15,000. In fact, there was no intention to build homes for that price. It was a typical bait-and-switch operation where fake claims were made to get the victim's interest and then pressure was applied to make the sale at a far higher price than advertised.

As you can see, the mail fraud statute equips us well to deal with many variations of white-collar crime. The Department of Justice has designated white-collar crime as a top priority. Through the establishment of economic crime enforcement units in U.S. attorneys' offices in various parts of the country, the Department is setting up the framework for vigorous enforcement of this type of crime. The Inspection Service will continue to play a leading role in this joint Federal effort to combat a major problem area.

In addition to the criminal mail fraud statute, the Postal Service has available two civil statutes which the Inspection Service and the Consumer Protection Division of the Postal Service's Law Department can use against individuals or firms whose advertisements soliciting remittances through the mail are shown to contain false representations.

Title 39, United States Code, section 3005, permits the Postmaster General, after an appropriate administrative hearing, to withhold and return to the sender mail addressed to anyone who solicits moneys through false representation. The companion statute, section 3007, makes it possible to obtain a temporary restraining order from the U.S. district court, to withhold from delivery all of the operator's mail pending disposition of action in the administrative proceeding.

These statutes are potentially powerful weapons, especially in our medical fraud investigations. However, we have been hampered in our ability to use them effectively because of the time lost in obtaining a sample of the product by mail order. In all cases, we must have access to a sample of the product to determine whether it is being falsely advertised and, if so, for use in our proceeding.

A recent scheme in which the statute was effective involved Penn-Bio Pharmacals, a trade style used by American Consumer, Inc. I have a poster here to my immediate left. This was a weight reduction scheme offering a soluble powdered protein and a booklet describing the program. Representations such as "burns away more

fat each 24 hours than if you ran 14 miles a day" were made in newspaper and magazine advertisements offering the product for sale by mail. Medical experts disclosed the falsity of this and other similar representations and a mail stop order was issued.

These statutes can sometimes be effective in forcing a quick voluntary discontinuance of the fraud, as in a recent case where advertisements appeared for wooden crosses allegedly made from the altar blessed by the Pope during his visit to Chicago. Quick inquiry determined the altar was in possession of the church and the crosses were apparently being made from a platform used during the ceremony. When the promoter learned we were preparing to file for a temporary restraining order, he voluntarily ceased his operation and returned all money received.

As I noted, in this type of investigation the Inspection Service will normally make a test purchase of the product and submit it for examination or testing to determine if misrepresentations have been made by the promoter. In most cases, a sample must be used as evidence to get a temporary restraining order. The process of obtaining a test purchase is time consuming and some promoters delay shipment of any products until the scheme has run its course. All too frequently the mail stop order is issued after the promoter has already received most of the money. At this point the order does not help much.

The Inspection Service currently has no authority to compel a firm or individual whom we believe is advertising falsely to furnish a sample of the product upon demand. The inability to obtain this necessary evidence to support a temporary restraining order in a timely manner often precludes us from meeting our real objective of putting the operator out of business before postal customers are victimized.

An amendment to title 39, United States Code, section 3005, which would require a promoter to furnish a sample of advertised products to a postal inspector upon personal demand and tender of the advertised purchase price would greatly facilitate our efforts to protect the consumer.

In summary, the Inspection Service will continue to play a significant role in insuring the postal customer can use the mails with confidence and security. We will continue to place emphasis on prevention through education. At the same time, however, we feel a strong enforcement policy is vital in keeping the mails as free as possible from fraudulent use.

As I noted, certain schemes can be attacked by utilizing civil temporary restraining orders to halt the flow of funds, but this action will not preclude criminal prosecution where warranted.

The bedrock of our efforts will always lie in the mail fraud statute.

Mr. Chairman, I appreciate this opportunity to report to you on the efforts of the Postal Service in the area of mail fraud.

Mr. Davis and I will be happy to answer any questions you may have.

Mr. HANLEY. Thank you very much, Mr. Fletcher, for your excellent testimony.

With regard to the amendment to the statute which you suggest on page 12 of your testimony, I believe, as you know, the commit-

tee does have such a bill and we hope very much that we can move with it in committee and it will indeed provide you with the tool to better implement the intent of your division.

Going back to page 3 and the number of complaints, 195,000 complaints and about 5,500 investigations, it appears to me that in the matter of criminal arrests they outnumbered administrative complaints—the complaints outnumber the arrests by a ratio of 19 to 1. Could you explain?

Mr. FLETCHER. We had one case last year, Mr. Chairman, with 40,000 complaints.

Mr. HANLEY. 40,000?

Mr. FLETCHER. 40,000 in a single case. So you can receive large numbers of complaints in a single investigation. I do not think you can really make that kind of direct comparison. In addition, some of these complaints do not actually involve mail fraud. We do receive a significant number of complaints each year—30 to 40,000—that we did not include in the 195,000 figure which really do not relate to mail fraud. They concern unsatisfactory business transactions of some sort.

To have fraud there has to be intent to defraud and so on. There are many occasions where a business may receive more orders than they anticipated or there may be some legitimate business reasons for not furnishing the products on as timely a basis as expected. We have in the past—up until about 4 years ago—advised people that there was no mail fraud involved in these complaints and that there was nothing we could do.

About 4 or 5 years ago, in an effort to provide some assistance to the consumer, we set up a liaison with many of the legitimate mail order firms across the country and now when we receive one of these complaints, we refer it to our inspectors in the appropriate geographic area. They contact the business about this complaint. We have found that about 90 percent of these are adjusted on the basis of our inquiry.

I think this relates to one of the questions posed earlier; if you are in this area and you have a business complaint with somebody in San Francisco, what can you do? Well, we will look into that complaint. If it is just an unsatisfactory business transaction, we will frequently get an adjustment of it.

Mr. HANLEY. The 40,000 complaints that you have just mentioned, what were the complaints in regard to?

Mr. FLETCHER. It slips my mind right now what kind of a case that was.

Mr. HANLEY. It was a fraud?

Mr. FLETCHER. Oh, yes; it was a fraud. I believe it may have been an offer of some merchandise. We had a case involving watches a few years ago that was similar. We received enormous numbers of complaints. It is Columbia Research; yes, Columbia Research.

Mr. DAVIS. A phony vacation scheme.

Mr. FLETCHER. It was an outfit in Chicago that offered phony vacation schemes. It advertised in many national publications and we received 40,000 complaints on that one.

Mr. HANLEY. The conviction of the person in Syracuse, what was the penalty in that case?

Mr. FLETCHER. I beg your pardon?

Mr. HANLEY. The conviction of the person in Syracuse, what was the penalty in that case?

Mr. FLETCHER. The sentencing is set for November 20, Mr. Chairman. We have been getting some pretty good sentences, to allude to a question asked earlier. We have been getting better sentences—4, 5 years, up to as high as 10 years—in some of our cases. I think there is a growing trend toward more effective sentencing in white-collar crime.

Mr. HANLEY. Now you have mentioned the need for one amendment and the committee is working on that.

What other changes might you suggest to the mail fraud statute which would make it more effective against white-collar crime?

Mr. FLETCHER. Well, the mail fraud statute itself I think has proven effective as it is. We have often wished we had a misdemeanor mail fraud statute. Mail fraud is a felony and sometimes some of the more minor cases are less attractive to some of the Federal prosecutors. A misdemeanor statute would help us.

The proposed revision of title 18 which is presently under study does call for some sort of a revised misdemeanor statute. With respect to our civil statutes, we have talked among ourselves about some revisions, perhaps a fine in relationship to the 3005 civil actions might be helpful.

I believe, though, that the proposal we have here to get the product faster will be of major help to us. These are cases where time is of the essence. Every day that goes by, additional people are being defrauded because the mail is being delivered to them. If we can get the product quicker, we can proceed with our injunction or fraud order proceedings.

Mr. HANLEY. In recognition of the greatly increased number of complaints, as evidenced in the testimony provided by the gentleman representative of the Better Business Bureau, it would seem that perhaps a review of the statute would be in order. I would invite you this morning to—now that you are about to become the Chief Inspector—perhaps you would want to make an indepth review and determine any inadequacies of the tools you presently have. And if you deem that they are indeed inadequate, we have some fine people on the staff who are more than willing to work with you to draw the language of legislation which would provide you with perhaps better tools to enable you to do a better job. I know that you want to do the best job possible.

Mr. FLETCHER. Yes, sir. I will consider that.

Mr. HANLEY. Mr. Taylor?

Mr. TAYLOR. Thank you very much.

Mr. Fletcher, thank you very much for your testimony. It was most informative to be able to get an overview of just exactly what the Inspection Service, Postal Inspection Service is doing and the authority under which you operate. I want to commend you for the fine work that you are doing.

I wonder, Mr. Fletcher, in your complaints that you receive, the 161,000 last year, what is the source of most of the complaints? What is the conduit by which these complaints reach the Postal Inspection Service normally?

Mr. FLETCHER. The Postal Service is fortunate in that we have a complaint network consisting of over 40,000 postal facilities. We

receive the majority of our complaints directly from the public either to a postal inspector's office or on some occasions to a post office which forwards the complaint to us.

We also receive complaints from the Better Business Bureau, from various State and Federal agencies, such as the FTC and the SEC, and from a variety of State and local consumer groups. But I think the bulk of them we do receive directly from the public.

Mr. TAYLOR. Normally if a person has a complaint or feel they have been defrauded, if they go to the local post office and report that, that is forwarded on to your office, is that true?

Mr. FLETCHER. Yes.

Mr. TAYLOR. What is the structure of your operation as far as where these people are? Are they in the sectional center, does every sectional center have a postal inspector?

Mr. FLETCHER. We have 2,000 inspectors, all across the country. They are generally in the major metropolitan areas. But I think that we would have postal inspectors in most but not all of the sectional centers, all but the very smallest sectional center.

Mr. TAYLOR. Thank you very much, Mr. Fletcher. Again I want to thank you very much for your testimony. It has been most informative to me. I am sure the committee appreciates it.

I would further reiterate what the chairman has said, any time this committee can follow through on any of the recommendations you have to make your work more effective, I am sure you will find we will be most cooperative and the amendment that you referred to as the chairman has indicated, is moving along in the committee and I am sure we will be marking that up before very long.

Thank you.

Mr. FLETCHER. Thank you.

Mr. HANLEY. Thank you, Mr. Taylor.

Mrs. Spellman.

Mrs. SPELLMAN. I was very sorry to see that you have taken those pills, or whatever they were that burn the fat away, out of the mails because I would like to look like that young woman there. I was planning to order some of those. Too bad.

I do not understand why you have trouble getting samples. Do you ask for them at the post office or couldn't you just write to Mary Jones or John Smith and get them?

Mr. FLETCHER. That is what we do. We write in. Our procedure is to send in an order—a test purchase we call it—for the product. But frequently you will find that it is part of the scheme that the promoters are very slow in delivering the product. Frequently it takes us 2 months or so to even get the product. Then, as in the case here, the product has to be examined.

We have a contract with the Food and Drug Administration, which provides medical examination and expert testimony for us. So our case is delayed for at least 2 months. All during that 2 months people are sending their remittances in and being defrauded? If we could shorten that 2 months, we would protect the people who send in remittances during that period.

Mrs. SPELLMAN. In the Treasury Department I know perfumes, hair tonics, all that sort of thing are sent to them on a regular basis, as I understand it, before they even go on the market, to be

tested for alcohol content. The Food and Drug Administration of course would get samples.

Could you not require that before a product goes on the market, you get a sample? I can understand that, with some of the firms that have a thousand items in their catalogs, this requirement would be a problem.

Mr. FLETCHER. The subject of regulatory powers of the Postal Service came up earlier and I think it is important to distinguish between what authority the Postal Service does and does not have in this regard.

We are not in a position to do some of the things that you are referring to here. It is not within our authority to determine what can or cannot be put into the mails, apart from certain nonmailable things such as bombs and explosives and similar things. Other agencies may have the authority, such as the Food and Drug Administration, to determine whether a product can be marketed, not only through the mails but in other fashions. I think that the actions you suggest would fall more within the purview of those other agencies rather than putting the Postal Service in a position of passing on the products being sold through the mails. I think it would be administratively very difficult for us to do this.

Mrs. SPELLMAN. In this weight reduction scheme, for instance, did Food and Drug check that product before it was offered in the mail?

Mr. FLETCHER. Not before.

Mrs. SPELLMAN. Are they required to?

Mr. FLETCHER. Not to my knowledge, but I will defer to Mr. Davis.

Mr. DAVIS. No. Drugs of this sort which are not prescription drugs, do not, as I understand it, come within the so-called new drug amendments which give the Food and Drug Administration the authority to examine the safety and efficacy of the drug before it is marketed.

This sort of thing is not within that statutory scheme, though there have been a number of suggestions that FDA should have such authority.

Mrs. SPELLMAN. It almost seems the over-the-counter items could be even more dangerous than the prescriptions.

Mr. FLETCHER. In this sort of situation, there is not so much of a health hazard as a question of inefficiency.

Mrs. SPELLMAN. In this case it did not work but in other cases perhaps the consumer could obtain an item that could cause some problems.

Mr. FLETCHER. That is possible, yes.

Mr. DAVIS. In connection with the American Consumer case, the Postal Inspection Service worked in cooperation with the Food and Drug Administration on a case involving the sale of several things by American Consumer which were dangerous. Through the use of the FDA statutes and the power of the district courts, some of those products were seized and their inventories were locked up. That is not this sort of thing. They were urine testers, blood analyzers of different sorts, that are highly dangerous.

Mrs. SPELLMAN. Does your agency cover the wires and telegrams?

Mr. FLETCHER. No. If the operation involved solely a telegram it would be fraud by wire, which would be within the FBI's jurisdiction.

Mrs. SPELLMAN. That would be FBI.

Thank you very much for your testimony. It was indeed most enlightening.

Mr. HANLEY. Thank you, Mrs. Spellman.

Does the statute require that the merchandise be provided within a certain time frame or a refund is then in order?

Mr. FLETCHER. No, that is a regulation that was issued by the FTC. The mail fraud statute does not address itself to that, nor do our civil statutes. But the FTC a few years ago issued regulations concerning the mail order industry requiring that products should be furnished within 30 days. I believe that is what you are referring to.

Mr. HANLEY. That is universal?

Mr. FLETCHER. Yes. And that is enforced by the FTC.

Mr. DAVIS. I think he has had a lot of dealings in connection with that. He might enlighten us.

Mr. DAVIS. It is not universally applicable. Certain products were excluded from the regulation, largely products which might be subject to first amendment restrictions: Magazines are excluded, as I recall, from the scope of that regulation.

Mr. HANLEY. The question is, What is the penalty for violation? Would you know that?

Mr. DAVIS. Yes. The penalty for violation is a cease and desist order under section 5 of the FTC Act, which declares that it is an unfair trade practice to engage in deceptive merchandising schemes. The basis of this regulation is the belief that the public expects to receive mail order merchandise within a sensible period of time, like 30 days. If they do not they have been the victims of a deceptive trade scheme.

Mr. HANLEY. Thank you.

Mr. Startz in his testimony complained about the time required to process and prosecute fraud cases. Apparently it requires an inordinate period of time to do this. Would you want to comment on his complaint?

Mr. FLETCHER. I think there are fraud schemes and there are fraud schemes. Some of our very complex fraud schemes do take a considerable amount of time to put together; some of our advance fee swindles are complex financial frauds which do take a lot of time. The type of schemes we are talking about today, however, do not take that much time. We have done a few things during the last few years to try to address this problem.

I agree with him, time is of the essence; the quicker we can act, the more effective we can be in protecting the American public. We have done the following: No 1, we have increased the amount of time our postal inspectors are spending on our mail fraud investigations by 42 percent—that is our plan for 1980—over what we actually did in 1978. So we are putting additional people in this area.

No. 2, we have set as a target for our investigators 6 months to present a case where fraud has been shown to the U.S. attorney.

We will try to get those cases to the U.S. attorney within 6 months, which is a reasonable time period.

No. 3, we have also embarked on a program with Mr. Davis's group to more aggressively use our civil authority under 39 U.S.C. 3005 and 3007, particularly 3007.

If we can get the product and go to the U.S. attorney, who in turn will get an injunction from a district judge, which means the mail will be held pending the administrative hearing under 3005; and if we do show that misrepresentations are present, then that mail will be returned to the sender with the notation that it is under a fraud order of the Postal Service. In these cases, we have protected the public from being swindled.

This would not preclude us from proceeding with our criminal mail fraud statute. In fact, in the Syracuse case mentioned earlier, that is what we did. We did have a civil mail stop order issued and did proceed criminally after it.

Our objective in this area is to protect the American public. We recognize that it is not adequate to simply prosecute the promoters after the scheme has run its course. We have to do more. We have to try to prevent the victims from being defrauded in the first place to the extent we can. That in essence is our effort this coming year in terms of our consumer protection program.

We are going to be using a variety of approaches, including the use of the media to alert the public to some schemes that are going around. We are also looking very hard to try to come up with some innovative ways to reach the victims themselves.

I alluded briefly to our efforts in the work-at-home scheme area. I might elaborate on that a little bit in terms of what we did out in Los Angeles. We placed, the Inspection Service placed, several ads in four newspapers there—typical work-at-home type ads: "Earn \$400 to \$600 per month in your own home, no investment necessary, choose your own hours, this unique program will help thousands like you balance their budgets," and so on. We took them right off some of the mail fraud schemes that we had been investigating.

We received in this case 531 responses from people writing in for this information. When we received those inquiries we sent them back a letter and—if I might read it, it is relatively short.

Mr. HANLEY. Please do.

Mr. FLETCHER. The letter we sent back to the people responding to these work-at-home schemes said:

Dear Postal Customer:

Among the responsibilities of the Postal Inspection Service is the investigation of violations of the mail fraud statute. While the overwhelming majority of mail order advertisers are honest, the American public still loses millions of dollars each year through fraudulent schemes operated through the United States mails.

Since you answered the newspaper advertisement we recently ran, it is quite possible that you could be the victim of such a scheme. It is not our intent to discourage you from engaging in mail order business. However, we would like to give you some warning signs you should look for before parting with your hard-earned dollars. The Postal Inspection Service has been investigating mail fraud for more than 100 years, and I hope you will find these tips helpful.

1. Always remember, if it sounds too good to be true, it probably is. Claims that you can earn unusually high income with little or no effort on your part should be viewed with suspicion.

2. Be suspicious of advertisements which state that they will tell you how to make money at home if you will send them a fee for this information. The most common

offering is for envelope stuffing. When you send your money in response to these ads, you are usually told to run a similar advertisement stating that you will tell people how to make money at home if you will send them a fee. What the advertiser is telling you is, do to others what I have done to you. Such an offering is fraud and, if mails are used, it is mail fraud.

As you can see, we have enclosed two United States postage stamps with this letter. This is to repay you for the postage you used in responding to our advertisement. I regret that we can't tell you how to earn \$400 to \$600 a month in your spare time, but perhaps we have saved you \$5 to \$10. I would appreciate it if you would pass this information on to your friends and neighbors.

If you have any further questions about schemes like this, or any other matter you feel might be fraudulent, please drop me a line at the address shown below. It is signed "Postal Inspector in Charge."

We followed up this letter with a questionnaire a month or so later and received 197 responses, which I think is a pretty good response out of 500. Ninety-six percent of those who responded said that they felt that they benefited and others would benefit by this kind of information.

We received some unsolicited comments on our questionnaires, along these lines: "I really appreciate knowing your concern for other people"; "I would be more aware of such scams in the future"; "there are many of us innocently deceived and your services opened our eyes"; "I was totally unaware of misuse of the mails, please make it more known; it is important that the public be educated in this field."

We are going to emphasize very heavily this year trying to alert the public to these kinds of schemes and we think this is an approach that can be effective against them. We are quite pleased with the results in just this one area of the country. We think by directing our efforts at work-at-home schemes perhaps we can effectively put them out of business. These are inherently fraudulent.

Mr. HANLEY. May I ask, do you feel that you have sufficient personnel, particularly inspectors, to perform your mission and attain the target that you have set? I believe you have 2,500 inspectors, is that correct?

Mr. FLETCHER. 2,000, yes, sir. We added last year in fiscal year 1979 40 additional postal inspectors for our mail fraud investigations. We are putting another 40 on mail fraud this year, diverting it from some of our other areas. I do feel we have enough people to do the job.

I think that if we are successful in some of our preventive approaches, particularly down the line, that in a year or two if we have occasion to have another hearing I hope that we can report to you concerning our progress in putting the work-at-home type schemes out of business. I hope that the same will be true of such medical quackery as diet pills and bust developers. I hope we can tell you that we have put them out of business, which in turn will save some additional investigative time.

Mr. HANLEY. Thank you.

Mr. Taylor.

Mr. TAYLOR. I have no further questions or comments.

I want to thank you very much for your taking your time to be with our subcommittee this morning and for the contribution that you have made in these hearings. Thank you very much.

Mr. HANLEY. Thank you, Mr. Taylor.

Mrs. Spellman.



Mrs. SPELLMAN. When you do put these people who are engaging in these fraudulent schemes out of business, do they just come back with another scheme? Do you find a pattern?

Mr. FLETCHER. Some of them have. That has been a problem, particularly in our medical quackery area. We have found, working with George Davis' people, that we will get a 3005 order on one operation and then it starts up again in another area. Because of this, we are changing our approach somewhat to go after them criminally under the mail fraud statute.

The 100-count indictment I mentioned in my opening remarks concerning diet pills in Memphis—those same people operated the same scheme in the Newark area and went on south. We feel that in going after these people with both our civil and criminal authority we are going to get their attention.

Mrs. SPELLMAN. I asked the former speaker about publications in which these people advertise. Is there a way to hold them responsible too?

Mr. FLETCHER. That is a matter that has received comment and consideration in the past. You get into some very significant first amendment problems here. Generally I think it is a case of the magazines involved accepting what appear to be blatantly, fraudulent advertisements having to police them themselves. I do not think we can get into a situation where we can approve advertisements.

I would go back to the comment that there is a need for some regulation on the part of the mail order industry itself. In terms of the advertisement, that is a little tougher.

Mrs. SPELLMAN. Thank you very much.

Mr. HANLEY. Thank you, Mrs. Spellman.

The funding of your operation, would you say that is adequate?

Mr. FLETCHER. Yes, sir.

Mr. HANLEY. No problem in this regard?

Mr. FLETCHER. No. We received an increase, as I said, last year of 40 inspectors. The year before we added 100 inspectors. I feel we are adequately funded. We are trying to sharpen our focus and do more preventive work. We have been emphasizing preventive work in all of our other areas such as mail theft, burglaries and robberies: This has enabled us to move people off some of these areas and into the current problem area, mail fraud.

Mr. HANLEY. Gentlemen, in behalf of the committee, our deep appreciation for your appearance here this morning. Your testimony was excellent. I reiterate what I said a bit earlier, that this committee is anxious to work with you to assure that you have the proper legislative tools to perform your function, toward what best affects the national interest.

Thank you very much.

Mr. FLETCHER. Thank you.

Mr. HANLEY. The hearing is adjourned, subject to the call of the Chair.

[Whereupon, at 11:25 a.m., the subcommittee adjourned subject to call.]

[Statement submitted follows:]

Mr. Chairman, I want to commend you and the Subcommittee on Investigations for undertaking these hearings on the problem of fraudulent mail-order schemes, a matter which the Senate Governmental Affairs Subcommittee on Energy, Nuclear Proliferation and Federal Services also has been examining in recent months.

Mail-order fraud is an area that generates a fairly consistent stream of consumer complaints. And, although our examination indicates that the Postal Service, working chiefly through its Inspection Service, has done an admirable job of enforcement in the past, its enforcement capability—especially in the area of civil enforcement—is lacking in essential authority. The Postal Service itself is of this view, as we know. It is also shared by other close observers, including those responsible for consumer protection functions at the Federal Trade Commission, an agency with overlapping jurisdiction in the area of interest advertising.

Mr. Chairman, all of us have seen the advertisements we are talking about. They include come-ons for such things as "astounding waistline reducers" and unbelievably huge vegetables or fruit plants. Sadly, they include such things as purported cancer cures, or other "snake-oil concoctions that the promise to cure virtually every known disease of man and some that medical science has not heard of. And these ads, unfortunately, do not appear only in sleazy publications sold under the counter, or those seen by relatively few. Some of them appear in publications with massive circulations, and in publications that enjoy the respect of their readers.

We may think of ourselves as sophisticated consumers and decide that anyone who bites on these types of ads is a sucker who deserves to be taken. But, tragically, there is a marketplace that works through advertising and mail orders which caters to the desperate as well as the gullible, and which peddles dangerous as well as worthless products. As the prosecutor in one recent criminal case observed of the perpetrator of a phony cancer cure scheme, the man took "incredible liberties with other people's lives."

I make that point in order to demonstrate that this problem of mail-order fraud goes beyond the matter of simply protecting people who have not learned the truth of the old maxim, "If something seems too good to be true, it probably is."

The criminal fraud provisions of Title 18 do provide a remedy against the most blatant, most dangerous of these operators. But criminal prosecution takes time and does not provide sufficient deterrence. The civil remedies presently included in Title 39 do require, I am convinced, some strengthening in order to facilitate enforcement.

It is important to understand, Mr. Chairman, that we are not talking about the vast majority of direct mail marketers who are honest and give the consumer a fair product at a fair price. Mail order marketing, just as it was in 1872 when Aaron Montgomery Ward of Chicago printed his first catalogue, is an honorable trade that has grown with America and has taken on some new importance of late because it permits consumers to shop with less expenditure of fuel. Not only does this industry provide consumers with desired service, but I think we could agree at this juncture that it provides the Postal Service with highly desirable revenue.

However, as with many honorable endeavors, there are the unprincipled few who misuse the tools society supplies to prey on the gullible and the desperate. These hearings center on the acts of those few; not the many. So, too, I hope will any legislation that emerges.

Quite frankly, Mr. Chairman, the reason I have not yet introduced legislation to alleviate the problem of mail-order misrepresentation and fraud centers around my concern that we not, in so legislating, expand the regulatory burden on legitimate businesses. I say that as a Senator who believes that the time has come to reduce the complications of Federal regulation, and one who has joined in sponsoring regulatory reform legislation.

Nevertheless, it is obvious that there are several aspects of the present law, which if amended, would greatly facilitate the Postal Service's ability to enforce the law against those relatively few operators who persist in operating misleading and fraudulent schemes.

Mr. Chairman, I understand your Investigations Subcommittee and my own Subcommittee have been, by-and-large, ploughing the same ground on this matter. We can and should work together to achieve a proper level of effective enforcement power without regulatory overkill. We can do it, in large part, by following existing precedents that will give the Inspection Service the ability to quickly acquire and assess suspect products or services offered through mail-order advertisements, by providing adequate subpoena power to the Service where necessary, and by providing some measure of civil penalty adequate to discourage those unprincipled schemers who prey upon the people.

Again, I congratulate this Subcommittee for its initiative, and I look forward to working with you to resolve this problem.

**END**