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Department of Justice

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STATEMENT

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

FRAUDULENT YOUTH EMPLOYMENT PRACTICES

ON

NOVEMBER 6, 1985

Mr. Chairman, I am pleased to be here today to present the views of the Department of Justice concerning H.R. 2544, entitled the "Fraudulent Youth Employment Practices Act". This legislation would establish a clearinghouse to assist non-federal governmental entities in regulating and prosecuting such practices. The comments of the Department will focus upon three aspects: First, the extent of the problem; second, the need for federal involvement in this area; and finally, the extent to which existing federal criminal statutes provide for prosecution or prevention of this activity.

A. The Extent of the Problem

The practice of selling magazines and other items door-to-door exists nationally. Although the majority of such door-to-door transactions are amicable ones for both the purchaser and the salesperson, problems relating to the recruitment and use of salespersons do exist.

The extent of these problems has not yet been established. The Justice Department, in conjunction with the FBI has conducted approximately 16 investigations of allegations that there was illegal activity relating to recruitment of door-to-door salespersons. These investigations did not uncover any significant measure of criminal activity on a national scale. In fact, the activity investigated tends to involve behavior which, although unethical, usually falls short of being criminal.

We should also consider the individuals who are the potential victims of such unscrupulous recruitment activity. To

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our knowledge, such victims are not minors or those unable to make adult choices about their lives. In the majority of cases involving misrepresentations in recruitment promises and work environment, those recruited are adults over 18 living in urban environments. Enacting legislation to protect a small group does not solve this problem. If criminal behavior is taking place, it should protect everyone.

Because the extent of abuse in this area has not been ascertained, it is difficult to conclude that there is a need for specific legislation dealing with the recruitment of door-to-door salespersons. Our initial suggestion is that further information be developed to establish the scope of the problem from a law enforcement view before legislation is passed.

B. The Need for Federal Involvement

State and local authorities may be as effective, if not more so, than the federal government in preventing such abuses. These authorities should be able to regulate unscrupulous door-to-door practices in their jurisdictions through the criminal process or by resorting to local non-criminal remedies.

Local law enforcement regulation might include prosecution under a state fraud or kidnapping statute, or, in the case of actual physical abuse, under assault or battery statutes.

Consumer or non-criminal local remedies could range in scope from obtaining injunctive relief or cease and desist orders against a company's operating in a particular state to regulation by state or local better business bureaus and employment commissions. Most importantly, consumer groups and other civic

associations can mount aggressive programs to educate the general public concerning the false representations and inducements used by door-to-door sales companies against both the sellers and the purchasers of their products.

Using a combination of these remedies, state and local authorities can do much to shut down the unscrupulous businesses in their jurisdictions.

In situations where there is no federal nexus, or where federal statutes do not apply, the Department could coordinate assistance with state and local jurisdictions through its Executive Working Group for Federal, State and Local Prosecutorial Relations or through the Law Enforcement Coordinating Committees of affected states.

C. Effectiveness of Existing Federal Statutes

If the behavior involves schemes which make false representations and inducements, the federal criminal statutes applicable are the mail fraud (18 U.S.C. §1341), wire fraud (18 U.S.C. §1343) and interstate transportation or travel (18 U.S.C. §2314) statutes. In each statute, a key element is a fraud scheme carried out either by use of the mails or wire facilities such as the telephone, telegraph or television, or some related, interstate travel by the victim.

The applicability of existing federal criminal statutes to the practices sought to be regulated in H.R. 2544 will be governed by the activities of the sales companies involved. The mere fact that door-to-door sales companies operate interstate does not automatically bring them within the scope of federal

criminal law. Rather there must be a federal nexus, such as interstate use of wire facilities or interstate travel as a part of a scheme to defraud. Let me assure you that where an investigation reveals a clear violation of the mail fraud or wire fraud or travel statute, those cases will be pursued.

Whether a particular case can fall within the scope of these fraud statutes depends on various factors, such as the manner in which these companies advertise for salespersons. A company which tacked help wanted handbills on trees adjacent to a college campus would probably be outside the scope of any federal statute, while a company advertising in newspapers or over radio or television stations may have committed a violation of the mail fraud or wire fraud statute. Similarly, even though a company may have transported its recruits across state lines to work, the provisions of the travel statute would not apply unless these recruits, as the victims of the company's misrepresentations and lies, were defrauded of money and property having a value of \$5000 or more.

Where violations of the mail and wire fraud statutes exist, a most effective way to prevent recurrence of the criminal activity is to enjoin that activity. Title 18, United States Code, Section 1345, enacted as part of the Comprehensive Crime Control Act of 1984, authorizes the Department of Justice to seek injunctive relief whenever it "shall appear that a person is engaged in or about to engage in any act which constitutes or will constitute a violation" of these statutes. Section 1345 has a wide potential for application, does not require that criminal

charges be brought and may be used even when proof beyond a reasonable doubt of the mail or wire fraud violation is not available.

Another possible area for prosecution is under the involuntary servitude and slavery statute, 18 U.S.C. § 1584. Involuntary servitude is a condition of enforced compulsory servitude of one to another. To prove a violation of the involuntary servitude and slavery statute, the United States must prove the following three elements:

1. A holding of the named person (victim) to involuntary servitude by the defendant.
2. Such holding must have been accomplished by the defendant knowingly and willfully.
3. Such holding must have been for a term.

To show that a victim was held in such a condition, the government must show actions by the employer (either force, threats of force, or other forms of coercion) which caused the worker to believe that he/she had no way to avoid continued service to the employer.

Allegations regarding deceitful recruiting practices, low pay, long working hours and crowded sleeping conditions, while upsetting to the victims and to their parents, do not in and of themselves constitute violations of the involuntary servitude statutes or any other criminal civil rights statute. Allegations regarding more egregious behavior on the part of the "crew leaders," such as physical abuse or physical or coercive

restraint of a worker, may constitute violations of the slavery statute.

I should note here that we defer to the Department of Labor with respect to the applicability of various statutes relating to wages, working hours and working conditions to the abuses being examined by this Committee. We understand that Labor will provide the House with its views on this bill.

Given the nature and scope of the activities with which we are concerned at this hearing, the Department of Justice considers present statutory provisions adequate. The proposed legislation would provide no more effective enforcement than now exists for other sorts of fraud schemes involving non-governmental victims.

Because the Department of Justice does not view this problem as widespread or national in scope, it advises against any specific legislation requiring federal intervention.

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