

FRAUD AGAINST THE ELDERLY: NEW YORK

HEARING
BEFORE THE
**SUBCOMMITTEE ON RETIREMENT INCOME
AND EMPLOYMENT**
OF THE
SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
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FRAUD AGAINST THE ELDERLY: NEW YORK

THURSDAY, OCTOBER 23, 1980

**U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT,
New York, N.Y.**

The subcommittee met, pursuant to notice, at 9:03 a.m., in room 305, 26 Federal Plaza, New York City, N.Y., Hon. Geraldine A. Ferraro (acting chairwoman of the subcommittee) presiding.

Members present: Representatives Ferraro of New York, Biaggi of New York, and Green of New York.

Staff present: Val J. Halamandaris, special counsel, and David L. Holton, chief investigator, of the Select Committee on Aging; Nancy E. Hobbs, minority staff director of the Subcommittee on Retirement Income and Employment; Timothy Flaherty, executive assistant, and Deborah Sacks, legislative director, of Ms. Ferraro's staff.

OPENING STATEMENT OF CHAIRWOMAN GERALDINE A. FERRARO

Ms. FERRARO. Good morning.

I am delighted to see so many of our seniors from the Forest Park Senior Citizens Center. We welcome you to the hearing this morning.

This is a hearing of the Subcommittee on Retirement Income and Employment of the House Select Committee on Aging.

Today's hearing will focus on income confidence games and frauds which cause the elderly of this city, and many others across the Nation, to lose their life's savings. Our witnesses today will be able to broaden the committee's knowledge of this subject by presenting to us the issues from several points of view.

We have with us this morning officials from Government departments and agencies with jurisdiction over antifraud statutes, a representative of the New York City Police Department, two senior citizens who have been victimized by con games, and a man who is currently serving a prison term for conning senior citizens.

The House Select Committee on Aging and its subcommittees often conduct hearings in the field, as we are doing today. These hearings allow us to receive testimony from people who may otherwise be unable to come to Washington and testify before a congressional committee. I would hope that this hearing will serve another purpose—to inform people and provide a forum for disseminating information to the many senior citizens of New York and the surrounding area who may some day find themselves the potential victims of a con game.

Con games are hardly recent occurrences. As an assistant district attorney in Queens, I handled many cases where senior citizens lost everything to fast-talking con men and women. I recall that those victims were among the most tragic ones that came into our office. All were humiliated by the fact that they had been taken in in this fashion. Many were afraid to come forward for fear of reprisals from the criminals; others were concerned that their families would interpret the fact that they had been conned as evidence of senility, and all had lost sizable sums of money.

As we will soon learn, the amount of money we are talking about is a staggering sum, and the numbers of senior citizens who fall prey to con men and women is equally shocking. As we will hear shortly from a New York City police officer, street cons are common in New York, and the prosecution of these cases is a difficult task. But street cons are not the only types of frauds which are being used to rob our elderly. Other witnesses will describe how sophisticated con men peddle worthless drugs, devices, and food fads which are billed as miracle cures for incurable disease.

Testimony at a hearing in Washington on October 1 revealed that health frauds were particularly prevalent. Senior citizens are purchasing worthless devices such as "health slippers" or one which is said to reverse the death process. Through advertising in newspapers and direct solicitation, con artists prey upon the poor health of our Nation's 24 million elderly and bilk them out of millions of dollars.

The Chief Postal Inspector is with us today to discuss the strengths and weaknesses of the Postal Inspection Service's enforcement powers and how we can curb these types of frauds against the elderly. We also will hear testimony from officials of the Food and Drug Administration, who will be able to further explain the high cost of health quackery.

We will also hear from the Chief of the Enforcement Division of the Commodities Futures Trading Commission. To the best of my knowledge, this will be the first time that the committee has received testimony relating to the fraudulent sale of futures and options, a con which convinces people that they will strike it rich and which, of course, does little more than take their savings.

Senior citizens are particularly vulnerable to these illegal dealings. As inflation erodes their retirement incomes, many of them are eager for an opportunity to increase their savings as a hedge against the rising cost of living. Others fall prey to these con games because the con men and women ask them to be a good Samaritan, or because they offer them a chance for friendship.

The toll that fraud is taking on our Nation's senior citizens is outrageous. The committee has a long history of examining crimes against the elderly, and recommending legislative action. I am pleased that Chairman Burton generously agreed to my request that these hearings be held. His willingness to have the subcommittee investigate this matter is another example of the chairman's advocacy for the elderly. While official business in his own district in California has made it impossible for him to be with us today, he did ask that he be able to submit a statement for the record. Without objection, it is so ordered.

[The prepared statement of Chairman John L. Burton follows:]

PREPARED STATEMENT OF CHAIRMAN JOHN L. BURTON

As Chairman of the Retirement Income and Employment Subcommittee of the House Select Committee on Aging, it is a privilege to work with my colleague, Geraldine Ferraro, on this most serious topic of fraud against the elderly. I know that no other Committee Member is as well-qualified as Congresswoman Ferraro to chair this Subcommittee hearing. She has both the determination and experience to lead the fight against criminals who exploit the trust and vulnerability of seniors for financial gain.

As Bureau Chief for the Special Victims Bureau of the Queens County District Attorney's Office, Representative Ferraro has been an eye-witness to the physical and mental sufferings of seniors who have been victimized by quacks, charlatans and financial racketeers. She has fought for the rights and security of seniors in court and continues to do so in Congress.

Testimony received today will focus on some of the common modus operandi of quacks and criminals who prey on our elderly citizens. It will also document the effects of fraud on people with fixed income. Those who attend this hearing and all of us who will read its record will share in the humiliation of seniors who believed too readily in the kindness of others. In turn, we will share in the anger of the elderly victims who have seen their hard-earned savings and income stolen by those who promise health and riches but deliver nothing.

I believe that through this and similar hearings we can educate people to recognize the common types of "get-rich" schemes and medical quackery so they, too, won't become victimized. I also hope that the hearing will build public and Congressional support for ending these crimes to save millions of dollars and untold suffering.

Ms. FERRARO. With me today on the panel are two of the committee's and New York City's outstanding Representatives, Congressmen Biaggi and Green. Both Congressmen have shown continued commitment to the elderly and dedication to alleviating the problems which they face. While Congressman Biaggi is not a member of the subcommittee, he has agreed to sit on the subcommittee and share his expertise with us. I know that his participation will enhance today's proceedings.

Congressman Biaggi, do you have an opening statement?

STATEMENT OF REPRESENTATIVE MARIO BIAGGI

Mr. BIAGGI. Thank you very much, Ms. Ferraro.

As an original member of this committee, I know that we have concentrated as much of our attention on the issue of crime against the elderly as any other topic. Some examples include the following:

In January of 1976, in this very room, I conducted a hearing on confidence games and the elderly. In early 1977, again here in New York, the committee looked into the overall issue of elderly crime victimization. Earlier this year, Ms. Ferraro and I conducted a hearing on still another form of crime against the elderly known as elder abuse or domestic violence directed against the elderly by members of their own family.

This committee's activities have produced improvements both in terms of remedial legislation and heightened public awareness of the problem. In the legislative area, one of the more important accomplishments was the enactment of an amendment I sponsored which requires, for the first time, that the Department of Justice and the FBI compile specific statistics on crimes against the elderly. This will allow existing Federal crimes funds to be redirected to meet the needs of elderly victims of crime.

In addition, Congress will soon complete action on legislation providing assistance to victims of domestic violence, including the elderly. Also awaiting congressional action is legislation which would provide, again for the first time, Federal compensation for victims of crime, including the elderly.

So-called consumer crimes against the elderly do not always receive the same degree of attention as do violent crimes, despite the fact that they are oftentimes as serious and traumatic. Imagine the devastation for an older person who is swindled out of his entire life savings by an unscrupulous con artist. Consider the mental anguish associated with this type of crime.

The fact is that confidence game victimization of the elderly still exists. At my 1976 hearing, testimony was received from Sgt. James Bolte of the senior citizens robbery task force in the Bronx on the extent to which the problem existed in the Bronx. I spoke to Sergeant Bolte just prior to this hearing and he advised me that thus far in 1980 there have been 320 reported cases of con-game fraud against seniors in the Bronx, with a total dollar loss of more than \$400,000.

As we will hear later, consumer crimes cost seniors in this Nation millions of dollars. They can take many forms, whether it is the purchase of worthless insurance policies, succumbing to a get-rich-quick scheme, or fraud advertised through the mail. Whatever form it takes, it is criminal activity pure and simple and the law must be enforced against all perpetrators.

One of the reasons why we have not seen an abatement in this city of consumer crimes against the elderly hinges on an apathetic criminal justice system. Most of those arrested for consumer crimes against the elderly, no matter the severity, or the number of times they have committed the crime, are either released on their own recognizance or are able to make bail with ease. An overwhelming majority of those released never reappear for trial. The few who are convicted almost never receive a prison sentence. In other words, there is virtually no deterrent with the existing criminal justice system to stop this criminal activity.

The fact is that a con-game scheme or any type of consumer crime which nets the criminal thousands of dollars is a crime of grand larceny, a felony punishable with a prison sentence. Yet rarely does a con-game artist ever see the inside of a jail cell. Even more tragic is the fact that rarely is an elderly victim ever given restitution for the money or property which they lose. Once again we see how the revolving door of justice works to the advantage of the criminal and to the detriment of the victim.

I propose that we focus our attention on a number of fronts: On the Federal level, we must work for the immediate passage of the Victims of Crime Compensation Act.

We must expand our consumer education programs in our senior citizen centers.

We must increase penalties for the interstate and intrastate mail fraud.

On the State and local level, we must work for stronger penalties against those convicted of con-game schemes and other forms of consumer crimes specifically against the elderly. Prison sentences

should become the rule rather than the exception and restitution by the criminal to the victim should be included.

The elderly have a special vulnerability to crime which we must not overlook. We must work to develop an effective intergovernmental partnership to fight the war against crime and prevent it from reaching epidemic proportions.

Thank you very much, Madam Chairwoman.

Ms. FERRARO. Thank you, Mr. Biaggi.

Congressman Green, do you have an opening statement?

STATEMENT OF REPRESENTATIVE S. WILLIAM GREEN

Mr. GREEN. Thank you, Madam Chairwoman.

I am pleased to have the opportunity to participate in today's hearing on confidence games which victimize the elderly. I wish to commend your leadership and concern in conducting this hearing in New York City. Field hearings provide congressional committees with the opportunity to examine specific abuses in a particular area. The issues to be examined today will aid the Select Committee on Aging in assessing the problems of con games against seniors.

Earlier this month in Washington, we reviewed the problems of medical quackery and we recognized the need to keep seniors informed about the sale of worthless medical devices and procedures. Today we are to hear about confidence games such as the bank-examiner fraud in which the victim is induced to withdraw savings as a means of helping in an alleged check of bank tellers' honesty. We will also hear about fraud in the sale of gold futures, obviously a timely confidence game, and of synthetic hair transplants that can injure the patient, and of a magical mat that, when walked upon, allegedly cures severe illnesses.

Law enforcement agencies such as the New York City Police Department, the Postal Service's Inspection Division, and the Food and Drug Administration have stopped many of these fraudulent practices but new ones keep popping up.

While it is true that the elderly are not the only targets of fraud, they are often the most tragic victims. Their health is most dependent upon quality medical treatment. Their savings are most easily depleted because they are usually on fixed, limited income.

We need more public awareness of these cruel crimes. We need to strengthen our enforcement agencies such as the FDA so the cruel practitioners of pain receive more than a scolding. We have to fulfill our obligation to our parents, our older friends, and citizens.

The testimony we receive today from the victims and those who tried to protect us will be utilized in our report to the Congress. I thank all of you for being here, and I know the media will continue to alert and thus protect potential victims.

Ms. FERRARO. Thank you, Congressman.

Our first panel of witnesses represent Government agencies which deal with antifraud statutes, and whose jurisdiction includes mail frauds, health quackery, and the fraudulent sale of commodities.

The panel includes Mr. Kenneth Fletcher, Chief Postal Inspector, U.S. Postal Inspection Service. Mr. Fletcher is accompanied by Mr.

Wayne Kidd, who is Manager of the Fraud Section, Office of Criminal Investigations in the Postal Service. These gentlemen's testimony will focus on the current enforcement efforts of the Postal Service and the possibilities for enhancing enforcement efforts. As I serve on the House Post Office and Civil Service Committee, I am most anxious to hear their testimony and do all I can to insure that the Postal Service has the necessary authority to curb mail fraud of this nature.

Also on this panel are representatives of the Food and Drug Administration, Mr. Ceasar Roy, Regional Director of the FDA, and Ms. Dianna McNair, who heads the FDA's Consumer and Regulatory Affairs Division. The Food and Drug Administration's previous testimony at hearings on health quackery was most informative, and I am sure that today's presentation will be equally enlightening.

The final member of the panel is Mr. Thomas Loughran. Mr. Loughran is the Director of the Enforcement Division of the Commodities Futures Trading Commission. As I mentioned earlier, to the best of my knowledge Mr. Loughran's appearance represents the first time that the committee's investigations of crimes against the elderly included testimony of these types of frauds. As we will hear, the elderly are particularly susceptible to fast-talking, unlicensed commodity salesmen and women.

I appreciate the fact that this distinguished panel of witnesses could join us today. I know that my colleagues share my enthusiasm. In the interest of time, and continuity, I will ask that each panel member make a presentation, and that the subcommittee members not ask questions until all witnesses have spoken.

I would also indicate at this time that after this panel has testified and is excused we will take a 10-minute break. We have a reporter who has a bit of a problem with his back. We will give him time to stretch and change his notepaper.

Mr. Fletcher.

STATEMENT OF KENNETH H. FLETCHER, CHIEF POSTAL INSPECTOR, U.S. POSTAL SERVICE, ACCOMPANIED BY WAYNE KIDD, MANAGER, FRAUD SECTION, U.S. POSTAL SERVICE, WASHINGTON, D.C.

Mr. FLETCHER. Good morning.

My name is Kenneth H. Fletcher and I am the Chief Postal Inspector. I appreciate the opportunity to appear before this committee this morning to discuss our efforts to prevent and combat crimes against the elderly.

As you know, 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 employees; and second, those which involve criminal misuses 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 100 billion pieces of mail, and has about 650,000 employees, over 40,000 postal facilities, and cash receipts of around \$18.5 billion.

The Inspection Service also has the functions of performing the internal audits in the Postal Service and providing for the security of postal facilities and postal employees. To meet these responsibilities we have 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 six crime laboratories strategically located throughout the United States.

With that brief summary, let me move to the purpose of my appearance here today, which is to discuss our common interest in protecting the elderly against crime.

Senior citizens are heavy users of mail; it is very convenient for them. It provides an ideal way by which they can obtain services or goods at a minimum of cost and effort. In fact, the Postal Service has been promoting shop-by-mail since the country first experienced the energy shortage. The integrity of senior citizens as a group is superb; they pay their bills on time. Unfortunately, these very factors make the elderly prime targets for the mail order swindler.

Let me insert a cautionary note about what I am saying. The vast majority of mail-order firms or offerings are legitimate. I am focusing on the relative few who have distorted and used the system for their own illegal gains.

Recognizing this, we have designated postal crimes against the elderly as one of our highest priority programs. A little later in my testimony I will be discussing actual case files which are representative of schemes where the primary victims were senior citizens. In fact, these fraud cases originate from various parts of the country but each has one thing in common, the citizens of New York were among the victims of the promotions. While we feel successful criminal prosecution in these types of cases serves as a deterrent to others, the fact remains that the victims of these schemes still generally lose. The ideal solution is, of course, to prevent individuals from being victimized in the first place.

We therefore consider the prevention of crime as our best tool in our criminal investigative effort. We will always investigate criminal cases because even the best preventive efforts will not deter all crime. However, we do believe a substantial reduction in crime can be accomplished through a combination of public awareness and a lessening of opportunity for the criminal. We think the efforts of this committee in holding these hearings is very helpful.

To this end, last year the Postmaster General initiated a consumer protection program, a program of prevention through education and awareness. This is a united effort of the Postal Service. It brings to bear the resources of several Departments of the Postal Service—the Public and Employee Communications Department, the Customer Services Department, the Law Department and the Inspection Service.

We selected and trained inspectors across the country as consumer protection specialists. Their mission is to educate and inform, working with such groups as the American Association of Retired Persons. We are now preparing information programs to be taken to all 6,000 chapters of that organization. We are also cooperating with other similar regional and local groups. As a part of that effort we are preparing, or have prepared, pamphlets and hand-outs, some of which I have here, which address specific problem areas or schemes. We have also cooperated with the media and have appeared in hundreds of talk shows and interview programs in the past year, all in an effort to heighten public awareness.

Where mail frauds have been committed, we use a two-pronged attack. First, we consider the possibility of criminal prosecution under title 18, United States Code, section 1341, which is the mail-fraud statute. It is one of this Nation's oldest consumer protection laws. The law is quite simple but very broad. Essentially, whoever uses or causes the mails to be used in an effort to defraud is guilty of mail fraud.

Second, and perhaps more important to the consumer, we can take action under title 39, United States Code, section 3005. This section permits the Postal Service, upon proper showing before an administrative law judge, to withhold and return to the sender mail addressed to anyone who solicits moneys through false representations.

In addition, the Postal Service can request the U.S. district court in the State where the promotion receives mail to issue a temporary restraining order, which stops the delivery of mail until the administrative law judge renders a decision. Oftentimes this is the only effective remedy, particularly with work-at-home and medical schemes, where victims are very reluctant to publicly display their gullibility in any criminal proceeding.

There are several types of fraudulent promotions which, by their nature, tend to focus on senior citizens. They include work-at-home schemes, investment and job opportunity ventures, land and merchandise frauds, and spurious medical promotions which probably affect senior citizens more than any other segment of our society. Through cleverly conceived advertising, promoters tout all manner of miracle cures.

Due to rising costs of medical attention and, perhaps, previous unsuccessful attempts to alleviate their suffering, the elderly are often tempted to try these purported cure-alls for a long list of problems, including arthritis, cancer, obesity, impotency, and baldness. Our years of dealing with the problem of medical fraud has led us to believe that a great part of this type fraud is controlled by a rather small group of operators.

The callous nature of these promoters and the grave danger involved in their product is perhaps best illustrated by a California case. The promoter sent thousands of direct mail advertisements to people throughout the United States and Canada purporting to have a wonderful new medical discovery to cure cancer and "any complaint that may be treated via the blood stream." The home treatment cure was priced at \$700 but, in spite of the price, the promoter was receiving up to 10 inquiries per day concerning the

product. No medical examination was required and each purchaser was furnished instructions with the purchase.

The product, which we show you here, was composed of injectibles represented as 100 percent pure organic extractions from kelp and seaweed, and oral medicine to be taken by the patient. We purchased the product and received bottles of B12 vitamins, bottles of fluids containing a kelp compound, and a needle to inject the fluid. These fluids were so contaminated by poisonous bacteria that serious illness or death could result. The promoter was arrested and, when confronted with the evidence, pleaded guilty to mail fraud.

Millions of senior citizens suffer the crippling effects of arthritis. All too frequently arthritis sufferers grasp at anything to relieve their pain and suffering and therefore are open targets for the con artist. All kinds of concocted potents and tablets have been touted as cures for arthritis.

This past spring a bracelet, as we show you here, made of coral sea plants from the Indonesia Island of Ambon was promoted by a Secaucus, N.J., firm, to control the symptoms of arthritis, sciatica, and rheumatism. The bracelet cost \$10. The Indonesian Consulate's office informed us this bracelet is used by Indonesian witch doctors as a charm similar to West Indian voodoo medicine and has no medical basis for curing anything. However, before this promotion was stopped, more than 900 people bought the bracelet.

Then there was a promoter who, with these half-page newspaper advertisements, touted a cure for nearsightedness, farsightedness, astigmatism, and middle-age sight problems, with only an eye exercise program. The exercise method directed users to ignore standard medical advice, telling them instead to do such visually destructive things as to gaze directly into the sun and to ignore their medication for such disorders as glaucoma. The program cost \$9.95 plus \$1 shipping. Medical experts who reviewed the program said it could actually lead to blindness. Approximately 66,000 people responded to the ads with an estimated loss of \$726,000.

Dr. John Gamel, assistant professor of ophthalmology, University of Louisville, also read this advertisement. I would like to quote to you some of the unsolicited comments he wrote to us about this eye exercise program, known as the Bates method:

I can only describe it as nothing more than the rantings and ravings of a clearly insane person.

Dr. Bates has been dead for many years now, and I cannot explain to you how the insane writings of this most unfortunate fellow came to be published.

Although I feel the lesson learned by investing \$10 in a mail-order fraud might very well be worth the minimal monetary cost, I think that blindness is a most unreasonable price for someone to pay for simple mindlessness or gullibility.

I will unequivocally support your department with all my professional expertise and will stake my professional title upon the dangerousness of Dr. Bates' method.

Another New York-based promotion caused 36,000 people to respond to an advertisement which promoted a product that would enable a person to "make love with anyone you desire." The advertisement claimed this product was the "miracle that can revitalize your sex life in just days even if you are 100 years old."

Mr. BIAGGI. At this point my curiosity is aroused, Mr. Fletcher. Has anyone tried that?

Mr. FLETCHER. I will defer to the audience on that one, Congressman.

For \$10, a person received a bottle of vitamin/mineral capsules similar to those purchased across the counter of any drugstore, and this so-called advice manual resembling an advice-to-the-lovelorn column.

Robert Butler, M.D., Director, National Institute on Aging, provided the expert opinion which refuted these advertising claims. Approximately \$360,000 was lost to this phony promotion before the concern was put out of business.

We are frequently asked to place a dollar value on medical-fraud, but any effort to do so would be strictly a guess. Let me assure you, however, the losses are substantial. One medical fraud promotion which we recently stopped resulted in over \$400,000 worth of orders being returned to the senders, and this represented only 30 days of business.

A diet-type fraud stopped this summer was receiving 5,000 pieces of mail a day and the average order was for \$22.45. For those of you who do not have a calculator, that promotion was grossing \$112,000 a day. This year alone we have initiated action against 132 medical-fraud promotions and 31 percent of these cases originated in the northeast region. We estimate about 60 percent of the victims are elderly individuals who unfortunately are grasping for the miracle cure or the vitality or appearance of youth.

A very prevalent fraud aimed at the elderly is the so-called work-at-home scheme. The most common offerings are for envelope stuffing or the making of a product, perhaps baby booties or aprons.

It is usually alleged there is a market for such products when there is none, or that the promoter will buy the products when, in fact, the promoter will not. I think you are all familiar with the kinds of advertisements I am talking about.

"Earn \$400 or more per month in your own home, no investment necessary, choose your own hours," and that kind of come-on. We know of no such work-at-home scheme that ever produces income as alleged.

In an effort to expose these operations, we have developed a brochure, available in post offices and many other organizations, which has had far more response than we anticipated. This brochure describes the typical work-at-home schemes with cautions for the consumer. It also asks the consumer to notify us of suspicious advertising and has a tear-off card for this purpose.

Since we put this out in June of this year, we have been receiving over 150 reply cards a week identifying numerous promotions, some of which we are totally unaware of. In the last 6 months we have put out of business, through false representation orders or consent agreements, hundreds of these phony work-at-home promotions.

An extensive work-at-home scheme was operated out of Syracuse, N.Y., by an individual who offered to set up people in their own mail-order business in the comfort of their own homes. For investments which averaged in excess of \$100 they 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 usually to other victims and losses totaled in excess of \$1 million.

The operator of this scheme was indicted in July of last year on 34 counts of mail fraud and was found guilty of all charges. In October 1979 this promoter was sentenced to 3 years in prison.

Another example involves four San Antonio, Tex., promoters. Through nationwide, direct-mail and newspaper-advertising campaigns that reach beyond our borders into Canada, they offered work-at-home employment stuffing envelopes. For a \$15 application fee respondents were guaranteed a weekly income of more than \$350.

Actually, those who sent the application fee were instructed to place a newspaper advertisement exactly like the one that enticed them to send the responses directly to the San Antonio promoters. These respondents were then given the same instructions.

At the peak of the promotion, the operators were receiving up to 5,000 pieces of mail daily. When we stopped this scheme through a false representation order, we returned to senders over 25,000 pieces of mail containing approximately \$375,000 in additional orders.

This letter of instruction and an innocuous booklet on business opportunities were all the people received for their application fee. New Yorkers were also subjected to this national advertising campaign. The Community Agency for Senior Citizens of Staten Island was among the first to bring this fraudulent promotion to our attention.

A Rochester, N.Y., woman wrote us as follows: "I want to thank the post office for returning my money. I appreciate your alertness. I have learned a valuable lesson."

A woman from Elmira, N.Y., wrote: "I sent them \$15. Is there any way you can help me?"

Last year about 6,000 people lost \$20 each to yet another work-at-home scheme which operated from Peekskill, N.Y. And this is what was offered: They were instructed, after paying \$20, to place ads exactly like the one that induced them to respond.

Another growing problem area which affects the elderly is in the broad spectrum of investment swindles. This involves a variety of schemes, including franchise/distributorship, investments in coins, gems, stocks, land sales, and a host of others. We feel that the increase in investment-related schemes has a direct 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 often seeking ways to supplement that income.

We frequently find that the victims are elderly people who have been persuaded to invest their nest eggs. As I indicated earlier, a preponderance of these opportunities are legitimate, but this only serves to give the mail-fraud operator a better climate in which to conduct a fraudulent promotion.

A sophisticated land investment swindle was carried out by L.T.P. Properties, Inc., DeBary, Fla. Through direct mail solicitations, newspaper advertisements, and personal contact, 507 individuals, most exclusively elderly, lost about \$6.25 million to this promotion.

In fact, the average age of the victims was 63. L.T.P. used glossy photographs, depicting a golf course, boating, horseback riding, and other unfulfilled promises to induce these individuals to invest.

They were given guarantees of 12 percent annual interest and alleged first mortgages on specific lots in the development. Little did they know that their mortgage was frequently subject to a prior mortgage, a mechanic's lien, a lease, or that the mortgaged lot was on the bottom of the lake, on top of a sewage plant, or part of the golf course, and that the paved roads were little more than footpaths, plowed out by a bulldozer.

Ms. Lorraine Huber, a quadriplegic, formerly of Forest Hills, N.Y., was one of the victims. She lost \$21,000 of her deceased father's retirement money, money he had received and saved from 42 years with the New York City Fire and Police Departments, to insure the future of her 82-year-old mother and herself. Now Ms. Huber is losing her home because of this swindle.

Another victim, Dr. Martin Skowronski, survived the concentration camp at Dachau but \$15,000 he received in reparation from the German Government was lost to these con artists. Although the promoter of this scheme started serving a 7-year prison term this past September, this is of little solace to those who lost their investments.

Another investment scheme oftentimes directed to those on retirement or fixed income is the distributorship/franchise promotion. This type of employment is particularly attractive to the retired person looking for extra income yet does not want to be employed on a full-time basis.

Fifty New York residents were among the 540 victims from 40 States who lost \$3.6 million to a Cleveland, Ohio, promotion which offered jewelry franchises throughout the United States.

These investors responded to a nationwide newspaper advertising campaign, which included the New York Times, and promised exclusive territories, guaranteed gross monthly incomes of \$3,400, 35 percent profit by working only 7 to 10 hours per week, no selling required, and the investment was secured by inventory plus a 100-percent repurchase agreement. The cost of this dream offer was \$6,495.

In most cases investors received less than \$100 worth of cheap costume jewelry, no accounts were established with major department stores and no exclusive franchise territories were set up.

Joseph Van Dyke III, who operated this scheme under the name "Rings 'N Things" diverted the investor's money to his personal needs, including a salary of \$10,000 per month. Van Dyke was convicted of mail fraud and sentenced in January 1979 to 4 years' imprisonment.

Many retired persons are able to set aside a portion of their nest egg to do the traveling they longed to do during their years of employment. This makes them particularly susceptible to the fraud

which was exclusively advertised in the New York Civil Service Sentinel newspaper for retired employees.

Hotel Travel Card, Millburn, N.J., offered for \$20 a travel card which guaranteed 50-percent discounts for lodging accommodations with the major hotels and motels throughout the United States. Two hundred and forty-two New Yorkers sent their \$20 and received nothing in return. However, this case has a happier ending.

We were able to identify the operators of this scheme, and when we contacted them, immediate restitution was made to all victims.

Sometimes senior citizens are the indirect victims of fraud schemes. An example of this occurred in the Rochester, N.Y., area where solicitations were made in the name of "Senior Citizens Entertainment Services."

The operators of the scheme alleged they were a charitable organization which would be providing live professional entertainment for those senior citizens who were confined to nursing homes and hospitals. Hundreds of persons contributed, many of them senior citizens, who thought they were donating to the welfare of those who were less fortunate.

Entertainment was not provided. Simultaneous action by the New York State Supreme Court and the Postal Service prohibited these operators from further fraudulent solicitations and receiving money through the mail. However, the reputation of bona fide senior citizen groups has been tarnished.

Several of the victims have commented that they will never contribute again; that they will not trust any organization which solicits funds regardless of the cause.

As you can see the variety of fraudulent schemes is seemingly endless. I pointed out earlier in my testimony that the Postal Service is encouraging the use of the mails to shop and we therefore feel very strongly about our obligation to keep the mails as free from abuse as possible.

The percentage of phony mail-order promotions is small when compared to the vastness of the total mail-order industry, but the substantial dollar losses and the cost in terms of human suffering deserves our attention.

Mrs. Ferraro, it has been my pleasure to report to you the efforts of the Postal Service to combat crimes against the elderly.

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

Ms. FERRARO. Thank you very much for your testimony.

As I indicated, I would like to give the other members of the panel the opportunity to testify and then we will get back to you with questions.

Mr. Roy?

STATEMENT OF CEASAR ROY, REGIONAL DIRECTOR, NEW YORK OFFICE, FOOD AND DRUG ADMINISTRATION, ACCOMPANIED BY DIANNA W. McNAIR, ACTING CHIEF CONSUMER AND REGULATORY AFFAIRS BRANCH, FOOD AND DRUG ADMINISTRATION

Mr. Roy. Madam Chairman, I welcome the opportunity to speak before this committee this morning to provide a broad overview of the Food and Drug Administration's role in dealing with the problem of quackery.

For FDA, quackery can take a number of different forms. These include false claims for drugs and cosmetics, irrational food fads, unnecessary food supplements, and fake medical devices. Specifically, quackery involves both people and products. It includes the charlatan with a miracle cure, but with little or no medical training; the drug or food supplement promoted with false health claims, or the machine with only knobs and dials and no proven therapeutic value promoted as a medical device.

Generally speaking, quackery is purposeful misinformation about health-care and health care products. The most unfortunate aspect of the problem is that it frequently preys on the elderly who are on fixed incomes and cannot afford to spend any of their limited budgets on unproven products, and the seriously ill who are especially susceptible to the false hopes held out by the quacks and their products.

The promoters of such products are primarily interested in financial gain and generally have little knowledge or interest in legitimate health care activities.

From FDA's viewpoint, quack drugs include cures for baldness for which there is no cure; chemical "face peels" that promise new youth but that may bring only permanent disfigurement; laxatives for colitis that can, in fact, seriously worsen the condition; and creams and lotions to "melt away" fat or enlarge or reduce parts of the body.

Perhaps the most cruel and dangerous of all quack drugs are unproven treatments for cancer and other serious diseases that rob the patient of the element that might save a life, valuable time in which effective treatment could still be administered.

In the food area, many so-called nutrition experts who sell food supplements argue that the American food supply is produced from depleted soil and that chemical fertilizers and modern food processing have deprived our food supply of its high nutritive quality.

They also claim that there is widespread disease in the United States caused by dietary deficiencies. Such statements are simply not true; and the need for vitamins, minerals, or other food supplements for people who actually have deficiencies can only be established after careful and complete medical examination.

In the area of device quackery, there is no machine that can diagnose or treat different diseases by simply turning a knob or by flashing lights. Excess body weight cannot be eliminated with special clothing or by vibration, and no glove or bracelet can cure or prevent arthritis.

FDA's legal ability to regulate quackery has come a long way since the limited scope of public protection provided by the initial Food and Drugs Act of 1906.

In 1911, the Supreme Court ruled that the drug-labeling provisions prohibited only false statements about the identity of the drug product but not false therapeutic claims, and a dissenting opinion said this would open the way for the sale of false cures for all manner of diseases.

President Taft immediately called on Congress to eliminate the deficiency in the 1906 act. Congress responded promptly by passing the Sherley amendment that prohibited false and fraudulent, curative, or therapeutic claims on a label. Unhappily, this action cre-

ated a new problem in the law and its enforcement, for it required proof that therapeutic claims were fraudulent as well as false, a matter which was extremely difficult since fraud involves proving an intent to deceive.

Our current basic law, the Federal Food, Drug, and Cosmetic Act of 1938, corrected this problem, however, by eliminating the requirement to prove fraud. It also brought under FDA control devices intended for use in diagnoses, cure, mitigation, treatment, or prevention of disease and devices intended to affect the structure or any function of the body.

Further, the 1938 act prohibited traffic in new drugs unless they had been adequately tested to show that they were safe for use under the conditions of use prescribed on their labels.

Later, the drug amendments of 1962 provided, among other things, that the producer of a new drug had to establish that this product would be effective, as well as safe, for its intended uses. Although the Government still bears the burden of proof, focus is on false and misleading labeling, not fraudulent acts.

The period from the mid-1940's through the late 1960's was one in which the FDA placed much emphasis on combating quackery. FDA's regulatory mandate was regularly reinforced by court decisions that brought injunctions against manufacturers of the Diapulse, Relaxicizer, and Microdynameter devices, and many other quack products, forcing their removal from the market.

Cases were successfully prosecuted against quacks such as food lecturers who preyed upon the unknowing with a large array of cooking utensils and other products for which extremely extravagant health claims were made.

The 1976 Medical Device Amendments, the most recent broad strengthening of the act, contains a provision allowing for administrative detention of a violative deceptive device for up to 30 days, during which time the manufacturer can either voluntarily correct the violation or the agency can take other administrative or judicial actions against the manufacturer or his device. This is a most useful tool for controlling quack devices.

Even before FDA's regulatory mandate was reinforced by these recent changes in the law, it was apparent that legal sanctions alone could not control the burgeoning and more sophisticated activity in quackery. We have long recognized that a concerted effort to educate the public is also needed to stem the tide of quack products.

Over the years, FDA's campaign against quackery has entailed a combination of regulatory actions and educational programs for consumers. The philosophical basis for developing our consumer education program is the concept that health care should be a joint effort among medical practitioners, agencies mandated to assure safe and effective health care products, and informed consumer/patients.

More recently, in September 1978, the Commissioner established the FDA standing committee on quackery, thereby placing renewed emphasis within the agency on dealing with quackery.

The functions of the committee are to determine the scope of the quackery problem; to identify, evaluate, and advise the Commissioner, our field offices, and headquarters' bureaus about activities

regarding quackery; to develop agency strategy; and to work with the FDA staff in coordinating agency quackery activities with other Federal agencies.

In closing, I would like to distribute to you some brochures and leaflets on quackery as an example of our consumer education program. Our major one in this regard is a pamphlet entitled, "The Big Quack Attack." We would like to give you an opportunity to look at this one.

My associate, Dianna McNair, and I will describe a few of the quackery products against which we have taken legal action and that we have here on display.

One I would like to mention, and this is especially of interest to the New York population, has to do with the hair implants, the use of synthetic fibers as an apparent cure of baldness. I have photos which I would like to show you, if I may.

This happens to be one of the quack devices that not only causes economic hardship on individuals raising false hopes about the cure of baldness, but I think these photos graphically illustrate the danger, the actual health hazard that is brought about these kinds of products.

Ms. FERRARO. I assume that this is a picture of the synthetic that is going to be implanted?

Mr. ROY. That is the synthetic that is going to be implanted and the tool that is used.

Ms. FERRARO. This is the implantation?

Mr. ROY. Yes.

Mr. BIAGGI. This is the result?

Mr. ROY. This is one of the results.

Mr. BIAGGI. When the head rejects it?

Mr. ROY. Yes.

Ms. FERRARO. Why is that rejected?

Mr. ROY. It happens often with all implants. These are synthetic fibers, not hair transplants, not to be confused with hair transplants. These use synthetic fibers to be placed on the scalp and most often you get that kind of result.

The other pictures illustrate even more graphically the kind of damage done to the scalp.

Ms. FERRARO. That is horrendous.

Mr. BIAGGI. This is confined to the implants of synthetics?

Mr. ROY. Primarily synthetics.

Ms. FERRARO. Who implants these; a doctor?

Mr. ROY. More often than not by nondoctors. In the Buffalo area an individual with no medical training operated a firm, Hair Replacement Center. As soon as we found out about the operation we investigated the plant, we were able to permanently enjoin the individual from continuing that operation.

I must also say in the State of New York we were fortunate in that the State officials in New York took up the ball as well against this individual and he has been sentenced to up to 3 years in the penitentiary and is out pending appeal. Nevertheless, we did take some pretty strong action in terms of getting that particular individual to stop that particular operation.

Ms. FERRARO. Thank you.

Ms. McNair?

STATEMENT OF DIANNA W. McNAIR

Ms. McNAIR. I would like to begin by contrasting the old with the new. You may think the old had some pretty ridiculous health claims but as I go along I don't think we have changed too much today.

Ms. FERRARO. I don't think our seniors can hear you.

Ms. McNAIR. I will try to speak louder.

Ms. FERRARO. Describe to me what you mean by old and new.

Ms. McNAIR. Old medical device quackery. The Perkins tractors, they were two pieces of dissimilar metals placed in contact with the body to draw off a surcharge of noxious electric fluid in the treatment of all afflictions. The tractors were invented in 1795 by Elisha Perkins in Connecticut and are generally considered to be America's first pseudoscientific medical quackery device.

The tractors became a national fad and later spread to Europe and other parts of the world. George Washington reportedly purchased the devices. Since we had no Government agency at the time to regulate these devices, medical doctors got together and condemned the tractors as devices "gleaned up from the miserable remains of animal magnetism."

Dr. Perkins was ousted from the Connecticut State Medical Society and any member using the devices faced expulsion.

Ms. FERRARO. If I can just point out that Washington was not the only one to purchase a worthless device. When you were testifying, Mr. Roy, about the Relaxicizer and how that has been removed from the market, Congressman Biaggi turned around to me and said, "You, too?" Both of us had one of those 15 years ago.

So it is not just people who are—

Ms. McNAIR. That is the point I would like to make.

Ms. FERRARO. George Washington and Congressman Biaggi and Congresswoman Ferraro are doing the same thing, falling for this type of stuff; it is incredible.

Ms. McNAIR. Yes. The newest medical device fake that the FDA has taken action against has been the Acu-Dot. It is advertised as the magnetic analgesic patch and consists of a tiny magnet with adhesive backing. The afflicted person is to place a magnet on any of the sore areas on the body that they wish to treat or cure and the magnetism will draw the pain from the body.

Earlier this year this product was the subject of litigation in Cleveland, Ohio. The Federal court there judged that the labeling was misleading and the product should not be allowed to remain on the market. In fact, in the summary the judge said that, "A kiss from mother on the affected area would serve just as well to relieve pain if mother's kisses were marketed as effectively as the Acu-Dot device."

I have here a Foot-O-Pedic Mat and another variation of the same kind of treatment, the Oriental Health Sandal. These devices are supposed to be walked upon and by emphasizing your weight on certain areas of the foot you can actually treat or cure ailments all over the body.

With your indulgence I would like to read the list of claims that they make.

It says:

Foot-O-Pedic Mat: The new sensational pain reliever and pain preventative . . . contained false and misleading claims for aches and pains, gastroptosis, indigestion and ulcer, constipation and gas; tympanitis, rheumatism, laryngitis; disturbance of eyesight; paralysis, ringing in the ears; low blood pressure; clouded brain; short-sightedness; distorted vision; tired eyes; gallstones; gallbladder problems; nettle rash; headache; intestinal problems; hysteria; irritability; weakened sex drive; enuresis; kidney problems; hemorrhoids; women's diseases, including retroflexion of the uterus and antifixion uteri, etc.; lack of perseverance; troubles with the throat and respiratory system; common cold, and claimed that it was effective in energizing the entire body, strengthening seldom used muscles, improving digestion, alleviating complications caused by weakening of the legs and hips, providing relief from insomnia, and the overall maintenance of youth.

Ms. FERRARO. Could I ask you, does it cover bronchitis?

Ms. McNAIR. I don't see that mentioned here.

Mr. BIAGGI. It doesn't say anything about it being good for your foot.

Ms. McNAIR. It does say it will treat troubles with the throat and respiratory system. Those run anywhere from \$9.95 to \$15.95.

Ms. FERRARO. How are those sold?

Ms. McNAIR. Through advertisements in popular magazines.

Ms. FERRARO. These are mailed to the person after they send the money in?

Ms. McNAIR. That is right.

Ms. FERRARO. How long ago were these offered on the market?

Ms. McNAIR. Oriental Health Sandals as recently as 1979. I have seen an ad. They change their name or some part of the article they will readvertise it another way. That is one of the loopholes that somehow they get around. It is all in the advertisement.

I also wanted to mention the Solarama Board, because this was such a widespread kind of ineffective device.

Ms. FERRARO. It looks like a piece of my kitchen counter.

Ms. McNAIR. Yes; it is just a formica board with some electrical wiring within it. The inventor invented it to make his plants grow better and healthier. But when his paralyzed cat was found relaxing on the board one day, after a few days relaxation on the board the paralysis went away. So, he began to think of it in terms of curing human ailments.

It was supposed to cure by electronic reconstitution of the human cell. It was to make many common ailments simply disappear.

Ms. FERRARO. What does it do? Does it heat up?

Ms. McNAIR. It heats up and emits electrons of very low level emitted by that board. It claimed to cure tension, insomnia, arthritis, bursitis, bed sores, everything, cataracts. But the insidious part of it was that they used testimonials to advertise the board's effectiveness and they had testimonials from terminal-cancer patients and crippled people, all sorts of things.

So you have to beware of any devices using these kinds of testimonials in advertisements. That is an example of one that preys on the very seriously ill. We consider it an indirect health hazard. It can't directly harm you but often it can keep you from getting the treatment you need.

Ms. FERRARO. If you rely upon this you might not seek out proper medical care.

Ms. McNAIR. That is right.

This next device is called an Electro Sedation Sleep Therapy, and the patient would hook himself up to this machine, turn it on,

battery operated. I am not sure exactly how it was supposed to work but it transmitted some kind of power through the electrodes to the body and was supposed to cure insomnia but not only insomnia, during sleeping it would cure tennis elbow, neurosis, depression, peptic ulcers, what have you.

We have no evidence that that gadget is effective or that it works at all but then again maybe someone never woke up to tell us about it. It may have worked so well everybody is still asleep.

Ms. FERRARO. Does it have some sort of attachment?

Ms. McNAIR. Yes; sponge-like electrodes attached to the body with a little lubricant and a tape. But it doesn't put out enough to cause harm, once again.

In addition to that I wanted to bring along some of the magnetic and copper jewelry that is so popular. It keeps popping up over and over again as treatments for arthritis, rheumatism. Even though we may manage to take some of it off the market it comes up in various forms from time to time.

We just want the consumers to beware of trying to cure any kinds of illnesses with this kind of jewelry.

Ms. FERRARO. What is the basis for the belief that copper will cure arthritis or rheumatism?

Ms. McNAIR. The biomagnetic theory is that magnets actually draw the pain from the body. I guess people see it drawing metal away and they can believe that pain could somehow be taken from the body in this way. The copper theory is that the elements of the copper seep through the skin into the bloodstream and the metal itself will help cure the disease.

We have no evidence to suggest that it works.

Ms. FERRARO. But, it can't hurt?

Ms. McNAIR. It is just an indirect health fraud, that is right.

This is the Cross of Magneta. I just wanted to bring it to your attention. It is still on the market in some various and sundry ways; they give it a different name or different shape but that kind of thing is still out there.

We have seized it, we continue to seize it, but it keeps popping up. It offers rewards of health, energy, freedom from pain. It can even cause success and improve your love life, what have you.

Ms. FERRARO. Don't believe it; don't believe it.

Ms. McNAIR. That is what we keep saying; don't believe it.

Mr. BIAGGI. May I ask one question at this point?

I know we intended to wait until the panel was completed but going on and on we see that many claims are made in advertising.

Ms. McNAIR. Yes; they make their claims in advertising. We go against them; we take action against these products based on false or misleading claims or the inability to write adequate directions for use.

Mr. BIAGGI. Is that advertising taking place in the city and State of New York?

Mr. ROY. I think we should say that it is really labeling as opposed to advertising. Our jurisdiction relates to labeling. So we are actually concerned about those things that are actually accompanying the product.

Mr. BIAGGI. I raise that because I note that former Attorney General Louis Lefkowitz had a special bureau set aside to pursue

the advertisers in this area and they were very effective in prohibiting the advertising.

Mr. ROY. You will find though that much of the advertising does occur in various kinds of national magazines, Cosmopolitan, airline magazines quite often include those kinds of things.

Ms. McNAIR. These are examples of the different kinds of arthritis mitts that are offered from time to time on the market. The one that Congressman Biaggi is holding is supposed to be filled with uranium ore. Upon investigation it normally turned out to be just gravel. The other is electric mitts. When applied to the arthritic hand the electrical mitts might provide some temporary relief because of the heat. However, it is temporary. As soon as the mitts are removed the pain will return.

Ms. FERRARO. This seems to me very much like a heating pad in the form of a mitt.

Ms. McNAIR. Exactly.

Ms. FERRARO. Technically, I guess the heating pad would be a relief.

Ms. McNAIR. Temporarily; but they claim to cure. That is going too far with the claims. So we take action against those kinds of things.

Ms. FERRARO. If they merely said this would be a means of relief, temporary relief, it would be all right, wouldn't it?

Ms. McNAIR. Yes.

Ms. FERRARO. But it goes a step further in promising the cure. That is the fraud; correct?

Ms. McNAIR. Right. I also have the Infra-Lux Pain Reliever. This is the device that claims to treat arthritis, bursitis, and so on, with infrared rays.

Ms. FERRARO. What do you do with it?

Ms. McNAIR. When you plug it in it turns into a little red flashlight that doesn't emit infrared rays, it in no way goes beneath the skin.

Ms. FERRARO. What are you supposed to do?

Ms. McNAIR. Put it on the affected area and rub it around. It claims that will work beneath the surface of the skin.

Ms. FERRARO. Do you have testimony that these things work too?

Ms. McNAIR. No.

Ms. FERRARO. What about the mitts?

Ms. McNAIR. No; they don't use testimonials in their labeling. The Solarama was the most abusive in that respect.

The same thing is true for these knee joint comforters that are just elastic comforters that could indeed cause some kind of body heat to remain around the affected or swollen area, but it won't cure arthritis.

Some of the claims they made went to extremes. That particular one claimed to reduce swelling, soothe and relieve stiff and aching joints and assist in the return flow of blood to the hands and fingers. It goes on and on with some claims that it can do.

Mr. BIAGGI. It claims more than it can really do?

Ms. McNAIR. Yes.

Mr. BIAGGI. It does something.

Ms. McNAIR. Yes; if you had a sprain and were to wear that on your elbow it would provide a little warmth and maybe a little relief but it couldn't cure or treat all the ailments they claim.

Ms. FERRARO. This looks very much like the thing you put on your elbow when you have tennis elbow.

Ms. McNAIR. Yes.

Ms. FERRARO. I know from experience that that doesn't help.

Ms. McNAIR. It will not cure tennis elbow; it will maintain body heat to the affected joint, but that is as far as it will go. That is where they go too far in their claims.

This is a recent device that we just seized in the Atlantic City and Pleasantville, N.J., area. It is called a Urinometer, to diagnose the level of sugar in the blood for diabetics. Supposedly you could take that big eye dropper, fill it with urine from a diabetic and if all five of those beads that are in there would float, that would mean you had too much sugar in your blood.

The urine would be so dense it would suspend those beads. If only one or two beads went up you were OK. We took it off the market only because a diabetic depending on that could be in serious trouble.

Mr. ROY. If I could interrupt a minute. One other thing. You will note on the labeling of that particular product, we would like to caution consumers about this. It says: "Approved by the Food and Drug Administration." Almost always if you see that kind of representation on an advertisement, on a label, you know that is a quack product.

Ms. FERRARO. Actually, it says registered with the Food and Drug Administration and approved by the medical profession.

Mr. ROY. That is the same kind of representation. If there is a representation that the FDA has approved or approved any kind of representation upon approval would or should cause the red flag to go up because we don't do these kinds of things.

Ms. FERRARO. When you seize a product such as this, is there any way you can find out who the people are who purchased it? If someone is really using this and doesn't know it is dangerous for them to use and rely upon, we might have people whose lives are in danger right now.

Is there any way we can get back to those people?

Mr. ROY. Yes. When we in fact run into a situation that we consider a significant health hazard we can force the manufacturer to recall the product. That is the only alternative that we have.

Ms. FERRARO. Then do you follow up on the recall?

Mr. ROY. We conduct what we call effectiveness checks to determine how effective the recall has been. If it is a significant hazard then we sometimes have to go to publicity in order to try to alert all of the people who are concerned.

Perhaps we ought to stop now. We have many other witnesses.

Ms. FERRARO. Ms. McNair, thank you very much.

Mr. Loughran.

STATEMENT OF THOMAS J. LOUGHRAN, DIRECTOR, ENFORCEMENT DIVISION, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C., ACCOMPANIED BY ANTHONY COSTANTINO, COUNSEL, EASTERN REGION, COMMODITY FUTURES TRADING COMMISSION, NEW YORK, N.Y.

Mr. LOUGHRAN. Madam Chairman, members of the subcommittee, my name is Thomas J. Loughran, and I am Director of the Division of Enforcement of the Commodity Futures Trading Commission, located in Washington, D.C.

On my right and with me today, is Mr. Anthony J. Costantino, the Commission's counsel for its eastern region, located here in New York City.

Our Commission is one of the newer and smaller of the independent Federal regulatory agencies, yet we have a very large task. Congress created our Commission in 1974 and assigned it jurisdiction over the trading of commodity futures contracts on all designated contract markets in the United States; over the trading of leverage contracts, options and other off exchange contracts involving commodities. The Commission's mission is to regulate and police these markets to insure their efficient operation and fairness.

Growth of investor interest in futures contracts has been remarkable. Trading volumes on several of the exchanges which our Commission regulates have doubled during the last 5 years. More troublesome to us, however, has been the proliferation of firms engaged in selling off exchange instruments, many of which have engaged in fraudulent selling practices and other unlawful practices. Such practices forced the Commission in 1978 to impose an almost total ban on the sale of commodity options in the United States.

Most of the firms selling off exchange instruments are selling what our Commission considers to be illegal contracts, that is, the investment vehicle is either an option contract, the sale of which is banned, or is a futures contract which by law may only be traded on a contract market designated by our Commission.

The selling practices of the firms which have been marketing these illegal off exchange instruments in the past 3 years or so have, as might be expected, left much to be desired. These are sometimes firms which are here today and gone with the customers money tomorrow. Often such a firm consists only of a core of hard sell salespersons and a bank of telephones.

The salespersons are highly talented con artists as the examples I will give you shortly will demonstrate. Frequently the firm secures a prestigious mailing address in one of the Nation's financial centers and uses a prestigious sounding name which easily can be confused with a well-known legitimate business.

Uncertain economic conditions and the high inflation rates of the recent past have facilitated the work of these unscrupulous firms and their salespersons. Preying upon the fear of our citizens that bank savings and other conservative investments are not keeping pace with inflation, slick salesmen have convinced normally cautious people to send money—sometimes large amounts of money—to an unknown voice at the other end of a telephone line. These citizens are convinced to purchase an investment they do not un-

derstand, offered by a firm they know nothing about. These people are not stupid; they are vulnerable; they act in haste; they are victims of fraud.

Americans of all ages and occupations are susceptible to this kind of investment fraud—especially when plied by smooth talking con artists. While we do not maintain statistics on investor victims by age group, it stands to reason that many older Americans provide an economic profile which is particularly attractive to con men.

Many elderly Americans live, at least in part, on income derived from invested life savings. When investment income does not keep pace with inflation they become particularly vulnerable to these forms of investment fraud. The effects of such fraud on elderly investors can be devastating, as the following example illustrates:

Mr. F is a 68-year-old retired gentleman living in a suburb of New York City. In August 1978, Mr. F received unsolicited promotional material from a firm in North Miami Beach, Fla., followed later that month by an unsolicited phone call from a salesman. After several calls, during which Mr. F was given assurances that the risks of the proposed investment with this firm were minimal, was told that the firm had been in the gold and silver business "for a long time" and was assured that the firm's experts constantly monitored the gold market, Mr. F mailed to the firm's New York City bank a certified check for \$8,700.

Mr. F understood that he would receive a full written contract describing the terms of this purchase within a few days. Instead of the expected contract, Mr. F received a one-page customer confirmation statement, the terms of which were at variance to the oral representations made to him by the salesman. By February 1979, when the life of the contract which Mr. F had purchased, expired, the firm was out of business. The firm had no gold or futures positions to back the contracts which it sold.

In this case, enforcement action by our Commission was not quick enough to save moneys due to customers. By the time suit was instituted, most of the moneys paid in by customers had been spent.

Businesses like this need only a group of salesman and a bank of phones to begin. The low overhead and high profit potential of such unscrupulous activities attract many more questionable firms into this business than our Division, with its resources, can investigate and police.

Let me give you another case which demonstrates how the sale of off-exchange instruments can be risky for elderly investors. Alfred H., a 60-year-old farmer had no previous investment experience in stocks, bonds, commodity futures, or commodity options, when a salesman phones him and interested him in buying a sugar option.

The salesman had obtained Mr. H's name and telephone number from a list purchased from Dun & Bradstreet. The salesman had no knowledge of Mr. H's financial situation, yet he strongly recommended the immediate purchase of a sugar call option.

The purchaser of a sugar call option buys the right to purchase sugar at a fixed price for a specific period of time. Unless the price of sugar increases substantially in the purchaser's favor, a call

option on sugar has no value at its expiration. The price paid by the customer is not refundable and is not applied toward the purchase of the commodity. The purchaser stands to lose his entire investment if the price of the underlying commodity—in this case sugar—does not increase significantly. Thus, purchase of a call option is generally recognized as a very risky transaction, and is not a suitable investment for a person in Mr. H's circumstances.

Nonetheless, Mr. H mailed \$8,437.84 to the firm on the day he first was contacted by the salesman. The salesman insisted that Mr. H act immediately "before the market turned." Only much later, when his option expired worthless, did Mr. H fully discover the terms of his investment, that the \$8,437.84 option price had included a \$3,368.16 commission for the salesman; that his sugar option would not be profitable unless the price of sugar increased significantly.

Mr. H, however, was luckier than many option purchasers. The company that sold him the sugar option is still in business and through the Commission's reparations program, Mr. H was able to obtain a judgment against the firm, although that judgment is still pending on appeal and has not yet been paid. Mr. H has also appeared as a witness for the Commission in a disciplinary proceeding brought by our Division of Enforcement against this firm for fraudulent selling practices.

Let me give you two more brief examples of retired persons who have been victimized by the fraudulent selling practices of firms selling off exchange instruments.

Mr. F, an 80-year-old Texan, was convinced by a salesman that purchase of, again, a sugar option would result in a \$1,102 profit for each cent the price of sugar increased. Only after purchasing an option for \$15,900 did Mr. F learn that the sales commission charged by the firm accounted for half of his initial payment, that the other half of his initial payment was for a nonrefundable premium, and that the price of sugar would have to almost double before he would break even.

After he learned the true nature of his investment and his demand for the return of his investment was refused, Mr. F filed a reparation action with our Commission against the firm which sold him the option. Mr. F, who requires crutches to get about, nonetheless attended and testified at a reparations hearing on this claim. The firm, which contested the case but did not appear at the hearing, went out of business without fully satisfying the judgment in Mr. F's favor.

Just as unfortunate is the case of a 61-year-old retired businessman in San Francisco who took most of the \$10,000 which remained from a failed restaurant business and invested it in a form of off-exchange instrument after a 2-week sales campaign by an energetic salesman. This salesman knew that the retiree's total assets consisted of that \$10,000, yet with promise of high profits, he took \$6,800 of the \$10,000 for an investment in coffee, about which he told the investor he needed to know or learn nothing to profit. Before the contract matured, the salesman left the firm and the firm went into bankruptcy. The firm is now being liquidated and the customer/victim will only get a small percentage of his investment returned.

These are only a few of the more serious experiences of elderly citizens who have lost significant amounts of their savings on fraudulent commodity investments.

As I have noted, the resources available to us to combat this type of fraud are limited. Our primary enforcement tool is litigation and litigation is a very expensive and time-consuming process. We try to pick carefully the cases which we bring, choosing those which will have the greatest deterrent effect on those in the industry or on those considering entry into the industry.

We also attempt to select those cases which will offer significant protection to public customers, either by enjoining at the outset fraudulent practices before a large scale illegal selling operation can ensnare unsuspecting customers or where the firm has sufficient assets to justify the appointment of a receiver. Many firms spend customer money as fast as they receive it and move on before we can catch them and freeze their assets.

To increase the effectiveness of our enforcement program, we also actively cooperate with other Federal and State law enforcement agencies and assist them in bringing legal actions against some of these firms. Recently, we have done so by joining with State agencies as coplaintiffs in actions in Federal court, by providing expertise and expert witnesses, and by sharing information to the extent our statute allows.

Also, the Commission has attempted to educate the public to the dangers posed by these fraudulent firms. Our division sends out a customer factsheet to all persons who contact the Commission and express an interest in investing in commodities related instruments. I have personally written law enforcement officials in each State asking for their cooperation in publicizing customer abuse in the marketing of off-exchange commodity investments. But clearly more needs to be done to control the sale of illegal off-exchange instruments.

First, we must and will continue to better manage our scarce enforcement resources. We must get more public benefit from our own program.

Second, the role of the States in prosecuting the illegal sale of off-exchange instruments must be increased. Many State agencies are becoming much more active in these prosecutions. Congress and the Commission should do everything reasonable to encourage this trend.

Finally, we will continue to publicize the dangers of buying these illegal off-exchange instruments. The watchword for all investors should be caution. Our experience has demonstrated to us that if an investment sounds too good to be true, it probably is too good to be true.

I would like to thank this subcommittee for giving us the opportunity to appear here today and to thank all of you for whatever assistance you can give us in helping to protect investors and assure the integrity of this Nation's commodities markets.

Thank you.

Ms. FERRARO. I want to thank the entire panel. Your testimony has really been very, very complete.

Mr. Fletcher, I just wanted to say that the two booklets that you have described during the course of your testimony have been

distributed in packets to the people here. In addition, we have them in our congressional office.

Mr. Roy, are those pamphlets available to congressional offices so we can distribute them, too?

Mr. ROY. Yes.

Ms. FERRARO. Disseminating information that way is probably the most we can do at this time.

I have one question of you, Mr. Loughran. With reference to the transactions you have described, most of them are done over the phone?

Mr. LOUGHRAN. Yes.

Ms. FERRARO. Is there ever a personal contact with customers in this type of scam?

Mr. LOUGHRAN. Very infrequently. Most of these scams are perpetrated by people who use WATS lines, long distance, high pressure sales activity. The typical pattern in fact is that an organization located in Miami Beach, for instance, will be selling across the country into the Midwest and into southern California and New York City and not in the Miami Beach area.

One of the problems is that if an unscrupulous firm sells in the Miami Beach area and is also located in the Miami Beach area, they tend to increase the interest in their activities on the part of local law enforcement agencies and they have local victims who will come down to their offices and see what is going on. So typically, there are very few personal contacts.

Ms. FERRARO. Are States forbidden from regulating commodities transactions?

Mr. LOUGHRAN. No; the States are not. There is a particular problem in that when the Congress created the CFTC it gave the Commission exclusive jurisdiction over this vast area of regulation and some of the State activities that had occurred before were preempted.

In 1978 the Congress amended the Commodities Exchange Act to provide that the States could go into Federal court to enforce the Commodities Exchange Act. That has helped significantly, but my experience is that many State enforcement officials—unlike New York, because New York is very active with us and we have cases pending here in Federal district court where we have joined them—but in many of our States, State officials do not have appropriations from their State legislatures or do not have enabling statutes which would allow them to go into Federal court to enforce a Federal statute.

My own personal view is that I hope that the Congress will look at the effectiveness of this section of the act and would consider some alternatives to increase the activity and the ability of State officials to police this illegal sales activity.

Ms. FERRARO. Thank you.

Mr. Biaggi.

Mr. BIAGGI. Thank you, Madam Chairman.

A number of quick questions. Mr. Fletcher, you cited a number of cases that were successfully prosecuted. What is the rate of conviction in the cases that you find yourself involved in?

Mr. FLETCHER. Our conviction rate of cases we bring that are indicted is over 98 percent. Many of these cases, though, do not

lend themselves very well to prosecution, such as some of the items that you have in front of you. You can see that prosecuting some of these things would not be very easy or very attractive.

It could be difficult to get somebody up on the stand who purchased that mat, for example, and have them explain why they felt that would really be effective and would lend themselves easily to some strong cross examination. Those types of things do not lend themselves very well to prosecution.

The problem with this whole medical fraud area is that it is very lucrative on the one hand and there are not many hazards in it, on the other. The big cases we can prosecute, but the little cases we can't prosecute. Therefore, we have to somehow take the lucrative aspect out of it.

We can do it by stopping the mail, holding up the mail, then going through an administrative hearing and returning the mail to the sender where we do get a fraud order. But this takes time. Time is of the essence. Every day that goes by, more mail is being delivered to the promoter and more people are victimized. We are looking for a way to protect the consumer by stopping that mail from going there. As Congresswoman Ferraro knows, we do have some legislation pending giving us additional tools to act more quickly.

Mr. BIAGGI. You stated my next question by that last comment.

Mr. FLETCHER. Well, the first one is that we have found that it takes us somewhere in the neighborhood of 5 to 6 weeks to obtain these products in the first place, when we identify what appears to us to be a fraudulent operation. Our postal inspectors monitor publications. When they see one of these advertisements, we write off and purchase the product. Many times, as a part of the overall promotion, the promoter will not promptly send the product. That is part of it, it takes us 6 weeks to get the product. That is 6 weeks that have gone by where the mail is being delivered.

Many of these promotions are very shortlived. So we do have legislation which will allow us when we see one of these advertisements to go to the operator and upon tendering them the retail price, get the product quickly. That should cut off many weeks out of this process.

Another tool we feel we need is an administrative subpoena or an investigative demand of some sort in cases where there are testimonials, where they allege there are some scientific experiments or facts that back up this product. We want to be able to go, and upon a demand or a subpoena, have them turn over to us this information that they are using in these advertisements. Frequently we can't get that information.

What we would like is the authority to do this. If we are refused, if the operator refuses to give us the basis upon which they have a "before and after," this sort of thing, that will serve as probable cause for us to issue the fraud order and return the mail to the sender.

Ms. FERRARO. You are saying rather than wait until you actually take the product and try it and find out it doesn't work, it would be more effective to shift the burden of proof, is that it?

Mr. FLETCHER. That is correct. We can't ignore due process and don't want to ignore due process here. But where somebody is

making these extravagant claims and have no support for them, that ought to be prima facie evidence of misrepresentations so we can take action quickly.

Mr. BIAGGI. You state in your testimony that the area of medical fraud schemes is controlled by a few. Have you been able to identify them?

Mr. FLETCHER. We think there is less than two dozen of them. We are trying to put some hazard into this thing. The other part of it is there isn't much hazard. You heard here about products put on the market. Action is taken against them, they simply change their name in some fashion, or change the product slightly and are back in business again. It is nice when we can stop the operation and keep anybody else from being victimized, but when they can turn around and start it up again because there is no hazard, we have an ineffective situation.

The legislation I talked about does call for up to a \$10,000 fine where action is taken to evade one of our fraud orders. We feel that will again put some hazard into this operation.

Mr. BIAGGI. In light of some of the cases you have illustrated, and this is the first time I have heard testimony from the Inspection Service of the Post Office, you do a good job. How much publicity or what effort has been made to highlight these cases of successful prosecution?

Mr. FLETCHER. As I said, last year we started our consumer protection program to try to put this in front of the American public. We have had this year from September—really October on—we have had our inspectors make presentations to community groups, senior citizen groups, where they reached over 81,000 people last year. We have had over 1,100 radio appearances and television appearances, ranging up to hour talk shows. We have had numerous articles in magazines, newspapers, trying to get the message across.

This pamphlet here is the first in a series of pamphlets we are putting out. We have one that is being printed now on some medical fraud items in an effort to try to prevent it from recurring.

One other point here. Somewhere along the line we need to get the help of the print media, the newspapers in particular, magazines, to show a little more responsibility in what they accept as advertising. There was mention about the airline magazines. We see in these airline magazines all kinds of these items for sale. There is no product that will cure baldness or make your hair grow again; there is no product that will increase your bust; there is no product that will take off 84 pounds of ugly fat in 2 weeks; that kind of thing. We need to see more responsibility on the part of the media in accepting these kinds of advertising.

Mr. BIAGGI. How much of a thrust are you giving toward restitution to the victims?

Mr. FLETCHER. We make restitution when we, through a mail stop order are able to return the letter to the sender, because the check that the person has enclosed in there is being returned to them. In effect they are getting restitution. In our other cases the restitution is up to the Federal judge. Occasionally they order restitution, more often they do not.

Mr. BIAGGI. Mr. Loughran, the same question, restitution?

Mr. LOUGHRAN. What we have done in many of our cases, Congressman, is to seek a remedy in Federal court called disgorgement. Another extraordinary remedy that we have been successful in getting in some of these phone cases is the immediate imposition of a receiver to hold and muster all the funds of the firm. We seek disgorgement of illegal profits from the individual defendants who may have absconded with customer moneys. If any money is still there, if it has not all been spent, we can get that money paid back to the receiver to be disbursed to customers who have been defrauded.

Mr. BIAGGI. Mr. Roy, you stated in your department you have administrative and judicial action. What do you mean by this?

Mr. ROY. Our judicial actions are solely injunctions, seizures, and prosecutions. Those are the kinds of actions we can take in court to stop or deter a manufacturer from producing these kinds of goods. The administrative detention is a temporary thing. It is simply a matter of being able to embargo, if you will, a product for up to 30 days. During that time we would hope we would be able to get the paperwork through to accomplish a Federal seizure of the goods.

Ms. FERRARO. I want to thank you, Congressman, and thank the panel.

Mr. Fletcher, I have a magazine which I spoke to you about previously.

I did promise our reporter a break. It will not cure his backache, but it will give him temporary relief, so we will take a few minutes so he can get up and stretch.

[A short recess was taken.]

Ms. FERRARO. The hearing will come to order. I take particular pleasure in introducing this panel. Though only one police officer will be testifying, Police Officer Kelly, several of my friends from the senior citizens robbery unit of Queens County are here; two of whom I have worked with. The first is Sgt. Frederick Ronca who heads the unit; I am delighted to see you here, and of course, my buddy, Arthur Monty, who has been very helpful in setting up this panel. I appreciate your help.

I also welcome Police Officer Barney Steffen. I am delighted that you are here.

For those of you who do not know, the senior citizens robbery unit deals solely in crimes against seniors. There is a separate unit in each of the boroughs, and I know that they have been very effective in Queens.

Our second panel of witnesses can give us unique testimony about con games from two different angles. One, Officer Robert Kelly is a police officer with the New York City Police Department. He is assigned to the Queens Senior Citizens Robbery Unit, and deals extensively with con games against the elderly.

Appearing on this panel with Officer Kelly are Mr. Robert Perry and Mrs. Rudnick, both of Queens. Both Mr. Perry and Mrs. Rudnick have been the victims of confidence games. They have agreed to come forward today and help the subcommittee by sharing their firsthand stories with us.

As we will soon hear, the con artists can be very sophisticated, very sympathetic, and very successful at what they do.

Once again, I will ask that we refrain from asking questions until all three witnesses have testified. I understand that Officer Kelly does have a prepared statement, while Mr. Perry and Mrs. Rudnick do not.

We will begin with Officer Kelly, and then I will ask our other two witnesses to begin by briefly describing their experiences. You can read from your statement if you wish, Officer Kelly.

STATEMENT OF ROBERT KELLY, POLICE OFFICER, SENIOR CITIZENS ROBBERY UNIT, QUEENS COUNTY, NEW YORK CITY POLICE DEPARTMENT

Mr. KELLY. The most common con game worked on the streets of Queens is the pocketbook drop. For the past 2 years con people have taken in excess of \$1 million from elderly residents of Queens.

We cannot estimate the amount of money taken by con people that goes unreported to the police department. Much of this money represents the life savings of the elderly victims.

The game is worked in this manner: An elderly person is out shopping or visiting, she is approached by a con girl. We call her a con girl. She is working the street looking for what they call a mark. An elderly person is an easy mark to them.

They approach the elderly woman, get in conversation with the con woman, being very friendly. They start talking. After a while if the first con girl knows that this woman is an easy mark, she will signal to another girl who is part of what we call a drag team. The second girl will approach the two people and show them a bag or an envelope, say I just found this, it fell off a truck, fell out of a car, a man dropped it. They open it up, they look and see a large amount of money, which is really \$100 on the top, \$100 on back with play money in the middle.

They talk, they show the woman, what shall we do? Most of the senior citizens say, we will take it to the police. "No, no, no, we can't. I work for a lawyer, let me call my boss and see what he has to say."

He says I will send a runner down to pick up the money, we will look to make sure the money is not counterfeit. They do this. A runner comes by, they give him the money. They call. The lawyer says, "It is fine, there is \$80,000 in here. We will have to hold it for a month, if nobody claims it you can split it three ways."

Now the elderly person is involved in the con. If it is \$80,000 she can make \$25,000 or \$27,000. But the lawyer says, "For the month he is to show good faith you are going to have to put up money of your own."

What happens during the beginning of the conversation, the first con girl is telling that her husband just died and she is left insurance money. She has the money to put up in good faith. They ask the elderly person, "Do you have this money, could you put up money?"

"Sure, I have it." They get her to go to the bank, withdraw the money, they get all the money together. They said, "We have to bring it to the lawyer now." One girl always stays with the elderly person, always talking, don't give the elderly person a chance to think.

While the second girl is taking the money to the lawyer, they just keep talking to the senior citizen. They will come back and they will tell her, "The lawyer says everything is fine, we will have to wait a month, go through the serial numbers, make sure everything is all right. The lawyer wants to talk to you on the phone."

He will talk to the senior citizen on the phone. After the conversation the lawyer says, "Listen, come up and see me, I want to see you in my office." So the two girls take her to an office building up to room 204, see Mr. So and So. When she goes upstairs, no Mr. So and So there, Mr. Weinstein, Mr. Feinstein, Mr. Miller, not there.

She comes down and looks for the girls. The girls are gone. The con game is over.

Ms. FERRARO. And she is out of money?

Mr. KELLY. Right.

Ms. FERRARO. Is there any other type of con game being used in Queens County?

Mr. KELLY. We have a handkerchief switch, where two males usually approach another male and they state they are from one of the islands or from Africa, that they just came to this country and looking for an address. The other man says, "I don't know the address." He says to the first man, "Why do you have all this money?" The senior citizen says, "Look, you had better put that money away. You will get mugged here showing all that money. Why don't you put it in a bank?"

The con man says, "No, they told me not to put it in a bank over here, they told me that in my country. Look, I am looking for this address, I have to go to the airport now. I can't walk around with this money in this country. What should I do?"

So they say to the elderly person, "Would you do me a favor? Hold this money for me."

He says, "I don't know." Then they say, "Maybe you will tell somebody, maybe they will rip you off. Tell you what. Do you have money in the bank?"

The senior citizen says, "Yes."

"Could you take it out?"

"Yes, I can take it out."

"Would you do me a favor and take out a thousand dollars and put it with my money and we will take it up and you hold it. This way I know you won't tell anybody because they will steal your money also. You hold it."

So the senior citizen goes to the bank, takes out the money, they put their money together, tie it up in a handkerchief and the con artists says, "Do me a favor. Make sure you keep it in here, make sure nobody sees it."

In that time he switches handkerchiefs. He says, "All right, take the money, put it right here and I will meet you later."

So they leave and they tell the man they are going to come back later. They have the man's address. After a while nobody comes back, the victim after a while opens up the handkerchief and all he finds is newspapers.

Ms. FERRARO. Is that what occurred with you, Mr. Perry?

STATEMENT OF ROBERT PERRY, QUEENS, N.Y.

Mr. PERRY. That was just about my same story. I was going to the bank to take out \$300. So I met this man, he said he was just from Africa. He had \$32,000 in his pocket. I said, well—he says, "But I can't put it in the bank." I said, "Why?" He said, "If I put my money in the bank they tell me they won't give me my money back."

Somebody says, "If you put some in the bank then I can trust you," he says, "I can get my money back." So he says, "You go to the bank and put in \$2,500 and I got \$32,000; carry me to my own home and put this handkerchief and paper all in my closet."

He had me so much confused I didn't know what to do. So I went with him to the bank and took out \$2,500 and he had put this big wad of newspaper tied up in the handkerchief in my closet. Then we go to the bank and he rode around, first man rode around and talked to me and fooled around and I went and got the money. How he got that money out of me then, I can't understand it yet.

Then he says, "I am going to the airport to get my suitcase."

Then he said, "Now you stay here and we will be right back as soon as I get my suitcases."

I live alone.

Ms. FERRARO. Mr. Perry, how did you meet him?

Mr. PERRY. I was going down Archie Avenue to the bank.

Ms. FERRARO. He stopped you in the middle of the street?

Mr. PERRY. Stopped me in the middle of the street. One was out playing with the car. The other one met me back from the car. He wondered why he couldn't find an African neighborhood. I said, "There is none around here."

He says, "Well, I got \$32,000 in my pocket."

I said, "Why don't you go to the bank?" He said, "I can't go there with this much money in my pocket."

Ms. FERRARO. How did he know that you had \$2,300 in the bank, did you tell him that?

Mr. PERRY. No.

Ms. FERRARO. Did you tell him that?

Mr. PERRY. No; I was going to the bank to get some money out of the bank. He had this \$32,000 in his pocket. I said, "You are going around with \$32,000, why don't you go to the bank?" He says, "I can't put my money in the bank."

Ms. FERRARO. I am going further than that. When you said that you took your \$2,300 out, who told you to take out \$2,300?

Mr. PERRY. I was going to the bank to take out \$300.

Ms. FERRARO. How much did you end up losing totally?

Mr. PERRY. I lost totally \$2,500.

Ms. FERRARO. All right. \$2,500, how did he know enough to have you take \$2,500 out of the bank in order to pay it?

Mr. PERRY. I had the bankbook in my pocket.

Ms. FERRARO. You showed it to him?

Mr. PERRY. I showed it to him. I was going to the bank. He was scared to put his money in there unless he sees me take some out. Then he advised me if I would take out \$2,500 then he could come back. I had put my money in—he had come and put his wad of paper in my closet, in my closet. Then I goes to the bank, I take his money. And then he carried me around and he took this

\$2,500 of mine and I left his \$32,000 in my closet. I knew it was \$32,000, but it wasn't nothing but paper.

So when he went back and put me out of the car and I goes up the stairs just to be sure, he was going to the Kennedy Airport to get his suitcase, said he was coming right back. That is the last I seen of him.

Ms. FERRARO. What did you do, did you then call the police department?

Mr. PERRY. I called the police officer as soon as I got myself together. It was so long before—

Ms. FERRARO. Did you apprehend him?

Mr. KELLY. Mr. Perry couldn't identify him.

Ms. FERRARO. He couldn't be identified?

Mr. PERRY. No.

Mr. KELLY. He told me he couldn't recognize him if he seen him again.

Mr. PERRY. I couldn't recognize him again. He brought a book around with a lot of them.

Ms. FERRARO. How much money did you have left in the bank after you took out \$2,500?

Mr. PERRY. I had taken out \$300, that left me \$500. Every penny I ever had.

Ms. FERRARO. That is a shame.

Mrs. Rudnick, would you like to tell us about your experience?

STATEMENT OF DOROTHY RUDNICK, QUEENS, N.Y.

Mrs. RUDNICK. I just don't know where to begin because I feel it was agreed on my part to be bewitched, be afraid and go yet so far—

Ms. FERRARO. Suppose we start with the first time you met the individual who took your money.

Mrs. RUDNICK. I went to Woolworth to purchase something. One of them came over to me and said she wanted to buy a pin and asked me if it was worth a price. I said, "I think so, for \$2."

Ms. FERRARO. A piece of costume jewelry?

Mrs. RUDNICK. Yes, she asked me about that. With that, I was about to go about my business when another one comes in from the outside—I don't know where she came from, Woolworth's is a big store—and said, "I just found in the telephone booth \$65,000." And she shows me, and on the top there is hundreds, I could see hundreds but that is all I could see. And she said, "Can we go to your house, would you want to go somewhere where we want to take you?"

I said, "No, come to my house." And from then on I was afraid of them.

Ms. FERRARO. She was with someone else then?

Mrs. RUDNICK. Another girl.

Ms. FERRARO. Did you ask why she wanted to come to your house, or why she didn't go to the police or the owner of the store?

Mrs. RUDNICK. I didn't ask her that. That came to me later. That came to me later that I should have said to them, "This is stolen money, you should report it to the police. Maybe you will get a reward from the party who returns it." But that all came when it was too late. I believed that this was true what they were telling

me and as soon as I got them in my apartment, though, I had a fear. I think if they had told me to go out and kill you or kill you, I would have done it.

Ms. FERRARO. What exactly happened when they came back to the apartment?

Mrs. RUDNICK. Well, they took me over. I didn't show them my bankbooks. They went to where I have a cabinet file and they took out and looked at the bankbooks. Why didn't I say something to them?

Mr. BIAGGI. Why did you bring them home?

Mrs. RUDNICK. That is it, why did I bring them home? I can't answer that.

Ms. FERRARO. Let's go back a step.

Mrs. RUDNICK. \$65,000 of paper money got me. I will be honest.

Ms. FERRARO. Do you live alone?

Mrs. RUDNICK. Yes.

Ms. FERRARO. And do you usually talk to people when you go out into the store?

Mrs. RUDNICK. No; I talk to babies because I am very fond of little ones, maybe their mothers.

Ms. FERRARO. Do you belong to a senior center? Do you see other people a lot?

Mrs. RUDNICK. I used to belong to a center but I don't anymore. I used to belong to a center.

Ms. FERRARO. Officer Kelly, could you tell us in your opinion, why victims stop and talk with people on the street whom they don't know?

Mr. KELLY. Well, in the last 3 years that I have been handling cases and with the judges and the A.D.A.'s in court and like everybody in this room, when she started telling the story, I am a cop, I don't know the social problems, I am not a sociologist.

My belief, in three-quarters of my cases with the elderly citizens, it is not the larceny in them. Everybody believes the larceny in the person makes the con artist so much greater. I disagree.

It is the loneliness in the people, in the senior citizen out there. Nobody bothered with some of these people for years, nobody cares, they have no family. All of a sudden they are outside on the street, walking down, two sharp women, I mean sharp, start, "Hey, ma, how are you doing? How is everything?"

They start talking to them, they just get ahold of them. They take them to eat, take them home, hang around with them. This is something in senior citizens that is lacking, that she has been missing for so long. It is not the larceny.

Sure, I get cases where it is the larceny, but the loneliness is there.

Mr. BIAGGI. Mrs. Rudnick said she was attracted by the money.

Mr. KELLY. That is questionable.

Mr. BIAGGI. Many of the judges say the same thing, by the way. I am aware of the total picture.

Mr. KELLY. Even on handkerchiefs, where the two con men approach a young person, 25, 26-year-old, you know what they look for? It sounds funny but they look for a real ugly person out there, maybe 5-foot-2, 200 pounds, that nobody has bothered with, doesn't date, doesn't have boyfriends, nobody cares.

They approach this girl, "Hey, baby, how are you doing? OK?" They take her to eat lunch. All of a sudden they are fulfilling what this young person hasn't seen.

Even in the young people it is not the larceny, it is the loneliness, they have no boyfriends, nobody bothers with them. This is what they are looking for.

Ms. FERRARO. Mrs. Rudnick, to get back to you in particular, you live alone; is that correct?

Mrs. RUDNICK. Yes.

Ms. FERRARO. Are you married or were you married?

Mrs. RUDNICK. I am a widow. I have a married daughter.

Ms. FERRARO. Does she live near you?

Mrs. RUDNICK. Not too far, she doesn't live too far; two buses I could get there.

Ms. FERRARO. Do you see her frequently?

Mrs. RUDNICK. Once a week.

Ms. FERRARO. What about the other times?

Mrs. RUDNICK. She works.

Ms. FERRARO. Do you have any other children?

Mrs. RUDNICK. No.

Ms. FERRARO. Do you see anybody on a regular basis?

Mrs. RUDNICK. I am friends with the neighbors, yes; the neighbors in the building, yes.

Ms. FERRARO. You don't ordinarily talk to people in the stores?

Mrs. RUDNICK. Well, if somebody will ask me like this woman asked me about should she pay \$2 for this little bit, I will answer her.

Ms. FERRARO. Have you ever brought anybody home with you before that?

Mrs. RUDNICK. No.

Ms. FERRARO. I know you have brought nobody home since.

Mrs. RUDNICK. No.

Ms. FERRARO. I am sorry. I interrupted your testimony. Could you go on with your testimony?

Mrs. RUDNICK. I would say I lost, I would say, about \$40,000.

Ms. FERRARO. \$40,000. How did that occur?

Mrs. RUDNICK. I would say by fear on my part because the moment they stepped into my door, I didn't know what they were going to do. The reason that made me get to that point is because they were going around looking and I was afraid to say, "Well, what are you looking for?" They were looking.

Then I seen them pick up my cabinet file and go through and look at my bankbooks. Shouldn't I have said something?

Ms. FERRARO. Did they threaten you?

Mrs. RUDNICK. No. I got the fear and they saw that they were dealing with somebody who was afraid of them.

Ms. FERRARO. How old were these people?

Mrs. RUDNICK. Well, you can't judge people's ages today but I would say in their thirties.

Ms. FERRARO. Could you describe them physically?

Mrs. RUDNICK. Yes. One was tall and she said she was driving her cousin's car and the other one was short and she was the one that had the money, that came in and said that she found that money in this bag.

Ms. FERRARO. After they looked for your bankbook and took it, what occurred?

Mrs. RUDNICK. Then they asked me if I wanted to get part of this money, I would have to contribute something toward it.

Ms. FERRARO. So what did you do?

Mrs. RUDNICK. Well, then they took out a bankbook and they said let's go to this bank.

Ms. FERRARO. And they went with you to the bank?

Mrs. RUDNICK. No, no. They sent me alone.

Ms. FERRARO. When you were outside—

Mrs. RUDNICK. They took me to the bank.

Ms. FERRARO. They took you to the bank physically and you went inside the bank. If you were afraid, why didn't you say something to the bank manager at the time?

Mrs. RUDNICK. I was—I think right now I was bewitched, whatever that word may mean, I was already far gone. I was afraid that they were going to—I don't know what they were going to do to me.

Ms. FERRARO. What did you do when you went into the bank?

Mrs. RUDNICK. I went into the bank. What amazes me most, when I went to the Bowery Savings Bank I had a \$10,000, 6 month's certificate and my daughter also signs on this bankbook and when I came for this money, which had never been touched, why didn't they question it?

All they said to me was, "You sure you want to take out this amount of money?" At this stage of life with the elderly, with what is going on, that is not enough. You should get in touch with that party, delay that to some point where you can find out. "This woman is entitled to every penny if she wants it, but she is asking for money that she has never touched this account."

Ms. FERRARO. You are suggesting—

Mrs. RUDNICK. I blame the banks for it, I hold the banks responsible for it, definitely.

Ms. FERRARO. Are you suggesting that the banks be required to check with the family of a senior citizen when he or she makes a large withdrawal?

Mrs. RUDNICK. When there are two signatures, what harm would there be to call? If you can't get the party, she is not home or whatever, you still can call. She hasn't moved away from the city.

Ms. FERRARO. If they had called your daughter you would have spoken with her and she probably would have said, "Don't do that." But what do you do with somebody who has a single signature?

Mrs. RUDNICK. Well, for them they have to find another means. I don't know what means they would have to find. I am only going by those who the banks can help in some way. It is true they do say, "Are you sure you want that money?" I am so afraid of them by now that I think if they would have asked me—they told me the amount to take out. Who are they to tell me what amount to take out?

Ms. FERRARO. You took out \$40,000. What did you do with it?

Mrs. RUDNICK. Not all at one time. Three different banks.

Mr. BIAGGI. Would you yield?

We have had hearings on this once before and we had bank officials present. We cautioned them in this area. As a matter of fact, they embarked on a publicity program within their own institutions, they had posters and the like, and instructed their employees to engage in lengthy discussion with senior depositors who were withdrawing an inordinate amount of money.

Apparently that had some effect. Did they do that here? Did the employee do that to you?

Mrs. RUDNICK. No. All he said was, "Are you sure you want this amount of money?"

Ms. FERRARO. You took out \$10,000 from one bank account. Then what happened?

Mrs. RUDNICK. Then I went to other banks.

Ms. FERRARO. You went to how many banks?

Mrs. RUDNICK. I don't know. They gave me the book, like as if they didn't belong to me.

Mr. KELLY. Three banks.

Ms. FERRARO. Did you go to three banks?

Mrs. RUDNICK. I would say three banks.

Ms. FERRARO. You went from one to the other?

Mrs. RUDNICK. No; they slept overnight.

Ms. FERRARO. They slept at your house?

Mrs. RUDNICK. Yes.

Ms. FERRARO. Mrs. Rudnick, before these people did, when was the last time you had someone sleep over in your house?

Mrs. RUDNICK. Never.

Ms. FERRARO. Never?

Mrs. RUDNICK. Never.

Ms. FERRARO. Why did you have them stay with you?

Mrs. RUDNICK. I don't know. I was afraid of them. I told you. As soon as they came in my house, they went to my bankbooks and started looking at my bankbooks. I was bewildered, bewitched. Why didn't I say, "What are you doing in my bankbook? Who are you to look at my books?" Why didn't I say that? Can't I say that?

Ms. FERRARO. Did you speak to your daughter that day?

Mrs. RUDNICK. When she called me when they were in the house, I said they were friends.

Mr. BIAGGI. If you will yield, I think a very important point is being made here. The fact is in these cases—I think Officer Kelly was right in the most part but there are cases that are contrary as far as motivation is concerned.

We have found that of the elderly victims are reluctant to prosecute even if they find the offender. There was a woman in my district who came to my office, who subsequently testified that she gave a con man a total of \$80,000 on three separate occasions.

When he was finally apprehended she refused to prosecute him because she said he was a very nice man and he kept her company and he would treat her very nicely and she was lonely.

Mrs. RUDNICK. Well, I am not lonely, I am not lonely.

Ms. FERRARO. Let me say one thing for the benefit of all of the people here today. Mrs. Rudnick, let me tell you that no one is criticizing you for this.

Mrs. RUDNICK. Well, I don't know. I am criticizing myself but I have no other excuse. I am not out of my mind.

Ms. FERRARO. No. That is the unfortunate thing. Tell us why you think they go to senior citizens?

Mrs. RUDNICK. We are an easy mark, apparently.

Ms. FERRARO. Right.

Mrs. RUDNICK. I think most of the people whom I do know, through little organizations that I belong to, have a few thousand dollars. So if they can clean you out of it—one has \$10, this one has \$100,000, this one has \$5,000, it is easy fish. I am not lonely. Some people are lonely. But I was a very young widow and I could have gotten married if I wanted to, not that they were running after me, but I didn't want to. I am not lonely.

Ms. FERRARO. Were the people apprehended, those who ripped her off?

Mr. KELLY. In this case we had two people apprehended in Connecticut before we even met Mrs. Rudnick.

Ms. FERRARO. And you were able to identify them?

Mr. KELLY. She picked out two women out of our photos of cons. She was very good at this. One of the girls she even said that was tall, she picked out of the book, and the one she picked out was tall and we happened to arrest her last year in Jersey driving the car. She happens to be the one driving the car all the time.

Ms. FERRARO. Where is she now?

Mr. KELLY. Good question. What happened, the guy on the phone, he went to Connecticut to pick up \$6,000 that was sent through Western Union to Connecticut, and we found out, we had the Connecticut police waiting for him over in Connecticut.

They picked up the girl who went in to pick up the money in Western Union but she was not one of the girls that worked the Mrs. Rudnick job.

Ms. FERRARO. Maybe you ought to describe to the audience the people who are perpetrating these crimes. Please describe for them a little bit about the type of people, give us a profile.

Mr. KELLY. OK. On a pocketbook drop it is usually done by two girls, sometimes they work singles but very seldom, usually two black girls working on the senior citizen. Sometimes, very seldom, it is two white girls or a white guy and a white girl. What they started doing in Queens is the obituary column, a guy and a girl. When somebody dies, if the husband died they go talk to the wife and tell her to take the money out of the bank. Different kind of con.

Usually the con girls are in their late twenties or early thirties. They usually work with the guy on the phone, that is their boss.

Ms. FERRARO. Do you have a book that has pictures of known con artists?

Mr. KELLY. In my office we have albums of pictures of 600 con artists. You can reform a drug addict, alcoholic, anybody, but you can never reform a con artist, you just don't.

Ms. FERRARO. Why?

Mr. KELLY. It is an easy way to make money, it is a nonviolent crime as far as the system is concerned. After a while it gets to be a game with them. They love to con somebody, they love to see if they can outdo somebody.

Ms. FERRARO. You have 600 people in your book?

Mr. KELLY. Yes, right.

Ms. FERRARO. Is that the same book used throughout the United States?

Mr. KELLY. No. The people I have in my book are known to work in New York. The ones I have in my book are mostly working in Queens. In the pickpocket squad in Manhattan they have probably 400 or 500 photos more than I have but most of these people do different kinds of cons.

Ms. FERRARO. Your book has pictures of the specialists in the type of con games you have been describing?

Mr. KELLY. Right.

Ms. FERRARO. Mrs. Rudnick, do you want to add anything more? Did you ever get any of your money back?

Mrs. RUDNICK. No.

Ms. FERRARO. No?

Mrs. RUDNICK. No.

Mr. KELLY. This only happened a few weeks ago. We have \$6,000 so far, Western Union. She had it sent in a different woman's name to Connecticut. Now we are in the process of getting \$6,000 back from Western Union.

Ms. FERRARO. Mrs. Rudnick, if those people are apprehended, would you go to the district attorney and proceed with criminal prosecution in any way?

Mrs. RUDNICK. Oh, sure.

Ms. FERRARO. That is great. I think you are a very courageous woman.

Mr. Biaggi.

Mr. BIAGGI. No questions.

Ms. FERRARO. I think that is it. Do you have anything to add? We have one more witness but this panel is excused. Thank you very much. Mr. Perry, Mrs. Rudnick, I wish we were capable of getting your money back. We do appreciate your coming before the panel and testifying.

I know it is not easy to do that, it is difficult to sit there and admit this. But you have done a very, very courageous thing for all the people in this room and all those senior citizens out there who hear about this and may not be taken in the same way. You are to be congratulated. Thank you, Mrs. Rudnick; thank you, Mr. Perry.

We have one more witness. The final witness is a man whom we are going to refer to as John Doe. Mr. Doe is currently serving a sentence in Riker's Island for committing the types of crimes which we have been speaking about today.

He has agreed to appear today to explain this subject from the viewpoint of the con man, so that the subcommittee can better understand the nature of these crimes.

Understandably, I would not want Mr. Doe to suffer any reprisals because of his willingness to cooperate with this congressional committee. We have agreed, therefore, to keep his identity a secret. I would ask that my colleagues and the members of the press honor that agreement by not asking any questions which may lead to the identification of the witness.

Mr. Doe, before we begin, I would like to thank you for appearing before the subcommittee today. I know that your testimony will be enlightening. I understand that you do not have any prepared

testimony. I would like to ask you several questions in order to begin your presentation.

I am sure Congressman Biaggi has some questions he would like to ask you as well. I would also like, for the record, to make it clear that Mr. Doe has been in touch with our office, that he has been promised nothing in return for his testimony other than that we will write a letter to be made part of his file with reference to his cooperation with the investigation by this committee. We do appreciate your cooperation.

The gentlemen who are seated with Mr. Doe are officers from the corrections department.

**STATEMENT OF JOHN DOE, ACCOMPANIED BY TWO
CORRECTIONS OFFICERS**

Ms. FERRARO. How old are you?

Mr. DOE. Forty-seven.

Ms. FERRARO. I understand that your first encounter with con games was as the victim of a "Murphy scam." As I understand this, this con game is one where the victim, or mark, believes that he is joining a social club where he will have sexual encounters with women. Instead, he finds that he has lost his wallet, watch, et cetera, when he complies with the club rule that you carry no money or valuables onto the premises. Am I correct in my understanding that this was your first experience with con games?

Mr. DOE. That is correct.

Ms. FERRARO. So, in effect, you were conned the first time you got involved?

Mr. DOE. Correct.

Ms. FERRARO. Now, what did you learn from that experience?

Mr. DOE. At that time, I did learn that this could be accomplished very easily.

Ms. FERRARO. Can you describe a couple of cons for us? We have heard about the pocketbook drop. Perhaps you can focus on some other cons. For example, can you describe the police scam?

Mr. DOE. Yes. Usually the police scam is affected when someone has been victimized by virtue of a con game, one of the short con games, and the person has additional funds which can be withdrawn from a bank or obtained wherever it is being kept. So a person that has lost or has been victimized would be approached by men representing themselves as police officers. Usually they would call the person first.

Ms. FERRARO. How do they know that that person has been victimized?

Mr. DOE. Because the person who initially victimized them would get in contact with these men and give them a description of what occurred and the information necessary to make the contact, such as the telephone number, the address, the bank account number and any paraphernalia that the person has that would make them recognize that they had to get it from the person who made the initial contact with them.

The police officers, or the con artists operating as police officers, would call the victim's residence at an early hour in the morning or preferably before the victim goes to work and make an agreement with them as far as in cooperating with the officers in light

of the fact that they have the people who initiated the first scam in custody and they would like to get the victim to identify the people and to explain to the victim that the persons cooperating with other organized elements, that they plan a further scam against the funds that they hold.

Ms. FERRARO. So the victim actually thinks they are cooperating with the police?

Mr. DOE. That is right.

Ms. FERRARO. In effect, they are being ripped off a second time?

Mr. DOE. A second time. The balance of the funds or a significant proportion of the funds that they hold in the balance.

Ms. FERRARO. So the way to get around this is to contact the police department directly when they call the second time?

Mr. DOE. Well, that would be the proper way; it would be the proper step to take to contact the police right away, if they do get a call from someone representing themselves as police?

Ms. FERRARO. Now, what happens when that occurs? They then go over to the victim's house and ask them for additional money? How do they get more money out of the victim the second time?

Mr. DOE. Well, one of the fundamental ways is to explain to the victim that the people intend to either cash the check against their account, because they have a copy of the signature of the person and the account number, or they intend to get the funds through some other method. So the police—the con artist acting as police officers—would make an offer to the person of funds, a reward, that perhaps American Express or some of the banks or even the police department have appropriated for them for cooperating in trapping the con artists.

So the person would be anxious to agree to participate with the officers as far as going to the bank and making a withdrawal, because the tellers or some of the bank officers would be acting in collusion with the con artist as far as distributing counterfeit money, counterfeit travelers' checks, and what-have-you. The con would like the person to go and make a large withdrawal for the purpose of getting some of the bank employees to, during the course of the large withdrawal, to distribute some counterfeit in this money, so that the money would be taken to the police laboratory for analysis, to take the counterfeit currency and after the victim has withdrawn the large sum, or whatever sum is withdrawn, a receipt is given to the victim by the con artist who represents they are taking the money to the police laboratory for analysis, and they would get a reward, either from some cop or from the money that has been appropriated for this purpose.

They would also get the funds back that they have lost. They drop the victim by the house to wait until this has been achieved, and they never see the con artist after that.

Ms. FERRARO. That is the ultimate con, relying upon the confidence that people have in police officers. Would you describe the bishop con?

Mr. DOE. The bishop is a con where two people, two con artists, usually work together. One would approach a person soliciting information as to where a church could be found, a particular church. And the person would be asked to assist the person in locating the church because the person can't read.

Ms. FERRARO. Is the person dressed in religious garb?

Mr. DOE. No; the person is usually dressed in a suit and tie or other garments, regular garments. The person is made an offer in many instances to look into the telephone directory because the person can't read or to stop someone to assist, which would usually be the second person who is stopped, and the conversation would ensue that it is like the certain church won't be listed and the only way to find it is to go to a church with the same denominational name and consult the head of the church who is usually a bishop, and he has a little minister's directory, and this is the only way to locate the church, and the offer would be made for a sum of money for each one to assist the lost person to the church.

And as a result of going to the church, the next step would be to tell the person that the first con man, con person, that approached the victim, would explain that the reason why he is looking for the church, he is trying to find his uncle because he wants his uncle to assist him in getting established in the community, getting a place to stay, because he had just picked up a large sum of money either from the death of a relative or some other way that he has come into possession of a large sum of money.

Then the conversation would revolve around why don't the person put the money into the bank? The person would explain that he is informed that in order to put money into the bank, although he can't read or write, he is informed that in order to put money into a bank, you have to have at least \$40,000 or \$50,000 to begin with, and that usually, his employer keeps his money for him for a percentage of the money, usually 10 cents on the dollar.

So it would be explained to the person that that is untrue, that actually the bank pays the depositors to hold the money. So in order to prove this would be asked of the victim to assist them, showing the person, pretending to be uninformed, that you can put money in the bank, and the bank book would be displayed.

An offer would be made to the victim to display their bankbooks to show that they didn't start with \$40,000; like perhaps \$500 would be offered. The victim gets the bankbook to show that it is not \$40,000. So, as a result of displaying the book, it would be stated by the con artist that you don't believe it is a bankbook, that he believes it is maybe a food ration book or something of that description.

The person can't read. So he believes the book is a food ration book or some other type of book, but not a book that you can convert into money. So an offer would be made to the victim to demonstrate that the book can be converted into funds. For example, if the book is worth maybe \$5,000, he would be asked to show \$4,000, a large sum, and he would be given maybe as a reward for this, he would be offered \$2,000 to demonstrate that you can do this.

So the victim would go and get the money from the bank to demonstrate that he could do it for the reward in many instances. And after the victim has gotten the money, brought it back to show to the con artist, then they would use what is called the final. That means to get away from the person, obtain the money, they would say, "Well, since we have demonstrated we can do this, we are ready to take you to the bank. Do you have your identification

papers?" So the first con artist will state he left his identification papers in his luggage maybe at the airport or one of the bus stations and also left an additional large sum of money in his luggage.

The second con artist would agree to at that time to take the first con artist to get his identification because he must have that in order to open a bank account.

So during the period in which they would travel to get the identification, they would ask the victim to hold all of the money that the first con artist has in his possession, which would usually be maybe \$5,000 or \$10,000, or whatever, and the victim agrees to hold it until he comes back.

They would ask the victim to put all the money, along with the con artist's money, which the con artists usually have—play money; large play money rolls with a legitimate bill on the top of it. Both moneys would be placed together and the victim would hold it either wrapped in a handkerchief or put in an envelope or paper bag.

Ms. FERRARO. Then you have the handkerchief switch?

Mr. DOE. That is correct.

Ms. FERRARO. Can you tell us how you go about finding your victims?

Mr. DOE. Usually there are two ways to go about it. We go to the bank and observe. One of the con artists will go inside the bank and observe someone conducting banking business, usually someone that has a savings book or check account book, or observes a person having actual cash and comes back out and gives a description of this person to the second con artist, who will wait and make the necessary contact with the person upon their exit from the bank. That is one of the approaches.

The other approach would be to seek out people that look somewhat prosperous walking down the street or in a store shopping or in check-cashing places.

Ms. FERRARO. You approach them from that direction. Do you think senior citizens are particularly easy marks?

Mr. DOE. Well, I wouldn't want to say they are particularly easy, but they are susceptible to con games.

Ms. FERRARO. Why?

Mr. DOE. Well, I understand that a lot of them, elderly people, are lonely and they are easily engaged in conversation because of their desire to talk to people, for one reason. Another reason is that most elderly people have had time to accumulate substantial funds, and con artists, realizing this, would approach them with the expectation of getting a substantial sum of money.

Mr. BIAGGI. As an active con man, if you had a choice to make between a senior citizen and one that is considerably younger, which direction would you go?

Mr. DOE. Well, I wouldn't say that I would necessarily—it depends upon the type of feeling I would get, the vibes. When I first speak to a person, the way the person responds when I ask the person for some information. How the person reacts and responds would give me an indication that I could go further, whether they were young or old. It would be both basically the same.

Ms. FERRARO. To follow up on that, though, for a minute; if you were facing prosecution or possibility of arrest, who would you rather have as the victim, an elderly person or a young person?

Mr. DOE. Well, the elderly person would be preferable because in many instances the identification would be more difficult for elderly persons.

Ms. FERRARO. Why?

Mr. DOE. Well, perhaps the eyesight is not as good, for one reason, and the police use with what is called mugs, photographs; the elderly person, not being able to see as good as the younger person, there would be more difficulty in picking the correct photograph.

Ms. FERRARO. You did not work alone, obviously?

Mr. DOE. No, I didn't.

Ms. FERRARO. Who did you work with? I am not asking a name. Was it a man or woman?

Mr. DOE. Both.

Ms. FERRARO. How did you go about getting people to work with you?

Mr. DOE. Well, after a period of time, being involved in this type of thing, you would come to know people, significant amount of people.

Ms. FERRARO. You meet people who are involved in the same activities?

Mr. DOE. Right. They exchange addresses. They have a social life that is in many instances conducted together. You develop a type of relationship where you can call the person or contact them in various places for this purpose. We agree to meet for this purpose.

Ms. FERRARO. So it is a social relationship as well as a professional relationship. Is that what you are saying?

Mr. DOE. Right. It does develop into a social relationship, too, because after the transactions are conducted, in many instances there are other social contacts that are made in this type of life.

Ms. FERRARO. How many cons have you played in your career?

Mr. DOE. The police scam is something I have not done very often, but the other one that I was speaking of, the bishop, I did have considerable experience with that. What is characterized as the drag or pocketbook game, not very extensively.

Ms. FERRARO. Could you give us a number? On how many separate incidents did you con someone?

Mr. DOE. No, I couldn't exactly; I couldn't give you—do you mean that I have participated in this type of confidence game?

Ms. FERRARO. Yes.

Mr. DOE. I couldn't give you a truthful answer.

Ms. FERRARO. What percentage of them involved senior citizens?

Mr. DOE. In my case not very many.

Ms. FERRARO. In your individual case?

Mr. DOE. I don't think it was very many in my individual case. It was roughly about 15 percent.

Ms. FERRARO. Fifteen?

Mr. DOE. Yes.

Ms. FERRARO. What did you average from each one of your cons?

Mr. DOE. Well, I would say maybe \$3,000, \$2,000, something like that, average.

Ms. FERRARO. Average. And how often were you able to do one of these, average?

Mr. DOE. Well, two or three times a week; maybe three times a week.

Ms. FERRARO. \$5,000 tax free?

Mr. DOE. I wasn't always successful at getting the \$3,000 every time I would go out. Sometimes you would get considerably less or maybe more. It depends upon—you know, what the person has, whether they are what is characterized as being playable.

Ms. FERRARO. Your percentage also depended on how many people you had to split with?

Mr. DOE. That is right. It was considerably reduced as far as splitting the amount of money. The amount that was received was reduced because if it was \$3,000 I would only get \$1,500.

Ms. FERRARO. If you were to give advice to senior citizens who were to run up against a person dealing in con games, what is the singular advice that you would give to them?

Mr. DOE. I would advise senior citizens whenever a person offers money to them or to display what seems to be money, you understand, that in order to get them—I would say never to continue to go along with any suggestions that this person may have, because it is some type of swindle, and to be careful not to just start conversations with strangers because it could lead to them being swindled.

Ms. FERRARO. Thank you, Mr. Doe.

Mr. Biaggi.

Mr. BIAGGI. Thank you.

You stated that you worked alone with a male and one other woman. Are you familiar with the activities of teams of girls?

Mr. DOE. Somewhat, sir.

Mr. BIAGGI. Do they function in the same fashion?

Mr. DOE. Basically.

Mr. BIAGGI. Any differences?

Mr. DOE. Well, whenever you refer to girls, in most of the cases they refer to as the drag or pocket game. The scam usually revolves around one of the girls working for a lawyer who also doubles up as an investment banker, stockbroker. One of the girls finds money either in a bank bag or any type of contraption, a large folder, large sums of money are supposedly found and they approach the person stating that they found this money, and then the second person would usually come in, the second girl, but either one of them could approach the person who found the money or one—the other girl could approach her first and start a conversation.

Mr. BIAGGI. Basically it winds up that one of them is working for a lawyer and they call him for legal advice as to what to do. I am familiar with that. So is the committee. In relation to men, what percentage of women are functioning in this area?

Mr. DOE. In relation to men?

Mr. BIAGGI. Yes. What percentage of women as contrasted to men engaged in cons?

Mr. DOE. I couldn't give you a truthful answer as to the percentage.

Mr. BIAGGI. There are quite a few of them?

Mr. DOE. I would say there are quite a few.

Mr. BIAGGI. Quite a few women?

Mr. DOE. Yes.

Mr. BIAGGI. Equal opportunity?

Mr. DOE. That is correct.

Mr. BIAGGI. Let me ask you one question that has always bothered me. We have all been around the world a long time, we have all had rough times and good times. I can understand someone with criminal intent going after someone their own age and that is calculated risk. You stand up, take your chances, pay the price, either win or lose. But what kind of feeling do you have when you go after the elderly, old people who are not harming a soul, who probably have their last few dollars in the bank and you know that when you take those dollars, you have wiped them out and you have removed the only semblance of security they had?

So even though you may not have assaulted them physically, the psychological impact is always the same because they will never recover.

What kind of feeling do you have or do your colleagues have? Do you give it any thought?

Mr. DOE. Personally, I have a sympathetic feeling myself.

Mr. BIAGGI. Say that again.

Mr. DOE. I said personally I have a sympathetic feeling for the elderly people. Some of the scams I have participated in I have made it a point not to take all of the people's money but to leave them a significant portion of the money. However, I realize that many other people are involved and a lot of them in order to—what is referred to as skipping the emotional feeling, they would either drink intoxicating beverages or take other stimulants to sort of like play down the emotional feelings or—

Mr. BIAGGI. Everybody is a sucker, right? Everybody is a target, get them no matter what? Not with you, you are a con man with a heart, you leave them with some money.

Mr. DOE. I am not the only one. What I am saying is people use stimulants and other forms of escapes in trying to play down the emotion they would have for the elderly.

Mr. BIAGGI. I see. That is very interesting. I never heard of that before. Would it be alcohol or drugs?

Mr. DOE. Alcohol is widely used in combination with drugs.

Mr. BIAGGI. You mean they take that for the purpose of—

Mr. DOE. Before they embark upon this type of routine.

Mr. BIAGGI. This bothers them?

Mr. DOE. It does, because a great percentage of them have to have something before they even go out to participate in this type of activity. Usually it is alcohol or other forms of drugs.

Mr. BIAGGI. Interesting. How many times were you arrested?

Mr. DOE. I don't know.

Mr. BIAGGI. How many times were you arrested and convicted?

Mr. DOE. I couldn't say exactly. I imagine it was 14, 10 to 14 times.

Mr. BIAGGI. Convicted?

Mr. DOE. Not convicted that many times. Convicted I would say seven or eight times.

Mr. BIAGGI. How many times did you go to prison?

Mr. DOE. A great deal. I have been in prison so many times I can't even count them.

Mr. BIAGGI. You were convicted seven times. Did you go to prison each time?

Mr. DOE. Yes.

You mean sentenced and convicted?

Ms. FERRARO. You are now what is called a persistent felony offender?

Mr. DOE. Not a persistent felony offender.

Ms. FERRARO. You are a second felony offender at least, so if you are arrested there is a mandatory sentence?

Mr. DOE. I am not a second felony offender.

Ms. FERRARO. Then your convictions have not been convictions of felonies?

Mr. DOE. Yes, but I am not a second felony offender. That occurred a long time ago.

Mr. BIAGGI. I see. It was prior to the law becoming effective?

Mr. DOE. That is right.

Ms. FERRARO. So it was not a mandatory sentence that had to be given to you at this time, is that right?

Mr. DOE. Yes.

Ms. FERRARO. Thank you.

Mr. BIAGGI. You say you have a social relationship with colleagues of yours in the same business, if you will?

Mr. DOE. Correct.

Mr. BIAGGI. What experiences have they had in being arrested, convicted, sentenced, and in fact sent to prison? Do most of them go away? What is the percentage of conviction after the arrest?

Mr. DOE. I don't know the percentage, Mr. Biaggi, but I understand that a lot of people that participate in these con games do considerable time. They may not be in many instances long terms, but the consistency winds up with substantial prison sentences. Some people do get substantial sentences, too, for these crimes. In fact, in my experience I got sentences that were very extensive under the old law. So really, since the law has changed, it has become, I guess, more lenient, but I have gotten substantial time.

Mr. BIAGGI. If you were required to make restitution, that is, pay back the victim at sentencing time, as well as serving time in jail, so it would be a prison sentence plus restitution, what effect do you think that would have on the activity of those engaged in cons?

Mr. DOE. Prison sentences plus restitution?

Mr. BIAGGI. Yes.

Mr. DOE. I wouldn't see how prison sentences would help because the person would have to be working in order to pay restitution. If they don't have the money, say for instance it is a substantial amount of money, they would have to pay from their salary which would be weekly.

Mr. BIAGGI. Except we assume that con men or con women have some money stashed away for a rainy day or when they are slower.

Mr. DOE. Usually they don't.

Mr. BIAGGI. Or when they get old?

Mr. DOE. Usually they don't, sir, because of the nature of the type of scams, they become conditioned to believe that they can always pull off the same scam. So the money is spent very fast.

Mr. BIAGGI. Last question. I don't know what the answer is, or frankly, if there is an answer. If you were in the law enforcement side, knowing what you know, what would you recommend to legislators or to law enforcement officials to stop or reduce the activity of con men?

Mr. DOE. Stop or reduce?

Mr. BIAGGI. Yes. You are now the cop.

Mr. DOE. I think the restitution aspect punishment would be more severe really than jail sentences because in jail, it seems like that the climate is not good for rehabilitary purposes.

Mr. BIAGGI. Judge Mullen said yesterday that the notion of rehabilitation is a fraudulent one that has dissipated itself with the passage of time. But what you are saying is instead of giving jail sentences, mandate restitution. That means we put you back on the street, and in order to get the restitution—you earn your money—you go back and get more victims?

Mr. DOE. I didn't say that. I mean under strict supervision with the person working, employment. I am not saying they could be sent out without supervision.

Mr. BIAGGI. You believe in restitution under the proper circumstances?

Mr. DOE. Supervision.

Mr. BIAGGI. That you are gainfully employed under strict supervision that would stop the person from committing crimes?

Mr. DOE. I think the victim would be getting the funds back, for one thing. It would benefit them in that respect. So far prison hasn't been a deterrent in this respect.

Mr. BIAGGI. Let's say instead of sentencing you to prison they asked you to go out and work and to make restitution, would you do that, work gainfully?

Mr. DOE. Yes, willingly.

Mr. BIAGGI. And give up the con?

Mr. DOE. Yes sir, very sincerely, I would definitely do that.

Ms. FERRARO. The only problem I have with that is I would like to know where you could go out and get a job where you can make enough to pay back the \$9 grand a week. You know, that is unrealistic, really. There just isn't that kind of money around.

Mr. DOE. I would say if a person cannot pay the money, all the money back, you can by weekly installments, at least the victims would be getting their funds back instead of—they are getting nothing when a person goes to prison.

Ms. FERRARO. You are very, very articulate. How long have you been involved in this type of thing? You are 47. When did you get started in con games?

Mr. DOE. Since I was discharged from the Air Force in 1955. I believe it was 1957 that I actually got started.

Ms. FERRARO. So it is 23 years you have been involved in con games?

Mr. DOE. Yes.

Ms. FERRARO. In and out of jail since then?

Mr. DOE. Correct.

Ms. FERRARO. Are all of the people involved as sophisticated as you are?

Mr. DOE. I haven't been involved all the time because for a significant portion of the time I was incarcerated. There were years when I didn't participate.

Ms. FERRARO. Were you gainfully employed during those years?

Mr. DOE. Well, a very small amount of time was I gainfully employed.

Ms. FERRARO. Mr. Doe, I appreciate your testimony. I think you have been very helpful. I think just telling everyone, the seniors here, and hopefully if we can inform seniors throughout the city, our hope that they adhere to the two warnings you have given—one, not to talk to strangers, and second, don't open up a check book or bank book or give money to strangers. If you have done nothing other than that, you have been totally successful today.

I appreciate your coming forward. I know it is difficult to do. Again, as I indicated to you, we will make a letter with reference to your cooperation part of your file.

The hearing record will remain open for 2 weeks. If there is anyone who wishes to submit a written statement for the record, you are welcome to do so.

I am going to enter in a statement by Esther Peterson, who is the Special Assistant to President Carter for Consumer Affairs. She has submitted testimony for the record. She is a senior citizen who is very, very involved in consumer frauds and is an expert on this subject. We are going to have her testimony become a part of the record, without objection.

[The prepared statement of Esther Peterson follows:]

PREPARED STATEMENT OF ESTHER PETERSON, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS

Madame Chairman, I applaud the committee for calling attention to the consumer "rip-offs" that so many of our elderly citizens suffer. Unfortunately, those on fixed incomes are most often baited by unscrupulous operators and they are those who can least afford to be victimized. And the elderly are victimized. They are victimized in New York and throughout this country—every day of the year.

In studies conducted by the Batille Institute, the University of Pittsburgh, and the University of California at Davis, both older men and women were found to have consumer problems based on a number of factors. With less education than the general population and poorer reading skills, they are less able to take advantage of disclosures and rely on salespersons for information; and because of less social contacts and physical immobility, rely to a great extent on media advertising. Physical immobility also makes it difficult for them to "shop around" and they are unable to travel to discount stores. These people, many of whom don't own a car, are often at the mercy of local merchants, and mail order and door-to-door sales. The elderly file twice as many complaints about these types of sales than the rest of the population.

Hearing and vision problems make it more difficult to bargain, and other physical disabilities, such as arthritis, make the elderly vulnerable to miracle "cure" schemes. A higher rate of mental health problems affects shopping skills and judgment. A fear of aging and loneliness renders them susceptible to products that are supposed "to make you beautiful and young." Because of this they are also more easily influenced by ingratiating salespersons. Poor self images about their competence cause them to be more easily influenced than younger people.

As a member of the 1981 White House Conference on the Aging National Advisory Committee, I am working with the staff to ensure that elderly consumers have maximum opportunities to discuss their consumer problems and make recommendations on policy initiatives that they would like to see implemented. These are examples of the kinds of complaints we receive from elderly consumers.

I. Some of the most unconscionable schemes are aimed, like cupid's bow, at the loneliness of the elderly. Con artists offer memberships in lonely hearts clubs, computer dating services and social organizations, even pen pal correspondence clubs. For example, one Vermont widow is still trying to track down the "suitor"

who swept her off her feet by mail and conned her out of \$2,500 the same way. He told her he would marry her as soon as he took care of a "business emergency." As soon as she sent the money, he vanished.

II. Another popular scheme deals with hearing aids. Some dealers and salespersons, posing as audiologists, employ a variety of schemes to sell hearing aids to people who may or may not need them. Those who can shop around may find prices for hearing aids differing as much as 40 percent from dealer to dealer.

III. Equally repugnant are operators who prey on the grief of senior citizens who have recently had a death in the family. Death-related selling schemes, such as the one portrayed in the movie "Paper Moon," are carried out by door-to-door salespersons who take merchandise, such as Bibles, to the homes of recently-deceased persons, claiming that they were ordered by the deceased.

IV. Older persons, and particularly women, seem to be the favorite prey of so-called home improvement contractors who over-charge for shoddy work or work they do not do at all. In California, a woman was sold a burglar alarm and a medical alarm device for over \$10,000 with a lien-sale contract, which gave title to her home to the creditor without notice with one missed payment. Not long after the sale she died of a heart attack (the medical alarm device wasn't hooked up as that was an additional fee), and her family did not learn of the contract and subsequent transfer of home ownership to the creditor until it was too late. California has addressed these abuses with emergency legislation, but this is a good illustration of the types of raw victimization connected with home improvement sales.

V. In the area of insurance, one older woman told a local better business bureau, "When I read the ad in the Sunday paper, I believed I was buying health insurance. I didn't find out until too late about the restrictions they have on the policy." This woman was hospitalized for pneumonia. Her "accident" policy did not cover illness. Senior citizens are also lured by offers of life insurance at bargain prices. Some, however, will return only the premiums paid plus 5 percent interest for two years. Most people can do better than that at a savings bank. Horror stories abound in the insurance field, from people who have purchased policies that don't become effective until the patient spends 21-30 days in the hospital, to people who have dropped their insurance in favor of new, much more limited policies that require additional waiting periods.

I am delighted that with strong backing from the President and Congress, the Social Security Disability Amendments of 1980 have become law. Section 507, of particular interest to consumers, requires the Health and Human Services Department to establish a voluntary certification program for Medicare supplemental health insurance policies (Medigap) in States that fail to establish an equivalent or more stringent program. To receive certification, policies must be expected to pay out benefit to consumers equal to at least 75 percent of the premiums collected for group insurance policies and 60 percent for individual policies. HHS is authorized to develop a seal of approval consumers can readily identify which policies have been certified.

President Carter's proposed health care plan would limit out-of-pocket medical expenses paid by older persons. Under the Administration's plan, Medicare and Medicaid would be consolidated under a single administrative umbrella, so that persons would only have to deal with a single agency and could settle claims more quickly. Women who have had trouble getting private insurance after the death of their husbands or at divorce would have the option of coverage under the Administration's health care proposal. This is particularly important for women in their 50's and 60's who have not worked outside the home and do not have access on their own to group health insurance policies.

With the defeat of the Hospital Cost Containment Bill, I testified before the Price Advisory Committee of the Council on Wage and Price Stability requesting a public monitoring system to track hospital expenditures and physician fees. As we know, high hospital bills can have a devastating effect on elderly consumers with fixed incomes.

In the area of banking and credit, my office has worked on the following issues which impact on the elderly.

Financial Institutions Monetary Control and Deregulation Act of 1980

In July 1979, the Office testified in favor of provisions of this Act which allows interest to be paid on checking accounts and also supported its provisions to lift the limitations on interest rates paid on savings accounts. This latter provision was of particular interest to the Gray Panthers. The bill was signed by the President on March 31, 1980.

Regulation B: Equal Credit Opportunity Act

USOCA is currently reviewing a proposed interpretation of the Federal Reserve Board which would require that equal points in a credit scoring system be given to income from pensions or social security. USOCA filed comments last year urging the Board to make such requirement clear to creditors. This, and a related interpretation providing for giving reasons for credit denials, are particularly important if discrimination against the elderly in the granting of credit is to be prevented.

Mortgages

A number of new mortgage instruments allowing for increases in interest over the life of the loan have been proposed since April 1979. (New proposals are still being made.) In each case, the mortgages available to the elderly will affect their ability to buy a retirement home if they require a loan to do so. USOCA reviews and comments on each to assure sufficient disclosure of terms and the widest availability of mortgage loans.

I see education as one of the keys to promoting both consumer protection and consumer participation. I have just returned from traveling throughout the country where I visited consumer education projects in schools, churches, senior citizen homes, parks, and town halls during National Consumer Education Week, October 5-10. I was delighted to know that there were so many "senior-helping-senior" programs.

Our new book, "People Power: What Communities Are Doing To Counter Inflation," describes this self-help movement or "People's Movement." "People Power" highlights successful projects in the areas of food, energy, housing and health care so people can learn from the experiences of others and hopefully duplicate these activities in their own communities. One project occurred in Portland, Oregon, where seniors established the Senior Citizens Grocery, with the help of a retail grocer who donated space, operating equipment, and initial capital. Seniors are reducing their food prices by 20 to 30 percent through the use of volunteers, limited stocks, and reduced wholesale prices.

My office has also published a free "Consumer's Resource Handbook" which gives information on how consumers can handle their own complaints and where to go for assistance at the local, state, and federal levels in both the private and public sectors.

I see consumer education as the first line of defense against fraud. For there can be no question that the best form of consumer protection is knowledge.

I regret that I cannot be here today. However, you are to be congratulated for holding this hearing on such a timely issue. The testimony will be useful as we prepare for the White House Conference on Aging.

Thank you.

Ms. FERRARO. I would like to officially thank Congressmen Biaggi and Green for their participation in the hearings today and to all of you good people for coming. I think we have learned something. Please, all of you, take those packets home and share them with your neighbors. If you need more, please let me know and we will get them to you. I certainly want the people in the Ninth Congressional District to know what is out there and how to avoid the pitfalls.

Thank you very much.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

END