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FRAUD AGAINST THE ELDERLY: CONNECTICUT

A BRIEFING

BY THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

JUNE 1, 1981, HARTFORD, CONNECTICUT

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FRAUD AGAINST THE ELDERLY: CONNECTICUT

MONDAY, JUNE 1, 1981

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
Hartford, Conn.

The committee met, pursuant to notice, at 9 a.m., in the hearing room, the State capitol, Hartford, Conn., Hon. William R. Ratchford presiding.

Member present: Representative Ratchford.

Also present: Ms. Lois Pines, Boston Regional Director, U.S. Federal Trade Commission.

OPENING STATEMENT OF CHAIRMAN WILLIAM R. RATCHFORD

Mr. RATCHFORD. The hearing will be in order.

For record purposes I am Congressman William Ratchford, from the Fifth District in Connecticut, a member of the Select Committee on Aging.

With me, also, is Lois Pines, who is in charge of the Regional Office of the Federal Trade Commission.

I will have a brief opening statement; as will Lois. Then we will proceed directly to the testimony.

For the benefit of members of the press who will be in and out and as someone who served in this legislature for 12 years, I know what the closing days are like.

Statements are available. More statements will be available as people come in. We are not certain at this point whether Frank will be joining us. That is up in the air, but our other witnesses remain as they appear on the list.

Those of you who are here know full well that in this country there are 25 to 30 million Americans over the age of 60. I know from my background, a background that started when former Gov. Ella Grasso said to me: "Will you serve as a chairman of a nursing home investigation in the State of Connecticut?" I know from my work as a former commissioner on aging in the State of Connecticut that, regrettably, at many, many levels, there is a high incidence of fraud against the elderly.

We saw it in medicare; we saw it in medicaid; we saw it in the area of consumer abuse; we saw it in out-of-State land sales—all telling us there are, unfortunately, in America, those who prey on the unsuspecting, the unknowing, and in this particular instance, on the aging.

The Select Committee on Aging, chaired by Claude Pepper, who undoubtedly has done more for the older American than any Member of Congress, began last year to look at some of this fraud and abuse. We had extensive hearings in Washington on the issue

of fraud and abuse, as it related to clinical laboratories, billing for services that were not provided, and ripping off the medicare and medicaid systems. Unfortunately, due to the backlog of cases in courts, prosecution did not become a reality in many of those cases.

Now, with the help of those witnesses who will come before us this morning, we look at another area. We do this for several purposes.

One, to say to the 550,000 to 900,000 people in Connecticut over the age of 60, beware.

Second, to say to those who will take advantage of this constituency, beware.

Third, and most significantly, to look at the possibility, the necessity, and the need for new laws to prevent this type of abuse.

I would like to read briefly from the statement because there are areas I would like to highlight.

As I indicated, the Select Committee on Aging did begin investigating fraud against the elderly under Claude Pepper last year through a series of hearings.

We learned that senior citizens are the primary victims of mail-order pirates who promise arthritis and cancer cures, to extend a lifespan, or to halt the aging process.

In fact, we learned sadly that more than 60 percent of all such fraud—more than 65 percent of all such fraud—is perpetrated against the elderly, and we learned that big money is involved.

We learned in working with the Arthritis Foundation that $1 billion a year is lost to phony claims, saying: "We have the cure for arthritis."

We learned of self-diagnosis kits sold to uneducated consumers. We learned that similar rackets exist which exhort the elderly to fill out a questionnaire which is allegedly fed into a computer and tells the person the vitamins and minerals in which they are deficient and what they should do about it.

We have learned about the proliferation of investment swindles, and we will hear about that today—mail-order, boilerroom operations that involve a roomful of con men who make calls to senior citizens at random, urging them to buy gold, silver, pork bellies, and all types of commodities.

We learned also that this frequently is legitimatized by the appearance of ads in publications such as the Wall Street Journal urging people to write in and receive instant solutions to their various ailments.

We learned also of the ongoing racket that all of us have learned to live with, of mail-order fraud relating to the purchase of land. And we have heard the sad story of older people who have sent out thousands of dollars to buy land in Florida only to discover that their land is under water or doesn't exist at all.

We will hear today from witnesses who will indicate what they have done through their various agencies, Federal, regional Federal offices, State offices, and also recommend to us what should be done at the Federal level to help solve this problem.

This transcript, word for word, will be presented to the Select Committee on Aging. It will be reviewed by its members, its chairman, Claude Pepper, the majority and minority staff—and out of it will come recommendations for proposed legislation.

We look forward to your testimony. I think it will be significant. It should serve as a warning to the elderly in the State of Connecticut that abuse is a reality. It will also say to the country that we who serve in Congress will not tolerate abuse of the elderly; and that those who serve in regional, Federal, and State offices will not permit it; and that we look to Congress, the legislative bodies, the prosecutors, the courts, the agencies, to protect those who are not being protected in America today.

At this point I would yield to Lois Pines, who is the Boston Regional Director for the U.S. Federal Trade Commission.

STATEMENT OF LOIS PINES, BOSTON REGIONAL DIRECTOR, U.S. FEDERAL TRADE COMMISSION

Ms. PINES. I am grateful to Congressman Ratchford and Congressman Barney Frank, who agreed to carry on the hearings we began in Boston and Springfield on May 20. I am afraid that today's hearings on fraud against the elderly will confirm the need for action by both the Federal Trade Commission and the Congress.

We heard in Boston, and Springfield several weeks ago about ripoffs and swindles against the most vulnerable in our society, the elderly.

We will be hearing about senior citizens being sold worthless health insurance and about phony home repairs. We will be hearing about work-at-home schemes, nursing-home evictions when patients simply run out of money, and of double billings by nursing homes.

We are hearing about interstate land sales, where senior citizens find their investments literally buried under water.

Today's hearing, the third in New England over the last 2 weeks on this subject, will conclude the first phase of our efforts. It is my hope that because of these hearings, the Federal Trade Commission and the House Select Committee on Aging will take action to protect the Nation's 24 million elderly against those who are just out to make a buck.

The outrage we all feel today I hope will be deferred to a national outcry for action.

My remarks here today represent only the remarks of a member of the Federal Trade Commission staff. They are not intended to be construed as representative of official Federal Trade Commission policy or the views of any individual Commissioner.

I would like to sketch in a little bit more detail some of the areas in which the Federal Trade Commission has been involved.

The FTC, in general, and my office, in particular, have had a strong interest in protecting the rights of the elderly over the past several years.

Our office has become identified as the place where an aggrieved consumer can go for action.

I am pleased to say that we have been able to resolve thousands of complaints of the elderly satisfactorily.

Further, our staff has made an aggressive effort to stay in touch with senior citizens and consumer groups in order to learn what is happening and what we, as an agency, can do to address the problems that were identified.

What we have learned after years of investigating complaints and launching investigations is that senior citizens are extremely vulnerable. They constitute 11 percent of the population, but a disproportionate percentage of those who are victimized by swindles of all kinds.

For example, the U.S. Postal Service estimates that 60 percent of all medical quackery promoted through the mails has been targeted at senior citizens. The Commission has been active in a number of areas of particular importance to the elderly—most particularly, hearing aids.

The FTC staff has conducted an extensive investigation of practices of the hearing aid industry, and among the misrepresentations which were complained of by senior citizens were claims such as age can actually halt or retard the progression of hearing loss, and aids to be prescribed, like eyeglasses.

To deter questionable sales practices and techniques in the hearing aid industry, the Commission staff has recommended to the Commission that a Sprague regulation rule be issued.

In the area of business opportunity ripoffs, they have recently been bombarded by sales pitches to withdraw their savings from low-interest passbook accounts to invest their money in high-return investments. In time of double-digit inflation it is a pitch that is all too often persuasive.

Investments in gold, vending machines, or farmers' cooperatives are proposed. Not surprisingly, these schemes in many instances turn out to be frauds.

The gold may not exist at all; the cooperative may be nothing but a paper shell, and the vending machines which senior citizens are sold and are told are pure profit either don't exist, don't work, or are in places so out of the way that they generate no income.

In the area of interstate land fraud the FTC has been investigating a number of land-sale cases where apparently worthless land has been sold to senior citizens at exorbitant prices.

Unfortunately, these schemes appear to be all too common.

Funerals—even in death senior citizens are frequently victimized, and at the time when senior citizens are particularly vulnerable, they and their relatives must make detailed funeral arrangements. Frequently, they are quoted one price, only to receive a bill which is double or triple what they expect.

These and other abuses are being addressed by the Federal Trade Commission as it completes its consideration of the funeral rule.

In the area of insurance, the FTC has issued several reports relating to various aspects of insurance plans sold primarily to the elderly. In particular, we expect a staff report entitled "Private Health Insurance, A Supplement to Medicare," to be of great help to the various States throughout the country in identifying and addressing financial abuses in the sale of medical insurance.

Home and automobile repair schemes—we have received innumerable complaints over the years by senior citizens who have been victimized by repairmen.

Among the most common are claims that an automobile ran fine until it was repaired, or that the repairs were not professionally made.

We recently received a complaint from a senior citizen who was told that his furnace needed extensive repairs, only to learn that no repairs were needed and he, in fact, had been swindled.

Then there are senior citizens who purchase aluminum siding and find themselves several thousands poorer and left with a house which has but one side completed.

Nursing homes—nursing homes are supposed to provide care and protection, but all too often they come to represent pain and degradation. Many senior citizens see nursing homes as not only synonymous with death, but also with the notion of protracted suffering prior to death.

The FTC has been conducting an investigation to see what should and can be done to better protect the rights of nursing home patients. In far too many instances important protections available to those patients who are on medicaid or medicare, and are not available to private patients.

Medical quackery—there is no more cruel racket in the world than those who promise hope while picking the pockets of the desperate elderly.

Those who sell phony arthritis and cancer cures to those in desperate need should be prosecuted to the full extent of the law. As we can see from the list I have just articulated, the elderly are all too often victims of fraud in this Nation.

Fraud is visited upon them in many different forms through many different schemes perpetrated by many different kinds of con men.

What these people have in common is a lack of respect for the elderly and the avaricious, conscienceless compulsion to separate the elderly from their hard-earned dollars.

It is easy to see that all of us have our work cut out for us. Senior citizens have made this country what it is today, and they deserve our help and our protection, and I very much hope that these hearings will help us to delineate the areas which need our most immediate priority.

I am delighted to have the opportunity to be here and look forward to hearing from the people in this part of the New England region.

Mr. RATCHFORD. We thank you for a very strong opening statement. I know, both as a former commissioner on aging, and in my work in Congress on the Select Committee on Aging that your office has been a strong office; it has been a good advocate for the aging. It has attempted, wherever possible, to do what it could to strongly enforce existing laws and make recommendations about needed laws, and I would hope that out of these hearings you would see fit through members of your delegation who are, in fact, on this committee—specifically Barney Frank—and to myself, to work with us, to say to the fast-buck operators in America: Stay off this turf; we believe in protecting the rights of the older Americans.

We are about to hear from William T. Murphy, Assistant Chief Postal Inspector for the U.S. criminal investigations. I would ask him to come to the witness table, to introduce to us members of his staff who are with him, and to proceed in his own fashion. His entire statement will be made a part of the record.

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We frequently think that this kind of thing doesn't happen here, in New England or here in Connecticut. When you hear this statement, when you read it, when you listen to it, you will realize that regrettably it does happen. Fortunately we have people like Mr. Murphy, in positions where they can go out and say to the fast-buck operator: "We are going to get after you in the toughest possible fashion."

There is testimony here about several incidents that occurred in our own region, and indeed in our own State of Connecticut.

Mr. Murphy, when you are ready, proceed in your own fashion, and we look forward to your testimony.

STATEMENT OF WILLIAM T. MURPHY, ASSISTANT CHIEF POSTAL INSPECTOR FOR THE UNITED STATES, CRIMINAL INVESTIGATIONS, WASHINGTON, D.C.; ACCOMPANIED BY WAYNE B. KIDD, MANAGER, FRAUD BRANCH, WASHINGTON, D.C.

Mr. MURPHY. Mr. Chairman, I appreciate the opportunity to appear this morning and to discuss the efforts of the Postal Inspection Service to prevent crimes against the elderly.

With me is Mr. Wayne Kidd, who is the Manager of our Fraud Branch in Washington. The Postal Inspection Service is the investigative arm of the U.S. Postal Service. It has investigative jurisdiction over all violations of Federal criminal laws relating to mail fraud, and to the other postal violations.

Senior citizens are heavy users of the mail. It is a convenient method for them to do business. It provides a means by which they can obtain services or goods without leaving their homes. In addition, senior citizens, as a group, are very consensual about paying their bills on time. Unfortunately, these very factors make the elderly prime targets for the mail-order swindler.

Here I insert a caution about what I am saying and about other comments made concerning mail-order transactions. The vast majority of mail-order firms are, in fact, legitimate. Today we are focusing on the really few who have distorted and used the postal system for illegal gains.

The Inspection Service has designated combating crimes against the elderly as one of our highest priority programs. While we feel that criminal prosecution in these cases serves as a deterrent, the fact remains that the victims of these crimes generally do not get their money back.

The ideal solution is to prevent individuals from being victimized in the first place.

Prevention is the best tool in our criminal investigative effort. The Inspection Service believes a substantial reduction in crime can be accomplished through a combination of public awareness and a lessening of opportunity for the criminal.

To this end, the Postmaster General, in September 1979, initiated the consumer protection program, a program of prevention through education and awareness. We have selected and trained postal inspectors across the country as consumer protection specialists. Part of their job is to educate and inform consumers. They work with groups such as the American Association of Retired

Persons. For instance, we will be providing information programs for all 6,000 chapters of that organization.

We are also working with other similar regional and local groups. As a part of that effort, we have prepared pamphlets and other handouts, some of which I have here, which address specific problem areas or schemes. In addition, we are developing other promotional materials.

We are also using the media in an effort to heighten public awareness. Postal Service representatives have appeared on many interview programs to bring the problem to the attention of the public.

When we have evidence that frauds have been committed, we first consider the possibility of criminal prosecution under title 18, United States Code, section 1341, the mail-fraud statute. It is one of this Nation's oldest consumer protection laws.

Essentially, whoever uses or causes the mails to be used in an effort to defraud is guilty of mail fraud. Second, and perhaps even more important to the consumer, we can take action under title 39, United States Code, section 3005. This provision 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, through the U.S. Attorney's office, can request the U.S. district court in the State where the promotion receives mail to issue a temporary restraining order. This, in effect, 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 tend to focus on our senior citizens. They include work-at-home schemes, investment and job opportunity ventures, land and merchandise fraud, and spurious medical promotions. The latter probably affect senior citizens more than any other segment of our society.

We are frequently asked to place a dollar value on medical fraud, but any effort to do so would be strictly a guess. However, let me assure you, the losses are substantial. One medical fraud promotion which we stopped last summer was receiving 5,000 pieces of mail a day with an average order for $22.45. That promotion was grossing over $112,000 a day. During the last 12 months, we have initiated action against 232 medical fraud promotions, and 20 percent of those cases originated in this 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.

Through cleverly conceived advertising, promoters tout all manner of miracle cures. Due to rising costs of medical care 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 aging, arthritis, baldness, cancer, impotence, and obesity.

All kinds of concocted potions and tablets have been touted as cures for arthritis. Over the years, these so-called cures have taken

many forms. They have included powders consisting of wheat cereal, protein, and small amounts of vitamins, mixtures of cod liver oil and orange juice, copper bracelets, and bracelets made of sea plants. Unfortunately for those who spend their money on these purported remedies, they don't work.

Other false claims have dealt with the aging process. These promotions prey upon our vanities. Since the days of the mythical "Fountain of Youth," people have been searching for ways to regain the vitality and appearance of youth. I am sure you have seen some of the phrases used to entice the purchase of these products: "Do I really look older than him;" "Take years off your appearance;" "Years of added youth for you;" "Why grow old before your time?"

These products are offered in the form of pills or creams, all claiming to possess the magic formula for regaining the vitality and appearance of youth.

A New York-based promotion advertised an "amazing skin formula" which would "lift aging skin right off your face * * * in just seven seconds." It also claimed to be FDA-approved. The price of this amazing product—$12.50. The doctor who refuted these advertising claims stated: "Washing with soap and water with a washcloth would accomplish the same results."

With direct mail advertisements, another promoter from this region claimed a significant breakthrough in the fight against aging by taking RNA tablets. Appealing phrases as "no-aging diet" and "scientific breakthrough of our time" were used to entice people to purchase this product. The doctor who refuted these claims stated: "There is no scientific evidence that RNA added to your diet contributes any benefit to the system and that all advertisement claims were false."

Recently, a company operating in Memphis, Tenn., sent direct mail advertisements to thousands of senior citizens nationwide, offering "The Miracle of the 80's." The product, called "Potency Plus," would stop the process of aging and increase the lifespan of the user. It was to be used by those suffering from arthritis, bad eyesight and hearing, gallstones, high blood pressure, gout, ulcers, bloodclots, constipation, heart disease, stroke, and all the other ravages of aging.

For $20 respondents received a 60-day supply of pills consisting of vitamins C and E and a so-called miracle ingredient—"Panax." Medical experts refuted these claims. But before the promotion was stopped by a false representation order, about 7,000 persons purchased this cure-all product.

Another promoter advertised in nationally distributed publications that one could "get rid of body pain without medicine." Those interested were to write to Zeldcoe, Santa Ana, Calif., for free details. In return the promoter sent a letter soliciting $14 plus $1.50 for handling and shipping costs, for a product called the new health restorer, a device which the promoter claimed that when used just a few minutes per day, would give lasting relief from body pains and miseries, would restore normal body functions and enable the user to live longer, more active lives. The device was also guaranteed to be completely safe to use.

In return, respondents received a board approximately 6 inches by 12 inches in size with three plastic cushions attached to one side. A person is supposed to place this device on the floor, sit on it, rock back and forth, and at the same time, move the knees from side to side. We would demonstrate this for you, Mr. Chairman; however, we could find no one who has had the dexterity or coordination to accomplish this feat.

A medical expert stated: "It is beyond my comprehension how this ridiculous device and exercise can possibly result in the claimed benefits." He further stated that use of this device would actually aggravate the condition of the user, especially if the user were elderly, and could cause even greater suffering.

Approximately 2,100 persons purchased this worthless device before we were able to put the firm out of business.

As you can see, Mr. Chairman, the problem goes beyond the mere loss of a few dollars. These devices can do harm and, possibly worse, the victim may put off seeking needed medical attention by relying on the promised miracle cure.

Another 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 kind 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.

In an effort to expose these operations, we have developed a brochure which 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 issued the brochure in June 1980, we have been receiving over 100 reply cards a week identifying numerous promotions. In the last 9 months, we have put out of business, through false representation orders, consent agreements, or criminal proceedings, about 2,600 of these phony work-at-home promotions.

More than 9,800 persons invested $12 each in a work-at-home promotion advertised by Habco Sales, Lufkin, Tex. The operators of this fraud scheme placed advertisements in nationally distributed publications such as the National Enquirer, offering employment mailing circulars. Those who invested were advised that Habco Sales represented 50 companies who paid commissions to have circulars mailed. However, instead of mailing circulars, respondents were told to place advertisements in newspapers similar to the ones which enticed them to invest their $12. The operators of this scheme were fined and sentenced to jail on January 5, 1981.

Another work-at-home promoter operating through five different company names and addresses in California, enticed over 25,000 persons across the country to invest $12 each with promises of income ranging from $180 to $500 per week. Lawrence Phillips placed classified advertisements in daily and weekly newspapers from the west coast to the east coast and mailed promotional material throughout the country soliciting homeworkers to join his

program in which they could earn a weekly salary by just stuffing envelopes.

For a $12 application fee, those responding to his advertisements received a starting kit for the program—claims that the work consisted primarily of addressing envelopes and inserting circulars, and that they would not be required to buy anything else.

No one received any envelopes to address and stuff, nor did they receive a weekly paycheck. What they received for their $12 was a booklet such as the one displayed here, which explains how to make money in mail order by being a distributor for the Phillips Envelope Co. This required the placing of classified advertisements similar to the ones which enticed them to invest in publications and mailing circulars soliciting additional people to join the pyramiding fraud scheme.

False representation orders have been issued against Phillips, work-at-home promotions and the matter has been presented to the U.S. attorney for consideration of criminal prosecution under the mail fraud statute.

In yet another case, an Ohio-based work-at-home promoter was sentenced on April 16, 1981, to 2 years in prison for defrauding 10,000 persons of over $200,000.

Although the individual monetary investments are small, the number of victims and total moneys lost to work-at-home schemes are substantial.

To heighten the awareness to potential fraudulent advertisements, we are also contacting publishers to advise them of action taken by the Postal Service against fraudulent work-at-home and medical schemes which were promoted through advertisements placed in their respective publications. In addition, Action Line and consumer reporters are frequently writing articles in an effort to alert their readers to these schemes.

Another growing problem area which affects the elderly is in the broad spectrum of investment swindles. This involves a variety of schemes, including franchise and distributorships, 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 seeking ways to supplement that income.

We frequently find that the victims are elderly people who have been persuaded to invest their life savings. Some 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 typical distributorship swindle involved the sale of jewelry franchises with its base of operation in the Hartford, Conn., area.

Investment Services International was formed by Brad Kneidl and Raymond Morrissey. They hired sales representatives to travel across the United States, conning people into investing in their distributorships by painting glorious pictures of high profits and money-back guarantees. For an investment of about $3,500, victims were told they would receive five jewelry showcases, each containing 100 pieces of fine costume jewelry.

The showcases would be placed in good, high-traffic locations guaranteed to produce at least 100 sales per week. Victims were shown photographs like this one of the showcases and jewelry they would be receiving, and, as you can see, they are impressive. So impressive, that at least 160 people invested $600,000 in this phony enterprise in the 6 short months it was in operation.

After closing down Investment Services International, Kneidl and Morrissey then started similar schemes, independent of each other, using the same sales techniques, but different products. In a little over a year, over 400 people throughout the country lost $1.6 million to these swindles.

To insure the success of their fraud schemes, Kneidl's and Morrissey's sales representatives encouraged wary prospective buyers to contact their local better business bureau. This was just another part of the con.

Karen Wells, the operations manager of the Hartford, Conn., BBB, was bribed by Kneidl and Morrissey to send false reports reflecting a favorable reputation of their firm to all the BBB's throughout the country.

Kneidl, Morrissey, and Wells were convicted and received sentences ranging from 18 months to 2 years in prison. Nine other people were also indicted for their involvement in these operations. To date, seven of these individuals have also been convicted.

Two salesmen involved in the Investment Services International swindle started their own distributorship swindle. Jeffery A. Thunberg and Henry O. Creque launched a campaign to sell distributorships for a product called cash card. Their base of operation was Branford, Conn. They solicited investors from across the United States with promises of significant savings at stores located in the United States and abroad to anyone who was a cash card holder. The only problem was no store honored or knew of cash card existence. Investors lost over $183,000 to this fraud promotion. Last month, Creque and Thunberg were sentenced to a 5-year suspended sentence, 5 years' probation, and fined $10,700 each.

As you can see, the variety of fraudulent schemes is seemingly endless. We feel very strongly about our obligations to keep the mails as free from abuse as possible. Phony mail-order promotions are a small percentage of the total mail order industry, but the substantial dollar losses and the cost in terms of human suffering caused by the dishonest promoters deserve our attention.

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

Mr. RATCHFORD. Mr. Murphy, your statement really is shocking. I just wonder how many Americans realize what fraud is out there and to what they are being exposed.

I certainly applaud you and your division for your efforts, because if we have this type of situation going on in a State like Connecticut, it is obvious it is going on all over the country. Second, those ads look all too familiar. I am looking at the one entitled "Medical Fraud." Were you able to stop that one, or is it still being used?

Mr. MURPHY. All that we have used here have been stopped; yes.

Mr. RATCHFORD. Do you have to be engaged in this on a continuing basis?

Mr. MURPHY. Yes; as I mentioned, part of our activity is to make the public more aware of what is happening so that they, in turn, can contact us.

I think expediency and the ability to move quickly, particularly in the medical fraud field is what we are keying in on. The trick is to act as quickly as we can and shut them down as fast as we can. It is a continuing thing.

Mr. RATCHFORD. If you could say to Congress: "You have a problem and this is what you can do about it," what would that problem be, and what solution would you offer?

Mr. MURPHY. Well, again, keying in on the expediency, the ability to move swiftly. There are probably three areas that we could really expedite our situations with.

For example, one of our processes is to obtain a product. If we obtain the product by ordering it through the mail, there can be a delay in actually receiving the product, and we must receive it, of course, before we can have it tested for effectiveness.

What we would like to see is the ability to go to the promoter right up front and say: "We are looking at your product; we would like to have it; here is the purchase price," and receive the product immediately. I guess you would call it up-front purchase power, with the thought in mind that should someone renege and prefer not to sell us the product, well, then, perhaps, that is a prima facie indication there might be something wrong with it. That is one aspect.

Another is that our 3005 procedures, whereby we get a false representation order against a company, or a promotion, we would like to see some solid penalties attached to that. As it is now, should that individual decide to develop a different product or change the name of his company, we must go through the false representation process, again, with the new company. What we would like to see is some type of civil penalty for intentional avoidance of the 3005 false representation order.

A final thing would be to see the Postal Service attain the administrative subpena power so that we would be able to obtain test results should the promotion or advertisement claim the article has been tested by a board of medical experts. We would like the ability to obtain those test results. Often, we don't believe they exist, and the administrative subpena would be a key to obtaining that.

Mr. RATCHFORD. We will carry these recommendations to the Select Committee, and if you choose to furnish written recommendations, we will carry those also.

What do you have to say to the older Americans? What warning do you give them? How can we prevent this?

Mr. MURPHY. At this point, I suppose, there is a trite bit of advice we do give, and I will use it here because it is apropos. If something sounds too good to be true, it probably is. The idea is to investigate before you invest, to take every precaution that you can think of to make sure that what you are ordering is, in fact, what you desire, and, beyond that, if you can contact the consumer agencies to determine any complaints against the company—that type of thing. Caution, I guess, is the byword.

Mr. RATCHFORD. What is your situation as far as staff is concerned in this period of tight budgets?

Mr. MURPHY. There are approximately 2,000 postal inspectors throughout the country. We have, as I mentioned, selected certain ones, and trained them to operate particularly in these fields, and I feel that we are sufficiently manned to do the job, with the addition of some investigative tools that we have talked about here this morning.

Mr. RATCHFORD. For informational purposes, what is your structure in New England, for example, if someone is listening to us or seeing us out there, and they have a complaint? How do they go about processing a complaint?

Mr. MURPHY. The most familiar method of contacting the inspection system is probably through your local postmaster.

I suspect there are very few people who are not familiar with the location of their local post office or could not find it in the phone book. By contacting that office, should they wish to make a referral of a claim of fraud, possible or potential, the postal employee on the other end will put them in contact with the inspection service.

We have local inspectors domiciled here in Hartford and other cities throughout Connecticut, but for the general contact I suggest the post office.

Mr. RATCHFORD. Do you have any idea whether the Connecticut complaints were initiated by your own department or by consumers?

Mr. MURPHY. I do not have that knowledge at this point. I suspect it was a combination.

Mr. RATCHFORD. At this point, again, with my sincere thanks, I am going to yield to Lois. I am sure she will have some questions, and she may want to comment about her own structure, because much of what we do today is educational and informational as well as progressive toward potential new laws or regulations.

Ms. PINES. The Federal Trade Commission has at the present time 10 regional offices located throughout the country, and I run the New England office. We are a law enforcement agency and it is our job to assure that Federal laws in the area of consumer protection as well as the antitrust laws of the Federal Government are enforced by our agency. We are located in Boston, and we have as our outreach responsibility the entire New England region.

For the Connecticut area, we are the headquarters for this region, and we have much hope that people who are here today will feel free to communicate with us. Some of the persons we know personally and have worked with, and we certainly hope we will have the opportunity to continue to work with them.

Mail-order fraud is certainly—the mail-order rule, which the Federal Trade Commission enforces in all these areas, which affects the elderly as well as the ordinary consumer in our society, are the areas in which we are very concerned.

Last year, we had over 15,000 complaints from people within the New England area. Those include complaints from ordinary consumers as well as from our senior citizens.

We have a staff of approximately 35 people, the majority of whom are attorneys, and the balance of that staff is available to support the law enforcement actions of our office. We would hope

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that the people of this area would feel free to call us at our Boston office. We are located at 150 Causeway Street, right next to the Boston Gardens. For those of you who might be on their way to watch a Celtics game next year, the Boston Bruins, or maybe you would even come to a rock concert, you will know where to go.

Mr. RATCHFORD. Again, Mr. Murphy, we will thank you. Your testimony will be presented to the committee. You have been such an outstanding witness, don't be surprised if you are asked to testify in Washington, also. It has been an excellent presentation. Thank you.

At this point, we are going to have a panel of three involved, concerned, and very capable Connecticut commissioners; people whom I have known for a long period of time through our mutual professional interests, people who are dedicated to seeing to it that their agencies do all they can to protect their constituents in this State. They are prepared to offer testimony on this important subject.

They are Mary Heslin, commissioner of consumer protection; Joseph Mike, commissioner of insurance; and Marin Shealy, commissioner, Connecticut Department on Aging.

STATEMENT OF MARIN J. SHEALY, COMMISSIONER, CONNECTICUT DEPARTMENT ON AGING

Ms. SHEALY. I am leading off, Mr. Chairman, only because my fellow commissioners have indicated they will let me. I think what you are seeing is a close working relationship between commissioners.

With that, I will be very brief. I do have two staff people here if either one of you would like to question them on the subject I am talking about after the commissioners are through talking.

The topic of this hearing is Fraud Against the Elderly, and in that respect I am not talking about something quite as dramatic as the mail fraud item I just listened to, but in one sense it is much more insidious because it is not seen, and it is hard to discover.

It is financial exploitation of the elderly. It occurs in many forms. Methods of misappropriation of the assets of older persons are as varied as the creativity of the human mind can make it. Certainly crimes of force and violence occur against older persons. Too often, gangs of hoodlums pick on persons they perceive as frail and vulnerable—frequently older persons.

Elderly persons are also the victims of deceit, misrepresentation, and fraud by con artists. These criminals know no boundaries of decency in their attempts to acquire the property of our elderly citizens.

Unfortunately, we at the Department on Aging know that it is not only strangers who exploit older persons. Since legislation was passed in July 1977 creating a protective services program in the department, we have received more than 2,300 complaints regarding abuse, neglect, exploitation, and abandonment of the elderly.

More than 260 of these cases have involved the exploitation of an older person's property. It is significant to note that the majority of these complaints involved persons over the age of 80. It is truly sad to report that many of these cases involve relatives or caretakers of the exploited older person.

I do know this is something we don't like to deal with, because we don't like to think in terms of relatives abusing or exploiting the elderly. We are concerned about the unknown. We already know about those complaints we get.

Some public attention has been focused on the problem of financial exploitation by outsiders. More awareness is needed. Very little attention, unfortunately, has been given to the problem of exploitation from within the family structure. This may be caused by the fact that it is unexpected; that we don't want to believe such things happen; or that too often they go unreported.

Our experience with the protective services program clearly indicates to us, however, that it is a very serious problem affecting too many older persons. We strongly suspect and fear that the reported cases represent only a small percentage of the financial exploitation caused by a family member or caretaker.

As I indicated earlier, the forms of financial exploitation are many and varied. Some examples of the ways in which older persons are exploited include:

A son telling his parent that unless all their property is turned over to the son, no one will take care of them. The son then wastes the assets on his own needs—son or daughter, to be fair, but in most cases it happens to be sons.

An elderly person who is not always lucid is convinced to sign away property rights without fully comprehending the consequences of this action.

A relative or friend uses undue influence to have an elderly person change his or her will.

An elderly person is convinced to sign a broad power of attorney which is used to sell all the person's property to their detriment. This is particularly insidious.

A person has him/herself appointed representative payee of an elderly person's social security benefit and uses the money for their own benefit. It is interesting to note that it is often very easy to be appointed representative payee, but difficult for the older person to remove one from this position.

Obviously, there are many other methods of exploiting the assets of an older person. Greater public awareness is needed if we are to find ways of preventing such abuse from occurring. We have just begun to have a full understanding of the problem.

I want to commend you, Mr. Chairman, for bringing this to the attention of the public.

I, in essence, am through, but I know you did ask questions before.

Mr. RATCHFORD. We will hear from all three of the witnesses, and then address questions.

STATEMENT OF MARY M. HESLIN, COMMISSIONER, CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION

Ms. HESLIN. My name is Mary Heslin. I am commissioner for consumer protection in the State of Connecticut.

Thank you for having me here this morning to make these brief remarks. I give you a written copy of my statement. I shall make reference to it with some asides rather than adhering to it exactly as it is written.

The bottom line, I think, when dealing with problems that we deal with, with senior citizens, is fixed income, actuality of health problems, and limited mobility. These are some of the characteristics that place them in an extremely vulnerable position.

The complaints that we receive from seniors cannot in themselves be isolated from general complaints. They are very similar to complaints that we receive from all other age levels in society, but these three particular characteristics make them that much more difficult for individuals to handle and to cope with.

A review of the some 12,000 written complaints in the fraud division received annually indicated that seniors are especially vulnerable in several major areas, and I will make reference to these.

First of all, home improvement repair: Many of our seniors in our State still reside in old homes. For this reason, the repairs are difficult; they no longer can climb on the roof to check a gutter that may be gone, or determine whether or not the carpentry needs repair, and, therefore, the continual upkeep leads them to accept someone knocking at the door, someone advertising in the paper, someone calling them on the phone. These are the ways that they are approached.

The mail-order fraud about which you heard a great deal already this morning, is particularly, I think, prevalent, not only in this State, but in other States, and I suspect tops the list as far as complaints are concerned.

This is primarily because it specifically refers back to one of the weaknesses. They are not mobile in many cases. I am not talking necessarily about those who have a great deal of income available, where they can become involved in pyramid schemes and pyramid frauds. I am talking about the great ad that appeared in a national magazine or the great ad that appeared in a national newspaper offering them all kinds of cures for all kinds of problems, or all kinds of great answers to problems that they can't deal with, and they can't walk down to the local store to purchase.

Because of that restricted mobility and some great deals that may be offered through that mail order, we find that it is a problem area that continues to get worse instead of better.

We are not alone, I think, in this State, and Connecticut, in itself, has some serious problems with regard to mail order firms that are located within the State, itself, with regard to the merchandise being returned on time; and in some instances, unfortunately, the companies go bankrupt.

Now, that is an area, I think, that has to be addressed.

Most people, through education, have become aware of the fact that there are mail-order regulations which allow them 30 days for their materials to be sent to the Federal Trade Commission if the number of complaints is significant enough, who will take some kind of action, so forth and so on.

I am very much concerned. As it currently stands, there is no way to get at the problem of companies which go bankrupt, which, by the time the case has been amassed, after 6 or 7 months of abuse, there is nowhere for the consumer to turn. There is no redress available for them. It is a problem we are going to address in the State of Connecticut next year, but that will only take care of Connecticut's problem.

What about the Connecticut consumer who writes to Tucson, Ariz., or New York, or Pennsylvania, or Florida, for that supposed great deal that they found advertised in a magazine?

I really think it is an area that needs addressing at the Federal level.

Work-at-home schemes also referred to earlier—the same kind of problem exists there, to the level and extent that we have with mail-order problems, but nevertheless it still exists.

Finally, the elderly are frequent targets of fraudulent advertising, particularly in the area of drug and health care products and related insurance coverage.

Let me first refer to the drug and health care product area. I actually feel, and honestly feel, that war should be declared by the FDA, in concert with the Federal Trade Commission, where the continual ads in the national magazines and the national newspapers are offering miracle cures for all kinds of problems of our seniors.

In the State of Connecticut, B–15 was advertised at one point as a panacea for every problem, from an ingrown toenail to diabetes. We were able to take it off the market in the State, based upon the fact that it was advertised as a great cure, when it was not proven to be a great cure.

My recent testimony before the general assembly indicated my concern over the way DMSO is being advertised in this State as—and accepted—as a cure for arthritis, when the Food and Drug Administration has taken no position in that particular area.

I recently wrote to "Sixty Minutes," because I suspect, from talking to a number of seniors, because they saw the advertising as seen on "Sixty Minutes," and, unfortunately, too many of our seniors believe that if you read it in the paper, it is true, and if you see it on TV, it is gospel, and I think that is the problem, and I would only hope that "Sixty Minutes" would make some kind of correction in that regard, because I have found a number of seniors believing that this must be all right if we saw it on national television.

I really think there is a responsibility with those who accept advertising and put it into either written form or oral form or visual form. There is a real need for the Federal Government turning the attention to the advertisers in this country because for every 90 percent that are good, we have 10 percent that are believed, that are bad, and the 10 percent, unfortunately, color and harm the 90 percent that are doing good.

In the area of related insurance coverages, obviously, given the physical facts of deteriorating health and the threat of catastrophic illness, many of our elderly are easy targets, not only for the quick-cure miracle drugs I have been referring to, but paying out large sums for duplicative and often unnecessary medical insurance policies.

Though we as a regulatory agency are able to identify the more major areas of abuse, it is significant to note that numerous studies reveal a similar pattern. That is, elderly consumers are least likely to initiate action. The under-65 population is far more likely to make a formal complaint to a regulatory agency or trade association. Thus, as regulators, we must assume responsibility for out-

reach and advocacy in those areas which pose serious problems for the elderly consumer.

During my tenure as commissioner, we attempted to fulfill this outreach obligation in a variety of ways, and I would suggest that possibly this might be, if not done in other States at this level, a pattern to follow.

First of all, home improvement contractor registration; generic drug availability; plain-language contracts; and regulations relative to discount offers for seniors in drugstores—have been some of our statutory changes.

Educational outreach must follow the legislative mandate.

Successful grant applications—the department conducted a series of consumer-education seminars around the State. Senior Consumer Day, we called it. Daylong seminars provided an opportunity for elderly citizens and consumer affairs experts to come together and exchange information on marketplace problems.

I make reference to this grant and to the success of these 3 consumer days we held throughout the State. I make reference to it because, as a result of some of the surveys done with these three groups, we came up with information that resulted in the department's initiating legislation regarding the sale of so-called medigap insurance for senior citizens.

Under the auspices of the Governor's office the department worked with the State Insurance and Aging Department on the first corrective efforts in the high-abuse area.

Commissioner Mike, I am sure, will discuss the State's progress in this area.

The other method of outreach which we use is dollar saving. In these days the accent is there. We found we cannot reach all the seniors in the State we would like to. Obviously, we cannot. And so, when things were better, 3 years ago, we initiated a training program for the senior leaders throughout the State, so that they could return to their community centers armed with material and information primarily in three areas—drugs, food, and frauds—which they are particularly vulnerable to. That is, home improvement and mail-order fraud and the advertising problems which beset them and still continue to beset them.

Regulatory and enforcement action at the State and national level is imperative. However, consumer education in this case targeted to the elderly consumer is equally important, and in both of these areas we at the State level must look to Federal agencies and Congress for support.

I thank you for allowing me to appear at this public hearing. I am available for questions, when the commissioner is through, or whenever you choose to ask them.

I would like to repeat that I think the bottom line to the problems that we face are found somewhere in the rescission of mail-order regulation, to the monitoring of the mails and to the cooperation of the Post Office Department, working with us and the banking department and other departments we work with, to get at these programs, to addressing the problems nationally, to the advertisers in this country, and then having the FTC and the FDA work together specifically on those areas dealing with advertising for medical cures and great savings in that area.

Thank you.
[The prepared statement of Commissioner Heslin follows:]

PREPARED STATEMENT OF COMMISSIONER MARY M. HESLIN, CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION

I am pleased to be able to speak to you this morning, in my capacity as Commissioner of the Connecticut Department of Consumer Protection, regarding consumer problems experienced by the elderly in Connecticut.

While the elderly contend with most of the consumer problems which beset the general population, many of the more common deceptive practices are exacerbated by some of the general characteristics of old age. Managing within the confines of a fixed income, coping with the threat or actuality of health problems and limited mobility are but some of the conditions which tend to place many of our elderly at a distinct disadvantage in a marketplace which is a challenge to any age.

A cursory review of the 12,000 written complaints received annually by my department reveals that elderly consumers are especially vulnerable in several major areas.

Chief among these areas is that of home improvement repairs. Generally a high abuse area it is very much so for senior consumers who have a higher rate of home ownership than non elderly and who tend to occupy older homes requiring continual upkeep. Frequently unable to climb up on the roof to verify a leak or inspect completed work senior citizens are often victimized by unscrupulous or simply inept contractors at considerable cost.

Another major abuse area is that of mail order fraud. Receipt of inferior merchandise at best or no merchandise delivery at worst hits the retiree hard when because of purported cost savings or restricted mobility he or she has sent money through the mail.

Similarly, senior consumers tend to be victimized by work-at-home schemes which invariably demand money up front and grossly misrepresent potential earnings. Nonetheless such schemes are appealing to individuals struggling on fixed incomes with much time on their hands.

Finally, the elderly are frequent targets of fraudulent advertising, primarily in the areas of drug and health care products and related insurance coverages. Obviously given the physical fact of deteriorating health and the terrifying threat of catastrophic illness many of our elderly are easy targets disappointed by the results of "quick cure" or "miracle" products which hold out false hope at great expense while paying out large sums for duplicative and often unnecessary medical insurance policies.

Though we, as a regulatory agency, are able to identify the more major areas of abuse it is significant to note that numerous studies reveal a similar pattern; that is, elderly consumers are least likely to initiate action. The under sixty-five population is far more likely to make a formal complaint to a regulatory agency or trade association. Thus as regulators we must assume responsibility for outreach and advocacy in those areas which pose serious problems for the elderly consumer.

During my tenure as commissioner of consumer protection, the department has attempted to fulfill its outreach obligation in a variety of ways.

Legislatively, the department has tried to address certain problems by statutory change. Some successes have been achieved on that front with the passage of department-sponsored legislation concerning home improvement contractor registration, generic drug availability, and "plain language" contract requirements.

The necessary complement to legislative advocacy is educational outreach. Department sponsored elderly consumer education efforts have taken different forms.

As the results of a successful grant application, the department was able to conduct a series of consumer education seminars around the State. Entitled "Senior Consumer Day," these day-long seminars provided an opportunity for elderly citizens and consumer affairs experts to come together and exchange information on the marketplace problems confronted by the elderly.

Information gathered by the department during the course of these seminars, coupled with supplemental survey information resulted in the department's initiating legislation regarding the sale of so-called medi-gap insurance to senior citizens. Under the auspices of the Governor's office my deparment worked with the State insurance and aging departments on the first corrective efforts in this high abuse area. Commissioner Mike will, I am sure, discuss the State's progress in this area fully with you this morning.

Education is an ongoing challenge which we address through radio and television public service announcements, press advisories and frequent public speaking and in service training by department staff.

Regulatory and enforcement action at the State and national levels is imperative. However, consumer education, in this case targeted to the elderly consumer, is equally important. In both of these areas, we at the State level must look to Federal agencies and the Congress for support. The impact of Federal action cannot be overestimated. An illustration of this point is the 1979 national distribution by the Federal Trade Commission and the Department of Health, Education, and Welfare of the Model Drug Selection Act. Though we in Connecticut have similarly enabling legislation the Model Act distribution by Federal agencies generated renewed public attention and enhanced the legitimacy of generic drug alternatives. Though generic drug substitution often represents a substantial cost savings to any consumer, it is a very significant alternative for elderly consumers who appropriate their largest and out-of-pocket health expenditure on drugs and drug devices.

Public hearings such as this provide a vehicle for public education which we at the State level will be able to utilize long after this morning's hearing has concluded.

Thus we appreciate your presence here today, we look forward to working with the Federal Trade Commission, the Food and Drug Administration, the Department of Health, Education, and Welfare, and all our Federal counterparts as we struggle to address these issues at the State level.

Thank you for allowing me this time. I will be happy to answer any questions which you may have at this time.

Mr. RATCHFORD. We in Congress are very appreciative of the work of Commissioner Joseph C. Mike in an attempt to develop a meaningful Federal medigap law. He testified before Congress; he worked with the conference committee. He continues to work toward implementation. We are pleased to welcome him this morning. Specifically, thank you for your efforts thus far.

STATEMENT OF JOSEPH C. MIKE, COMMISSIONER, CONNECTICUT INSURANCE DEPARTMENT

Mr. MIKE. What you just made reference to, Congressman, the most important insurance problem we have come across, and obviously the one that has received the most attention, the medicare supplement question. As we all know, the elderly, and the medicare recipient are much more vulnerable to the scare tactic of oversell. This can lead to any number of abusive insurance practices.

The result has been a number of situations that have been uncovered around the country in which we have found the elderly have purchased 19 or 20 different insurance policies, all of which provide the same coverage and so duplicative as to be worthless, costing sometimes $15,000 or $20,000 a year. These are people who have been persuaded they should purchase the extra coverage to guarantee that they are not a burden on their family; that their medical expenses are fully covered, et cetera, et cetera.

There are any number of problems involved, not the least of which is the fact that many of the medical expenses that retired individuals, and those on medicare may face, are not insurable by anyone. So they recognize the fact that nursing-home care is so certain and so expensive as to be virtually uninsurable.

It is a tremendous expense. People think they are buying extra coverage to provide this benefit. They are not. They are buying extra coverage to repeat the benefit they already receive, but the bulk of the costs are not to be covered.

We developed in Connecticut, in conjunction with Commissioners Heslin and Shealy, and then Governor Grasso, a program that involved several steps, the first of which was a regulation.

Connecticut is one of the first States to come through with a tough, effective regulation, dealing with the question of medicare supplement insurance policies. It essentially required disclosure.

Now, other States have chosen to identify specifically the kinds of policies that can be sold. It seemed to me—and I stand by this—more important that we get an effective and efficient disclosure methodology in operation, because it will not only guarantee that in an investigatory situation, we can determine that the right information was delivered, but hopefully it will help identify for the individual consumer the kinds of information they may heed, the extent to which they are dealing with a very complex topic, and hopefully encourage them to seek some assistance in making that decision for purchase.

We require disclosure for the replacement of duplicate policies. We require disclosure for replacement of policies. That is, if a salesman sells an individual a policy and cancels an earlier one, we want to make sure the individual realizes a number of insurance conditions step in, preexisting conditions that may cost them benefits.

We also require the delivery of disclosure information that was developed in conjunction with the Health Care Financing Administration, to individual consumers in the marketplace.

This program is in place. It doesn't duly comply with the Baucus amendment, which I will talk about in a minute, but it requires a third step that we are still working on, and that is the development of some outreach counseling program.

I am describing something that is not technically intensive but much more commonly available, and we review it as a peer-counseling effort. In the final analysis the individual consumer needs some form of continuing expertise that is available for the handling of inquiries, responses, just to help them review the various forms of coverage.

We can handle through the insurance department the more technical questions, but we need to have someone routinely available through the regular senior citizens center, through any outreach program possible, just someone they have confidence in that can sit down and go over some of the questions that should be asked. This is because the main problem we come across is not a question of the authority to enforce, but a question of discovery.

Let me talk just a bit about Baucus. The Baucus amendment is a Federal statute that provides for additional standards for medicare supplement regulation and statutes for the States. It provides for some stricter authorities than we have in Connecticut, that we will be embracing.

Our statute provides for further disclosure forms and applies them to anyone eligible for Medicare. The Federal Baucus amendment seems to apply only to people who are buying medicare supplement policies.

There are other types of insurance policies sold to the elderly that are used to supplement medicare but aren't technically medicare-supplement policies. You may buy a $50 hospital indemnity policy. In Connecticut, we cover those, also.

Baucus also provides for very tough Federal penalties for any operation that may attempt to avoid State regulation via the mails.

That is, if someone attempts to sell through the mail coverage to an individual to avoid State regulation, then they are subject to a penalty, if I am not mistaken, of something like 5 years in prison and a $25,000 fine. It is a very, very strict penalty. It helps guarantee that a number of operations that may otherwise make attempts to avoid State regulation, do not.

We have authority over out-of-State operations in certain situations. The trouble is, it is very difficult for the States to pursue lengthy Federal court proceedings to continue to verify the extent to which we can place that authority. This helps enormously.

The main problem we have, again, is one of discovery. The insurance product is sold quite often without advertising, although it is not uncommon to have some advertising. It is quite often sold by an individual making a solicitation at the home, based on a referral by someone else. They may have picked up, based on a newspaper article—oftentimes, unfortunately, from obituary information—information that there is someone there who may buy insurance.

It is not uncommon to get a direct referral. Someone recommends a friend. A person knocks on the door, sits in the living room and makes a sale. There is no one else there to observe, to witness, to counsel. It is very difficult to find when a problem has occurred, because the individual making the purchase believes they are making a wise and sound purchase and doesn't realize there is a problem.

Discovery is of utmost importance to us. That is why we ultimately need the peer-counseling program. We need to be able to expose potential market problems throughout the regulatory mechanism more quickly. We have tremendous authority once that is done.

I will state a recent case we had in Connecticut, which involved a Massachusetts insurance agency which was selling to the elderly in Massachusetts and Connecticut. We investigated from the Connecticut side in conjunction with the Massachusetts department and the Federal Postal authorities, the State's economic crime unit and the State's attorney, as well as the comparable authorities in Massachusetts.

We uncovered a situation in which an agency was selling products to the elderly, who was misplacing the products, was selling duplicative coverage. In many cases, by their own testimony, they were making up premium charges. They would sit down with the individual, come up with an estimate of how much they thought the person could pay, pull a figure out of the air that fit, later buy a policy with it—perhaps; maybe not. They would make repeat visits. They took some people for $15,000 or $20,000. Because they weren't licensed to sell in Connecticut, they would file false applications certifying—in one case a 90-year-old person, bedridden, had to be driven to Massachusetts to buy a policy. A number of violations were uncovered. There was tremendous cooperation with the State of Massachusetts.

The Postal authorities had the greatest prosecutorial authority. They took the case. Five individuals were convicted on anywhere from three to eight counts each. They are all serving time in Federal prison right now. The money has been refunded by the

insurance companies to all the individuals concerned. It is fortunate, however, that we discovered this.

The next one could go undiscovered. This is the second situation we had like that in Connecticut. A first one was a similar situation with one particular individual. Our economic crime unit was able to prosecute, obtain conviction and the money was refunded.

Again, we have to discover the situation. We have to learn of the problem, and we need the outreach program.

We will talk briefly about ERISA. ERISA is a Federal law originally intended, I believe, to protect pension programs. In the process, it removed from the State's purview any control or any responsibility for pension plans and placed it in the Labor Department—the Federal Labor Department.

The problem is that it went a step further. It didn't address just pension plans; it addressed employee benefit plans.

Now, self-insured plans are by statute not insurance. Under ERISA, if an employer or any entity decides to self-insure, then they are instantly exempted from State authority; they become an employee benefit plan and the Federal Government steps in instead.

We have a number of situations in which trusts are formed around the country in an attempt, often, to bypass State regulation. Because ERISA is primarily concerned with pensions, most of the regulation that occurs in the Labor Department, at least thus far, is concerned with pension regulation.

There is a place in the marketplace for insurance trusts. Multiple employer trusts provide insurance or insurance-type products to individuals who won't otherwise be able to avail themselves of it, such as many people in the construction trade who go from job to job. All the employees participate in the same plan. It provides a constant benefit and guaranteed level for it. There is a place in the market for it.

An insured multiple-employer trust, permitted under ERISA, is written by an insurance company, and because of that, we have authority over the insurance company. All the State protections apply, including our insolvency fund. Uninsured multiple employer trusts have been used as a loophole to avoid not only State regulations but Federal regulations. The Labor Department has determined an uninsured trust is not covered by ERISA and should be under the purview of the States.

We have some court decisions upholding that. There is still apparently some legal question, though, as to why that will finally be the determination, as to whether ERISA preempted us in those situations.

We, the National Association of Insurance Commissioners, are pushing for a reconsideration of the extent to which ERISA preempts the States. For this reason, a number of consumer protection statutes have now been exempted, also. We can't use our unfair advertising statutes for insurance, our unfair trade practices statutes, or our unfair claims practices statutes.

We really have no authority even to attempt to arbitrate claims—even by valid self-insurance operations.

We don't believe the original intention was for ERISA to go this far in exempting State activity, but rather to carve out the pension and allow for Federal pension regulation.

We would like to see some reconsideration in allowing the States to further extend the consumer protection aspects of our statutes to noninsurance plans—employee benefit plans.

Mr. RATCHFORD. I will now yield to Ms. Pines, who has some questions.

Ms. PINES. I have had an opportunity over the past 2½ years to work closely with Commissioner Heslin. I am particularly delighted to once again have the opportunity to hear from her today. She has been exceedingly helpful to the Federal Trade Commission, and I would like to take this opportunity to commend Connecticut for having such a superb person fighting for the consumers of this State.

I was very interested in a comment that Mrs. Heslin made with regard to bankruptcy and mail-order firms. I wonder if she has any specific recommendations with regard to what the Federal Government ought to be doing in this area.

You indicated Connecticut is contemplating the passage of legislation. I do not have a copy of it. I would certainly like to secure a copy of the proposed draft and would appreciate talking with whomever it is who is leading the fight in this area.

Ms. HESLIN. It is just a proposed idea. It has not at this point been drafted. We have just survived this legislative session with some good legislation, but I do think that, looking back at the entire picture, and at all the evidence that we have amassed over the past 4 to 4½ years, since the mail-order regulations came into being—when was it, 1975, I think, was the tail end of it—maybe 1976.

They are limited in their ability to, I think, provide protection. Not that anyone ever is going to be able to provide complete protection, but I think I made reference to the loophole, to the problem that exists there.

First of all, there must be a significant number of cases before the Federal Trade Commission will take some kind of action.

Second, before the significant number of cases can be developed, there is oftentimes a point at which the company is going to fly away. At that point, I don't think there have been developed as yet some type of provision for providing restitution to the thousands of people who have been affected out there by the fraud. Or in some cases by the extent of bankruptcy. I don't know which. Each case is different.

There has to be a better way of approaching this problem because it is too prevalent. I think one of the ways may be in the development of some kind of requirement at the formation or the registration of this company, as a mail-order house. Oftentimes, it represents nothing to the consumer except a post office box with some fancy address. I believe sometimes that that is by design.

Our methods have been partially successful; that is, the Federal Trade Commission regulations and the department's actions with regard to investigation, and attempts at mediation and letterwriting and saying: "Look, it has been 6 weeks; that stuff should have

been sent sometime ago; here is their cancelled check of 4 weeks ago."

The record keeps playing on and on and on, and it still continues to be the top-level complaint in our State, and whenever I attend any of the conferences, it is the top-level complaint in those States, followed only by the automobile-repair problems. Those two, I think, have yet to be approached.

What we have now apparently isn't working. Or the failure in some instances to get after some of the perpetrators of fraud, though the advertising has not been working, either.

I assure you that as soon as we can better analyze the problem and attack it through all the corrective legislation we can, we would be hoping that the Federal Government would examine it also, because what we may draft in Connecticut may protect Connecticut, but it is not going to protect the Connecticut consumer from the mail-order firms in the other States. It really is a national problem; it isn't just a Connecticut problem.

Ms. PINES. I would agree with that. I would hope the Select Committee on Aging might be able to allocate some resources for research to come up with proposals in this area. It really is a bankruptcy problem as well as a mail-order problem. It may take several committees.

I personally believe that we at this point probably need some additional legislation to better protect consumers who do presently utilize mail order.

Ms. HESLIN. It doesn't target in on the seniors, but the seniors are particularly vulnerable in this area because of their lack of mobility.

Ms. PINES. I would agree with that. In our hearings to date—and this is the third in the last 2 weeks—it would appear that mail order is a substantial area of concern for the elderly person as well.

Mr. RATCHFORD. I want to pick up on that. I think all of you were here to listen to the shocking testimony of Inspector Murphy. He made the point that in these times of economic difficulty, that there seems to be a increase in this type of fraud. You feel it in your protective service program; you see it in medigap; you see it in the mail-order quackery relating to arthritis, or that type of easy cure that has been talked about earlier.

Are you getting more complaints? Do you see more evidence of fraud and abuse through the mails during this very difficult period of our economy?

Ms. HESLIN. Our complaints have not diminished. Even with increased education, they have increased. I wouldn't target it in on the elderly, per se. We are up in our complaint department. We figure we will average out this year close to 14,000, which is up 2,000 from 1 year ago, which is a significant increase.

I would expect that a percentage of those would be from senior citizens in the State. We are up in the entire complaint area.

Mr. RATCHFORD. I might indicate for those here that the commissioner does have with her representatives from our ombudsmen and protective service agency, which is the envy of the country.

Ms. SHEALY. That is right. You were instrumental in getting that passed. We are the beneficiary of your work.

We have one of our ombudsmen here who can deal directly with complaints.

We have seen a direct response. The response has been, as the economy has gotten tighter and tighter, we have seen a direct and dramatic increase in this kind of complaint.

We also get the mail order complaints. Just to briefly pick up on that, so often we go out and people say, "Why don't you tell us about this?" And we spend our lives trying to tell consumers about it, though we are limited by our budget constraints.

I think we can ask the radio stations to help us in this instance, because I know of no better way than radio and TV. I do not denigrate any newspaper reporters here, but 2 or 4 minutes on those media, reaching 600,000 people at night, can do more than all the outreach—we need all the outreach and training, too, but that, over and over again can help us.

We have one person who answers calls from the elderly in the department all day long. We have five regional ombudsmen who cover every single complaint on abuse, and that is all we have other than the State nursing home ombudsman.

Having worked as deputy commissioner under Commissioner Mike, I know that he is equally constrained. I don't need to speak for Mary. She can speak for herself.

Mr. MIKE. Let me just note in terms of insurance two things have happened. First of all, we are very, very fortunate in Connecticut. Our awareness of insurance benefits and our understanding of the working of insurance is much better than it is elsewhere in the country. Insurance is a very difficult topic for people to handle, but it is fortunate that whenever I go, for example, into a center, I am speaking to an audience who has been in the insurance field at sometime in their career. It is helpful.

We have found over the last few years that not only do harder economic times cause development of more schemes—people are willing to take even greater chances to secure dollars they shouldn't be entitled to, but it also helps highlight to the person on a fixed income the tenuous situation financially that they occupy, and it makes them even more vulnerable for some financial arrangement that seems to offer some protection against whatever malady they may be concerned with.

Yes; we have seen an increase in rise in number of complaints. We have also seen, however, on the plus side, with harder economic times, a rise in the number of people willing to step forward and say: "I think I have a problem."

Ms. PINES. The Federal Trade Commission has no authority to bring any action that in any way relates to the insurance industry. We had been asked by congressional committees to do various studies. The publication of those studies resulted in the elimination of any authority to do any additional studies.

Thus, I personally feel very hamstrung and incapacitated in terms of dealing with any insurance issue, as a Federal agency. Thus, we are totally dependent, as consumers, upon what the various States do and do not do.

I am particularly interested in your proposal with regard to a peer-counseling program. Could you perhaps elaborate on that for a few seconds?

Mr. MIKE. This is something we have been working on in conjunction with the Department of Aging. We have begun a program of training key people from various programs around the State so that they can go out and begin training further peer counselors. It is our hope to have available through whatever organization, or whatever senior citizen centers there are in existence in the State, some people with expertise that would be routinely available through this programmatic structure, to provide insurance information. It is easy on a more formal basis to make our expertise available. The problem is—making sure that at the very base level of contact there is someone who has that insurance understanding and is available for that. We are obviously all limited.

Ms. PINES. How many peer counselors do you anticipate having?

Mr. MIKE. As many as are willing to do it. It is not that we need two in every community. We are gearing toward developing a system of volunteer trainers who will then provide whatever training is desired or available at the community level for people who wish to function as peer counselors. It has to be a volunteer effort, because there isn't anywhere the money available to put people out on a paid basis.

We have a training program. I haven't information on how many have come through the training programs. We have also received a great increase in the number of requests for technicians to participate in developing programs and making presentations at the community level.

Ms. SHEALY. I think we could work quite well together. In the State of Connecticut there is a law that mandates every municipality to have a municipal agent for the elderly. I think we can work together on this as well as the senior center directors who are very willing to give out information, but we have to also remember that for every elderly we see at the senior center, there are countless hundreds we never get to.

Mr. RATCHFORD. We want to thank you. We know what a busy schedule you have. You have given us specific recommendations. Again, we applaud your efforts; we will continue to work with you.

I feel positive, that out of this series of hearings will come more recommendations for further tightening up of these statutes so we don't have to go through the litany of presentations that we saw this morning.

This morning, we received a call from Richard Blumenthal, who is involved presently in judicial proceedings in the New Haven area and will not be joining us. However, we do have Mr. Blumenthal's prepared statement, and it will be included at this point in the hearing record.

[The prepared statement of Richard Blumenthal follows:]

PREPARED STATEMENT OF RICHARD BLUMENTHAL, U.S. ATTORNEY, DISTRICT OF CONNECTICUT

I appreciate this opportunity to comment briefly on the problem of crime as it affects the elderly—a topic that has concerned me greatly during my four years as United States Attorney.

The elderly are frequent victims of all types of crime. Most dramatically and visibly they are affected by street crime—robbery, mugging, and other types of violent or physical harm that may also entail financial loss. The new administration has given major priority to a much enhanced effort to provide "leadership" in combatting street crime. As a federal prosecutor, I agree that street crime should be

combatted; the question is whether the federal government belongs at the forefront. My own top priority has been "white collar crime", meaning consumer fraud, embezzlement, Medicare and Medicaid abuse and other types of fraud against the government. These exact tremendous costs on society generally and the elderly in particular—costs even greater than those of street crime in many instances.

My reasons for advocating continued federal concentration on white collar crime relate to both jurisdiction and resources. The federal government simply does not have the authority under our current law to prosecute many of the types of violent crime that involve the elderly as victims. Nor does it have the manpower or financial wherewithal to do so. Most actions involving theft or physical harm do not become federal crimes unless there are distinct jurisdictional elements present, such as interstate travel or transportation, or involvement of a federal facility or federal employee.

As for resources, the New York City police force alone has a total of 23,000 uniformed employees, compared to 7,000 F.B.I. agents for the entire nation. I doubt seriously that many of us would welcome a vastly expanded federal investigative service, shunning as we do the notion of a national police force that might supplant locally controled, locally responsive police institutions.

A couple of examples may illustrate how the costs of white collar crime to the elderly and all of us often exceed those of street crime. In one scheme recently prosecuted by my office—an appeal is still pending so I will delete defendants' names—a group of skilled "con artists" persuaded victim investors around the country to invest in jewelry and display cases that they promised could be resold at substantial profits. The unwary victims soon discovered that the actual worth of the jewelry was barely a fraction of its advertised value. Prosecutors from my office and investigative agents from the Postal Inspector's Service succeeded in apprehending those responsible for the scheme, and eventually the defendants were sentenced to substantial prison terms. This outcome, however, offered little consolation to the investors, whose losses totaled many thousands of dollars in each instance. Many of these victims were elderly. Many had invested their life savings in the falsely advertised wares.

The case illustrates an important and repeated characteristic of many such schemes as they affect the elderly as well as other victims: unrealistic and exaggerated hopes for "getting rich quick" often are the reason of the schemes' success. Careful and vigorous scrutiny, even some degree of skepticism, should be applied always to promises of rapid riches—promises that appear too good to be true. Prosecution often offers a remedy of little practical utility to the victim, since conviction of the defendants only rarely results in restitution.

Other criminal cases illustrate involvement of the elderly as unwitting participants as well as victims in white collar crime. In certain forms of Medicare and Medicaid fraud, the federal government and the ordinary taxpayer are real losers along with the elderly. One such scheme prosecuted by this office was implemented by an attorney and a doctor to exaggerate or concoct recipients' injuries or illnesses, thereby charging for services never actually performed. While the elderly in this instance suffered no direct detriment, the long-run effect of this type of fraud is to discredit social service programs such as Medicaid and Medicare on which they depend. Abuses add momentum to efforts aimed at cutting back or abolishing the programs. Close scrutiny and energetic vigilance is essential to protect poor and elderly persons from those who exploit them in this way. The Inspector General offices established by many of the social service programs have performed an important function in detecting and investigating this type of fraud. They are crucial, notwithstanding possible cutbacks in levels of funding.

The gradual increase in the median age of our population, as reflected in the most recent census report, means that efforts to detect and prosecute white collar crime affecting the elderly will become more and more important during the years to come.

The interest of this Committee in the subject, and its potential authorship of new legislation regarding this problem, are very encouraging signs that the country is on the right course.

Mr. RATCHFORD. Are there any members of the public who wish to offer any testimony at this time?

STATEMENT OF BETSY BERGEN, REPRESENTING THE WATERBURY BRANCH, CONNECTICUT LEGAL SERVICES

Ms. BERGEN. We serve probably more than 1,000 elderly people in the area. I am here to talk specifically about an area which is most sad, that which is called relative ripoff.

I am addressing myself now to the issues of medicaid and powers of attorney and conservatorship. I am going to give you some case histories, if I may.

Case No. 1: Miss Millie, age 85, came from New York City, to live with her nephew in New England, a little white house in New England just northwest of Waterbury. She came with a handsome portfolio of stocks and bonds inherited from her sister's father who owned an apartment house in the Bronx. The income from these was to last her for the rest of her life.

Miss Millie gave these stocks and bonds to her nephew, who managed to do away with them completely and put Miss Millie in a nursing home. She ended up with one little interest in an oil well in Oklahoma, except for her receiving $6 every 2 months.

This occasioned a court case in which there was some evidence that there was a significant collusion between Millie's attorney and the attorney for the nephew.

After court costs and fees were paid, Miss Millie was put on title 19 with her social security check going to the convalescent home and a small remittance from this particular middle interest.

As legal services for the elderly, we arrived on the scene about 1 year after the transactions had taken place.

Frankly, we are not allowed to pursue criminal cases and investigating malpractice is not within our purview.

There is nothing we could do about the nephew. He continued to live in style and Miss Millie in a convalescent home bemoaning the loss of her stocks and bonds.

We were called into the case because she was about to be thrown out of the nursing home because the Department of Income Maintenance, medicaid, felt that perhaps this middle interest, bringing in $6 a month, that perhaps she was sitting on an oil well gushing forth tons of money and no one knew it.

We investigated the case and in Millie's behalf sold her stocks and bonds. She is now still in a nursing home wishing that she could get these stocks and bonds back.

I will give you another example. Mrs. Black—again, a classic New England home—produced a large family. As she became older and thus fearful, one of her granddaughters offered to take care of her, and this granddaughter helped her, with back rubs, cleaning, cooking, and all those nice things. She also helped herself to about $18,000 of grandma's money.

Granny ended up in a convalescent home with the significant transfer of assets from her bankbook showing in black and white.

The granddaughter disappeared, the son was trying to settle or prove, or do something with the title 19 people. He doesn't dare finger his own daughter, but he doesn't know or will not say what happened to the funds.

This lady was about to be terminated from title 19. In fact, she was. The nursing home was left holding the bag. This lady had nowhere to go.

When information is not provided to title 19 people, they terminate the title 19, therefore occasioning the onus to blame the eviction that occurs to the poor old lady who didn't know what she was doing.

The son cannot be useful here. The granddaughter disappeared. There is a question of who does what. Does somebody go after the granddaughter, make her prove what happened to the assets? She is not available. She skipped town.

I know that the Federal laws now read that there should be a 2-year investigation of bank accounts, especially with reference to the transfer of assets. But nobody said anything about whose responsibility it is to do the investigating, and nobody takes the responsibility.

Therefore, on the basis of lack of information alone, old ladies are terminated from title 19, leaving them where they go—we have had a fair hearing. I have no idea how that fair hearing decision will work out because patently it is obvious that according to the rules my client did not provide the information that she was supposed to. Therefore, she should be terminated. But whose fault is it?

Another issue is the case of Mrs. "F" in Danbury. Mrs. "F" has been an active, charitable woman with many friends. She had a heart attack, and she ended up in a hospital. After 3 months' stay in a hospital, she came home to her home to find out that was now occupied by a real estate agency. Her home, her assets had been sold. She had given the power of attorney to one of her best friends, and this best friend had literally sold her home from under her, taken her bank account, sold her assets at auction.

The case is now in the courts, and Legal Services has asked this person for her $10,000, and they may or may not get it. Meanwhile, what happens to this lady? Does she go into a nursing home? What do people from the title 19 say, when it is perfectly obvious that somebody has run away with her money?

There was an illegal transfer which the lady herself did not cause and was not responsible for. She will be denied title 19 because of these problems. There is nobody to look out for her and nobody to take care of her.

So we have two problems. One is the ineffectual nature of the ordinary power of attorney, the lack of, I would say, competent overseeing of the particular instrument. And the other is the fact that the medicaid laws both at the State and Federal level are not clear as to whose responsibility it is to go looking for the miscreant, if I may say that; so I would like some Federal attention to these problems.

Thank you.

Mr. RATCHFORD. We thank you for coming here. As a former commissioner who worked with you, and others at Connecticut Legal Services, some of whom work for us in our Waterbury office, I would take this time to urge support nationally for a service that is so important to the elderly that appears to be endangered in the current budget crisis.

Thank you.

Are there any others who wish to testify? If not, we will declare the hearing closed. For those who wish to submit testimony in

writing, please direct it to our office in Washington. We will then make it a part of the record.

The record will be reviewed by the Select Committee on Aging, by its staff. There may be further hearings, but in any instance we will use today's testimony as the basis for doing what we can to strengthen the law. On the budgetary side, we will use today's testimony to see to it that this type of service is not neglected, with the excuse being a poor economy.

If we allow the economy to be the excuse for not providing services, we are going to have more of the fraud and abuse that we have seen demonstrated all too graphically this morning.

Thank you. The hearing is adjourned.

[Whereupon, at 11:10 a.m., the hearing was adjourned.]