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Fraud Against the Elderly in North Carolina

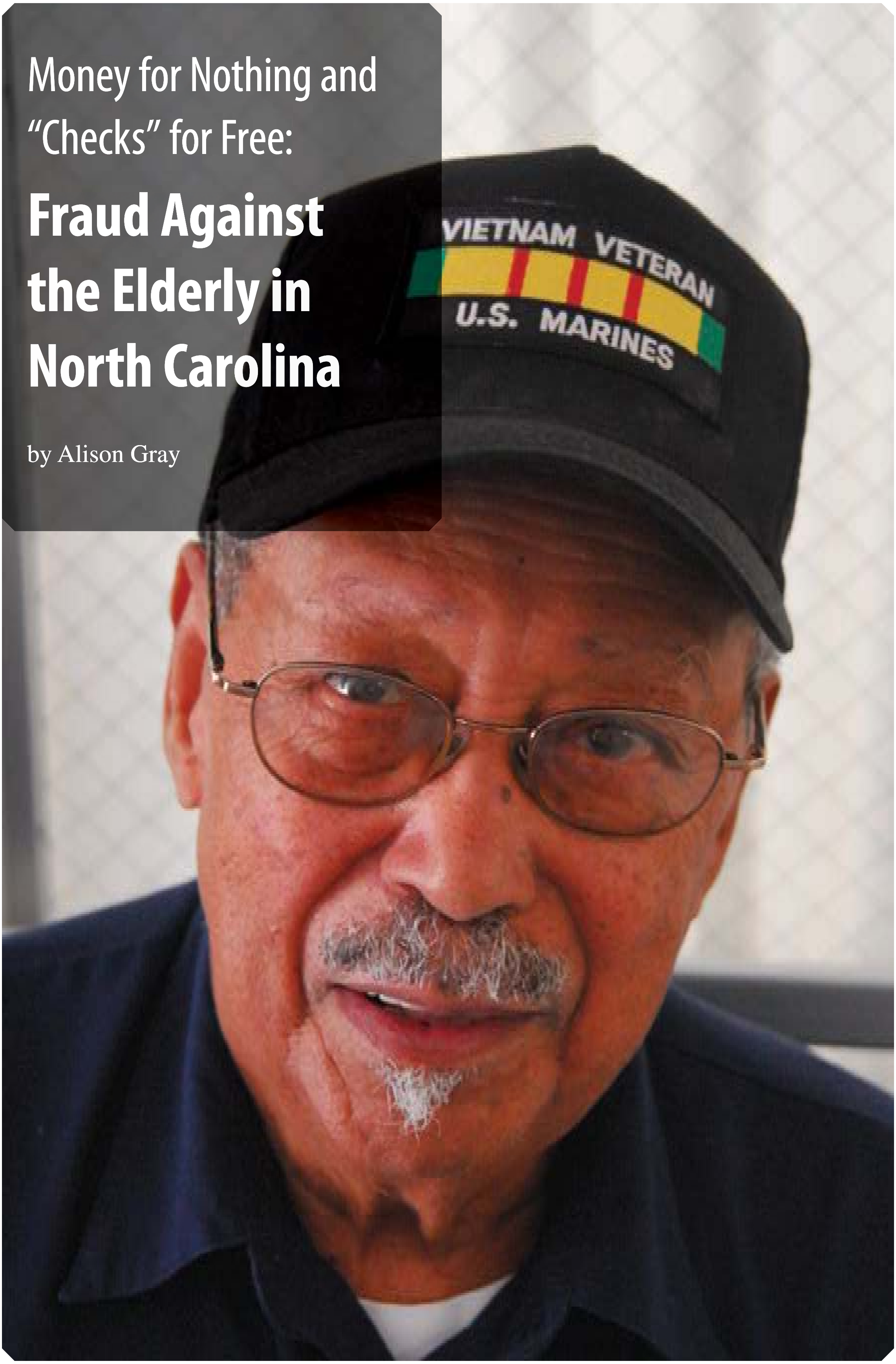
The Art of Aging: Our Elders, Our State

North Carolina Center for Public Policy Research

Money for Nothing and "Checks" for Free:

Fraud Against the Elderly in North Carolina

by Alison Gray



Karen Tam

As they age, North Carolina's Baby Boom generation may find new meaning in the lyrics of the Dire Straits' song, "Money for Nothing," if they come up against the ever-evolving scam artists whose enticing lures of free money and even false love rob them of their life savings. "Elder fraud," or the financial exploitation of older adults, is not a new phenomenon. What is new, however, is the increasing sophistication and international scope of the fraudulent operations, a continually growing population of older and wealthier citizens, and the widening role of the Internet and other forms of advanced technology as a means of perpetrating new, and often hard to detect, schemes. These factors add additional layers of complexity to an already complex problem where the schemes are as varied as the minds of those who devise them, few generalizations can be made about the victims, and the perpetrators range from complete strangers to trusted family members, caregivers, and advisors.

How Big Is the Problem?

Although the actual extent of fraud against the elderly is not clear because it is an under-reported crime, the impact is substantial and far-reaching. On a national scale, consumers lose in excess of $40 billion a year to telemarketing fraud, only one type of the many fraudulent schemes. On an individual scale, persons can lose anywhere from a few dollars to their life savings and homes. Such losses can be especially devastating to senior citizens who have limited opportunities—because of their age and in some cases accompanying health problems—to recover such losses.

North Carolina is no stranger to this crime. According to the Federal Trade Commission, consumers in the Tar Heel state lodged 14,846 fraud complaints in 2007 and 23,128 in 2008. In 2008, 85 percent of these complaints reported an actual total loss of $25,473,738. In addition, North Carolina consumers lodged 6,069 identity theft complaints in 2007 and 7,609 in 2008. Overall, in 2008, North Carolina ranked 24th among the 50 states in the number of fraud complaints, and 21st in the number of identity theft victims. Nationwide, in 2008, 30 percent of all consumer fraud complaints and 26 percent of identity theft complaints were lodged by individuals aged 50 and over.

The Scammers and Their Schemes

In general, the financial exploitation of the elderly is carried out by two broad categories of perpetrators: (1) strangers; and (2) relatives, family friends, and caregivers. **Strangers** run the gamut from (a) sophisticated, international telemarketing check and sweepstake schemes; to (b) local home repair fraud rings that persuade elderly homeowners to undertake needless repairs based on false reports of crumbling chimneys, rotting roofs, and frozen pipes; to (c) Internet-based identify theft through phishing (an electronic attempt to illegally acquire information such as usernames, passwords, and credit card details by pretending to represent a trustworthy organization) and spam e-mails; to (d) the insidious "sweetheart scam" where an opportunistic *con artist befriends an elderly widow or widower and over time feigns false love which they use to gain control of the senior citizen's estate and finances.*

Unlike strangers, ***family members, friends, and caregivers*** *have a legal, fiduciary, or moral responsibility to take care of, not abuse, the older adults within their care and start out from a position of trust. The methods used by these individuals include, among others: (a) intentional theft of money, property, or valuables from the senior citizen's home; (b) "borrowing" money without any real intent to repay it; (c) withholding services or medical care to conserve the elder person's financial estate; (d) selling or disposing of the elderly person's personal property without permission; (e) misappropriating funds received by the elderly in the form of pension or retirement checks; (f) misusing ATM and credit cards; and (g) forcing the senior citizen to part with resources or sign over property.*

Who Are the Victims?

It is human nature to want something for nothing or feel like one is getting a bargain. Whether older adults are necessarily more vulnerable overall to such impulses than other age groups, however, is unclear. Various studies show that different frauds attract different audiences. Although age alone is not necessarily a good predictor of likely victimization, it is clear that many scam artists specifically target the elderly due to the following risk or lifestyle factors. First, the elderly are the most financially well-off population group, and their assets tend to be easy to convert to cash. Second, as retirees, older individuals are more likely to be at home to respond to telephone calls or door-to-door scams. Third, according to the American Prosecutors Research Institute, "most older Americans are just too polite to hang up."

Efforts by North Carolina To Combat Elder Fraud: Prevention and Enforcement

Those with front-line state responsibility for addressing elder fraud—the Attorney General's Office, the Division of Aging and Adult Services, and the Secretary of State, as well as the nonprofit AARP-NC (formerly the American Association of Retired Persons-North Carolina)—view this issue as a high priority for the state. Their combined work mirrors what is widely viewed as a necessary two-pronged approach to combating fraud against the elderly: prevention and enforcement.

Among North Carolina's earlier efforts in ***prevention*** *was the 1995 creation of the Partnership for Consumer Education, a nonprofit organization with authority to secure financial and other support for the statewide education of consumers in identifying and avoiding fraud. In 1998, the North Carolina Senior Consumer Fraud Task Force was formed to bring together federal, state, and local law enforcement, consumer networks, crime prevention agencies, and North Carolina's aging network in an alliance to address the financial exploitation of the elderly in North Carolina. Then in 1999, the N.C. Attorney General's Office was selected to participate in a pilot project funded by U.S. Department of Justice to fight telemarketing fraud. Other* *successful prevention efforts include SCAM Jams—half-day or full-day events where the elderly and other consumers are invited to listen to presentations and discuss consumer-related topics such as identity theft, telemarketing fraud, and investment fraud—and the accompanying "Shred-a-Thons"—where a truck which contains a huge cross-cutter shredder comes to the SCAM Jam or other public venue so that people can safely shred outdated financial documents.*

North Carolina is embracing the role of volunteers in two elder fraud initiatives. First, the Victims Assistance Program uses trained volunteers who are assigned to individuals who are especially vulnerable individuals and/or those already victimized. Second, in 2007, the Fraud Fighters Program began training a number of speakers to go into community groups, civic groups, clubs, and churches and present a 30-minute presentation on elder financial exploitation.

Although preventive efforts are often geared at educating the public, equally important is educating and enlisting the support of local and national businesses, especially financial institutions which are in a front-line position to assist in detecting and halting fraudulent transactions. One success story in this area is a 2005 agreement with Western Union that was negotiated by N.C. Attorney General Roy Cooper and nine other attorneys general on behalf of 48 states to protect consumers from telemarketing scams. Under the agreement, Western Union has agreed to institute better warnings on their materials and in their offices, train their clerks to recognize the telltale signs that a transaction is fraudulent, and provide $8.1 million in funding for consumer counseling. A similar agreement with MoneyGram was reached in summer 2008.

There is no question that fraud against the elderly is a multi-jurisdictional problem that presents a role for local, state, federal, and international law ***enforcement****. Ensuring that all the various law enforcement parts are working in conjunction with each other, however, can be a very difficult process. In North Carolina, the Attorney General's Office does not have original criminal jurisdiction; thus, criminal prosecutions either have to be referred to federal authorities who prosecute telemarketing cases under, for example, wire or mail fraud statutes, or to local district attorneys who prosecute under state laws against obtaining property by false pretenses. Both of these options, however, can be problematic because many times the amount of the loss fails to satisfy federal guidelines, and local district attorneys may be ill-equipped financially and time-wise to handle cases that can be complex and resource-draining in light of the multi-jurisdictional issues. Despite the limitation on its powers, the AG's Office has been very active in prosecuting civil claims under the North Carolina Unfair and Deceptive Trade Practices Act.*

Future Elder Fraud Trends

The expectation is that fraudulent telemarketers will increasingly use computer technology, including spam e-mails, to *contact potential victims because the aging population of Baby Boomers tends to rely on computers twice as much as the current generation of older Americans. The implications of this in terms of fraud against the elderly could be significant. The combination of decreasing costs through technology and the increasing number of seniors, especially seniors with wealth, is a worrisome combination. One foreseeable implication is that law enforcement and prosecutors will have to become fully knowledgeable about how to investigate and prosecute telemarketing fraud and identity theft conducted through the Internet. Such training also will have to include educating prosecutors and investigators on how to obtain and present electronic evidence to juries.*

According to the American Prosecutors Research Institute, another troublesome trend is the scam artists' increased use of "disposable technology such as calling cards, cellular phones, and laptop computers, to avoid identification. [Such] tactics pose immense barriers to successful investigation and prosecution." Finally, consumer advocates in North Carolina are becoming concerned about the increased targeting of elderly people in the early stages of dementia or Alzheimer's disease. Those individuals who are most likely to become repeat or "super-victims" are those with mild dementia because "the community around them has not yet appreciated that they're having memory disorders." The targeting of this subset of elderly creates significant enforcement problems because these victims are unlikely to make good witnesses due to their impaired memory function.

North Carolina's public and private consumer advocates have made great strides in implementing programs and creating ongoing partnerships that address the financial exploitation of older adults. However, from defining mistreatment of the elderly to gathering data on the extent of the problem to finding solutions, all agree more needs to be done.

The Center's Recommendations on the Mistreatment of Elders

Fraud against the elderly, or the financial exploitation of older adults, is just a part of the problem. No one knows how many older adults in America suffer from elder fraud, abuse, and mistreatment. According to the National Center on Elder Abuse, a program of the U.S. Administration on Aging, "while evidence accumulated to date suggests that many thousands have been harmed, there are no official national statistics." Even the definitions vary, and in the absence of a uniform reporting system for states or a nationwide tracking system, information on the prevalence of this problem is hard to come by.

The wolves are often those we least expect: a minister, a daughter, a next-door neighbor, a trusted caregiver. To prepare for its aging population, North Carolina needs to update its laws to protect vulnerable adults age 60 and over. The Baby Boomers are a wealthy generation, and the more money Gramps and Grandma have and the longer they live, the more conniving the wolves will be.

Recommendations

The Definition:

The N.C. Center for Public Policy recommends that the N.C. General Assembly clarify and strengthen N.C. General Statute Chapter 108A, the Protection of the Abused, Neglected, or Exploited Disabled Adult Act. The statute has not been amended since 1981, and it needs to support a broader system of protection for older adults. The definition of abuse should include physical abuse, emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. The act should cover vulnerable adults instead of limiting it to disabled adults. In defining vulnerable, the functional limitations of an individual should be considered in addition to any diagnosis, and the act should also cover vulnerable adults who are at substantial risk of being abused. For those elders that have the capacity to consent to services, the statute should cover voluntary interventions as well as involuntary interventions. And, in keeping with the definition in the federal Older Americans Act, older adults should be defined as those 60 and over.

The Numbers:

The Center recommends that the N.C. General Assembly require reporting on the statewide incidence and prevalence of mistreatment of the elderly, expanding North Carolina's current data collection system.

The Role of the Banks:

The Center recommends that the N.C. General Assembly establish a study commission to examine how the N.C. Commissioner of Banks, the financial management industry, and law enforcement agencies can partner to prevent fraud against the elderly. The study commission should assess whether training for bank employees can help them recognize, report, and reduce the incidence of fraud against the elderly.

The Role of the Attorney General:

The Center recommends that the N.C. General Assembly consider giving the N.C. Attorney General authority to initiate prosecutions for fraud against the elderly. Only five states do not give their Attorney General any authority to initiate local prosecutions—North Carolina, Arkansas, Connecticut, Texas, and West Virginia.

As they age, North Carolina's Baby Boom generation may find new meaning in the lyrics of the Dire Straits' song, "Money for Nothing," if they come up against the ever-evolving scam artists whose enticing lures of free money and even false love rob them of their life savings. "Elder fraud," or the financial exploitation of older adults, is not a new phenomenon.[1] Schemes to bilk unsuspecting senior citizens have been around as long as older citizens with accumulated wealth.

What is new, however, is the increasing sophistication and international scope of the fraudulent operations, a continually growing population of older and wealthier citizens,[2] and the widening role of the Internet and other forms of advanced technology as a means of perpetrating new, and often hard to detect, schemes. These factors add additional layers of complexity to an already complex problem where the schemes are as varied as the minds of those who devise them, few generalizations can be made about the victims, and the perpetrators range from complete strangers to trusted family members, caregivers, and advisors.

How Big Is the Problem?

> *An 88-year-old widow and retired librarian, "MW" has no children, but she sees her niece once a month. One day, MW asked her niece to check her bank stubs. The niece found that MW was 10 days from foreclosure on her house, had spent her entire life savings, had tapped out her overdraft protection of $10,000, and had maxed-out on three different credit cards. After obtaining power of attorney, MW's niece found that her aunt was sending money to more than 90 psychics and sweepstakes and had applied for more credit cards. MW did not understand that this was a problem, and asked her niece to pay the psychics, explaining, "They are my friends."*[3]

Although the actual extent of fraud against the elderly is not clear because it is widely recognized as an underreported crime,[4] it is fair to say that the impact is substantial and far-reaching. On a national scale, the Federal Trade Commission (FTC) estimates that consumers lose in excess of $40 billion a year to telemarketing fraud, only one type of the many fraudulent schemes.[5] The National Fraud Information Center reports that individuals aged 50 and over account for about 48 percent of all victims of this type of fraud.[6] The FTC data for 2008 also show that nationwide 30 percent of all consumer fraud complaints (not just telemarketing) and 26 percent of identity theft complaints were lodged by individuals aged 50 and over.[7]

On an individual scale, persons can lose anywhere from a few dollars to their life savings and homes. Such losses can be especially devastating to senior citizens who have limited opportunities—because of their age and in some cases accompanying health problems—to recover such losses. In a June 15, 2006, speech before the United Nations, Sally Hurme, coordinator of outreach and service for AARP Financial Protection, stated that while most people associate elder abuse with physical violence, financial abuse happens more frequently and:

> "its emotional consequences leave as lasting scars as physical violence. Not only are life savings wiped out with little time to recover financial stability, there is an enormous psychological toll. Loss of assets means loss of independence and security, resulting in being dependent on fam-

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ily or public assistance. Financial abuse isn't just about loss of money. Its ramifications go far beyond the dollars. It causes fearfulness, loss of confidence, depression, hopelessness, and suicide."[8]

North Carolina is no stranger to this crime. According to FTC data, North Carolina consumers lodged 14,846 fraud complaints with the FTC in 2007 and 23,128 in 2008.[9] In 2008, 85 percent of these complaints reported an actual total loss of $25,473,738.[10] Although the FTC's data in this particular instance is not broken down according to age group for each state, studies have shown that senior citizens, especially those aged 70 and older, are more likely than the public at large to fall victim to prize and sweepstakes fraud, the seventh highest fraud complaint category for North Carolina consumers.[11] The remaining categories in the FTC's 2008 top ten list for North Carolina were Third Party and Creditor Debt Collection (1st); Internet Services (2nd); Shop-at-Home and Catalog Sales (3rd); Television and Electronic Media (4th); Credit Bureaus, Information Furnishers, and Report Users (5th); Foreign Money Offers and Counterfeit Check Scams (6th); Computer Equipment and Software (8th); Telecom Equipment and Software (9th); and Health Care (10th).[12] In addition, North Carolina consumers lodged 6,069 identity theft complaints in 2007 and 7,609 in 2008.[13] Overall in 2008, North Carolina ranked 24th among the 50 states in the number of fraud complaints per 100,000 population, and 21st in the number of identity theft victims as recorded by the FTC.[14]

One may smile, and smile, and be a villain.

SHAKESPEARE, *HAMLET* (1600), ACT I, SCENE 5, LINE 108

The Internet Crime Complaint Center (IC3), a partnership between the FBI and the National White Collar Crime Center, compiles statistics on Internet fraud. In 2007, the IC3 received 4,625 complaints from North Carolina with reported losses exceeding $3.6 million. Individuals 50 and older accounted for 26.9 percent of reported complaints. Fifty-three percent of complainants were male and 47 percent were female.[15]

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In addition, the following six North Carolina metropolitan areas ranked among the top 50 largest metropolitan areas nationwide for consumer fraud complaints in 2008, according to the FTC: (1) Dunn (fourth with 827 complaints); (2) Thomasville-Lexington (11th with 1,003 complaints); (3) Salisbury (18th with 822 complaints); (4) New Bern (27th with 673 complaints); (5) Statesville-Mooresville (31st with 829 complaints); and (6) Durham (33rd with 2,566 complaints). The ranking was based on the number of fraud complaints per 100,000 inhabitants for each metropolitan area. Thus, even though Dunn had fewer overall fraud complaints (827) than Charlotte-Gastonia-Concord (6,235), Dunn ranked in the top 50 because it had an overall greater number of complaints per 100,000 inhabitants than Charlotte-Gastonia-Concord.[16]

The following five North Carolina metropolitan areas also ranked among the top 50 for identity theft consumer complaints: (1) Thomasville-Lexington (6th with 437 complaints); (2) Dunn (12th with 250 complaints); (3) Salisbury (17th with 286 complaints); (4) Goldsboro (46th with 194 complaints); and (5) Statesville-Morrisville (49th with 246 complaints).[17] In short, these scams, which often originate in other states and countries, have a very real and significant impact in North Carolina.

The Scammers and Their Schemes

In general, financial exploitation of the elderly is carried out by two broad categories of perpetrators: (1) strangers; and (2) relatives, family friends, and caregivers.

Strangers: The Professional Con Artists

The Office of the North Carolina Attorney General (the AG's Office) has identified numerous types of scams perpetrated by professional scam artists affecting North Carolinians. Strangers run the gamut from (a) sophisticated, international telemarketing check and sweepstake schemes; to (b) local home repair fraud rings that persuade elderly homeowners to undertake needless repairs based on false reports of crumbling chimneys, rotting roofs, and frozen pipes; to (c) Internet-based identify theft through phishing (an electronic attempt to illegally acquire information such as usernames, passwords, and credit card details by pretending to represent a trustworthy organization, such as a bank) and spam e-mails; to (d) the insidious "sweetheart scam," where an opportunistic con artist befriends an elderly widow or widower, and over time feigns false love which they use to gain control of the senior citizen's estate and finances.[18]

Debbie Brantley, Chief of the Elder Rights and Special Initiative Section of the N.C. Division of Aging and Adult Services, relates one story where a 92-year-old Army colonel in Raleigh was bilked out of more than $227,000 in 1994-95 by home repair con artists who convinced him, by bringing in rotten pieces of wood and a jar of termites, that his perfectly sound attic needed substantial repairs. The colonel admitted at the time that he had been defrauded and wanted to aid in the scammers' prosecution. However, after Hurricane Fran struck his neighborhood in 1996, the colonel contracted with the scammers to make the necessary repairs. The scammers then took another $22,000 of the colonel's money.[19]

Scam, give me ten, that's the
move I give you five
Scam, people say it's the way to
stay alive.

—from Jamiroquai's "Scam"

Other schemes are equally devious. Although the "honor" for most prevalent scheme changes yearly, the fake check scam is often identified as the reigning telemarketing scam, according to both Josh Stein, former senior deputy attorney general and now a state Senator, and Susan Grant, former director of the National Consumer League's Fraud Center and now the director of consumer protection at the Consumer Federation of America.[20]

The NCL, which runs its own hotline, has recorded complaints from a number of North Carolinians, including a complaint from a Bessemer City woman, who received a fake check in the mail for $2,950 with a letter that explained that she had won a $45,000 prize for unclaimed money in a Publishers Clearinghouse and Readers Digest sweepstakes. The letter instructed her to call a number for instructions about how to claim the rest of the money.

Grant notes that had the woman followed the instructions, "She would have been instructed to wire some or all of the $2,950 to pay for taxes, custom fees, bonding or some other up-front charge. Only later would she have learned that the perfectly legitimate looking check was actually a fake check and she would have been liable to the bank for the money." In this particular case, the woman was saved by deciding to check with the customer service line at Publishers Clearinghouse which informed her it was a scam.

According to Grant, not only is the average loss to this type of scam significant in monetary terms, approximately $3,000 to $4,000, but also in the severity of other possible repercussions. "The bank could close your account, garnish electronic direct deposits such as retirement or pension checks or any other electronically deposited funds to pay off the debt if current funds are insufficient to do so, and report you to a special credit reporting bureau for checking account abuse, so that if you try to get an account in another bank you might not be able to do so." Grant also notes that the Fraud Center has even seen instances where the victim has been prosecuted for check fraud. "Falling victim to a fake check scam is a really big problem," she says.

The NCL also uncovered complaints from:

- A Mebane consumer who lost $300 after providing his checking account information in response to a bogus e-mail offer of a credit card and $10,000 loan which he was told he could obtain for a certain fee. Grant notes these types of scams often involve individuals who are "in some kind of financial straits and they're looking for credit cards or loans, having been unsuccessful in getting them from local banks."
- A Fuquay-Varina consumer who lost $150 after purchasing a trial sample of some kind of health-related product with a debit card through the Internet. Grant notes that consumers "need to be really careful with trial offers—they can be made by legitimate companies, but they can also be made by scammers just to get your credit card or bank account information and then charge you later." This is especially problematic with debit card misuse, which lacks the same level of protection as credit card misuse.
- A Carrboro consumer who received an e-mail as part of a phishing scam claiming that there was a problem with his on-line Bank of America checking account. Inevitably, these types of e-mails require the recipient to provide personal financial information or even passwords to sensitive accounts. Grant notes that this individual did not fall for the scam because he did not have a Bank of America account, but "the very nature of these types of scams is that they 'phish' around using different names of financial institutions and other well-known companies or organizations such as the Better Business Bureau, even government agencies such as the FDIC, Social Security Administration, and the IRS. A certain number of people to whom they send these e-mails are going to have a Bank of America account, and of those, a certain number will respond. Even if it's a small number, if you send millions of these out, you are going to make some money."

With respect to this last category, Grant warns that, not only can you lose money and have your identity stolen, but these phishing and other malicious e-mails can secretly download programs that spy on you and track your movements in order to gain further information without your knowledge or redirect you to phony websites when you type in a legitimate website address.

One additional area that has become ripe for identify theft con artists is the new Medicare Part D prescription drug program. Consumer advocates in the N.C. Department of Insurance are hearing reports of con artists attempting to gain access to beneficiaries' Medicare or Social Security numbers as well as bank account and credit card numbers by pretending to represent the Department of Insurance's Seniors' Health Insurance Information Program (SHIIP).

Although studies by the AARP reveal that many elderly consumers have a difficult time believing that con artists are anything other than hard-working and honest salespeople or repairmen,[21] there is no question that the perpetrators are callous criminals who, in many instances, target the elderly, as evidenced by testimony from several convicted telemarketing scammers.[22] For example, in testimony before the U.S. House of Representatives Committee on Government Operations' Subcommittee on Commerce, Consumer, and Monetary Affairs, one perpetrator, caught up in the FBI's Operation Disconnect, a sting operation targeting fraudulent telemarketers in the early 1990s, readily admitted:

> We targeted the wealthy and the elderly in our fraud. Retirees were easily accessible by phone, usually at home during the day, and thus easy to re-sell. We found the elderly intent on enlarging their nest egg, their limited income, and often interested in generating money for their grandchildren. Many were former businessmen who had routinely committed on deals over the phone in their previous working days.
>
> The elderly are vulnerable because their memory is poor, they rarely memorialize phone conversations into writing, and only occasionally ask for written guarantees . . . Their most notable weakness is that once they recognize the deceit, they are often too embarrassed to relay the events to their offspring, friends, counsel, and law enforcement.[23]

Another convicted perpetrator testified that:

> In the case of senior citizens, who in most cases, had their lives affected by having lived as children or younger adults through the Great Depression, the key is to work on the greed and insecurity caused by those times . . . because most senior citizens are more trusting of supposedly "caring" strangers, because they grew and matured in less threatening times, they are incredibly easy to con out of everything they have.[24]

And, in yet another case, the prosecutors discovered that the perpetrators' *modus operandi* was to routinely collect newspaper obituaries in order to target the elderly during their period of grief in the hopes that they would be less vigilant against scams.[25]

A story related by Josh Stein, formerly of the N.C. Consumer Protection Division, also reflects these criminals' venality. David Kirkman, a long-time elder fraud consumer advocate and Assistant Attorney General, had worked repeatedly to assist an elderly woman in Franklin who had been defrauded a number of times by telemarketing scam artists. Afterwards, when the scam artists called again, she informed them that Kirkman had educated her, and she was not going to be defrauded again. Minutes later, however, the scam artists called her, pretended to be Kirkman, and told her that he had been mistaken about one particular outfit that actually was legitimate. Kirkman says, "It was only because I happened to call her back a few moments after she spoke with the false David Kirkman that she decided not to go to the bank and wire $30,000 to Costa Rica." As Stein notes, "You can just imagine the unbelievable confusion that results from that kind of deviousness."

Equally disturbing are reports that professional telemarketing scammers often receive assistance from large publicly traded companies who compile and then sell consumer information on scores of vulnerable senior citizens.[26] In one reported case, InfoUSA explicitly advertised lists of "Elderly Opportunity Seekers, 3.3 million older


Visit us online for up-to-the-minute information
about your account . . . and much more.

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people 'looking for ways to make money,'" and expressly characterized another data list as containing names of "gullible" senior citizens "who want to believe their luck can change."[27] The FBI, in several highly successful undercover operations which infiltrated telemarketing "boiler rooms" or phone centers, also discovered that the owners of the boiler rooms typically purchase, often on a weekly basis, lead lists that identify likely victims including "those who have been victimized recently by other telemarketers."[28]

Such lists are sold not only to local perpetrators but also to scam artists worldwide. Stein notes, "For the most part, the perpetrators are not located in North Carolina and, in fact, many of them are not located in the United States." According to the Internet Crime Complaint Center's 2008 data relating to Internet fraud perpetrator demographics,

> Among perpetrators, 77.4 percent were male and half resided in one of the following states: California, New York, Florida, Texas, District of Columbia, and Washington. The majority of reported perpetrators (66.1 percent) were from the United States; however, a significant number of perpetrators were also located in the United Kingdom, Nigeria, Canada, China, and South Africa.[29]

The IC3's data also showed that North Carolina ranked 40th among the states and the District of Columbia with 18.57 perpetrators per 1,000 people, while ranking 15th on total number of perpetrators identified as residing in North Carolina with 1.8 percent.[30]

Stein adds that the international angle is likely to continue to increase as the use of the Internet becomes more and more prevalent, especially among older citizens. "The kind of heartlessness of criminals who would steal from a vulnerable senior has been with us as long as human society has existed, but before it always had to be in a face-to-face context—you had to know the person to get them under your spell, so to speak, but with telephones and even more so with computers—technology has enabled the criminal to search farther and wider for prospective victims," says Stein.

Exploitation by Family Members, Friends, and Caregivers

The second category of perpetrators are those who start out in a position of trust with the elderly such as family members, friends, neighbors, and advisors who have a legal, fiduciary, or moral responsibility to take care of, not abuse, the elderly within their care. According to a report authored by Kelly Dedel Johnson, a criminal justice consultant, the methods used by these individuals include, among others: (a) intentional theft of money, property, or valuables from the senior citizen's home; (b) "borrowing" money without any real intent to repay it; (c) withholding services or medical care to conserve the elderly person's financial estate; (d) selling or disposing of the elderly person's personal property without permission; (e) misappropriating funds received by the elderly in the form of pension or retirement checks; (f) misusing ATM and credit cards; and (g) forcing the senior citizen to part with resources or sign over property.[31]

Such exploitation can come from unexpected quarters. For example, the N.C. AG's Office has reported that in several instances clergy members "have been accused of exploiting their status and the affections and religious sentiments of very elderly people

12 Signs That an Older Adult May Have Been Targeted by Telephone Con Artists

1. Frequent visits to the person's home by overnight courier services.
2. Numerous cheap prizes in the home (*e.g.,* plastic cameras, gold-plated jewelry, vacation certificates, small television sets).
3. Phone bills showing a sudden, unexplained increase in long distance calls to other countries.
4. Several colorful mailings in the home re: international lotteries, puzzle-solving contests.
5. Questions about other countries, foreign taxes, Lloyd's of London insurance policies, wire transfers, "barristers," customs duties, registering bonds overseas.
6. Checking and credit card accounts showing sudden increases in transactions with wire services, numerous unexplained debits or charges from out of state, purchases of money orders, or counter checks in large amounts.
7. Wire transfer receipts showing large sums going to areas near the Canadian border and to various foreign countries.
8. Unexpected or unexplained borrowing patterns; an unexpected inability to pay bills or meet living expenses.
9. A sudden reluctance to be away from home or to have visitors in the home.
10. Visits to wire transfer outlets by a person who normally does not use such services.
11. Unexpected secretiveness or defensiveness regarding any of the above.
12. Social withdrawal, depression, or anxiety that cannot be attributed to other events or conditions, together with any of the above.

Source: Virginia H. Templeton and David N. Kirkman, "Fraud, Vulnerability, and Aging," *Alzheimer's Care Today*, Vol. 8, No. 3, Lippincott Williams & Wilkins, Hagerstown, MD, July-Sept. 2007, p. 276.

There was a time when a fool and his money were soon parted, but now it happens to everybody.
—Adlai Stevenson, *The Stevenson Wit* (1966)

in order to gain control over their finances."[32] In another case reported in Pennsylvania, a bank branch manager and assistant manager were found civilly liable for using undue influence to persuade an 82-year-old customer to consolidate her accounts and deposits totaling $600,000 into a pay-on-death account and to name the bank employees as beneficiaries.[33]

And, in some cases, the "caregivers" walk away with everything but the kitchen sink. In a 2004 case involving a Clinton, North Carolina man, his caretakers took close to $16,000 worth of jewelry, made $14,000 in charges on the elderly man's credit cards, and stole his trailer, valued at nearly $1,000, to cart off the victim's computer, refrigerator, and washing machine.[34]

Although sometimes the victim never even knows that the exploitation is occurring, such as when a caregiver steals a blank check or misuses an ATM card, Johnson reports that, in many instances, the fraud occurs through:

> coercion, intimidation, emotional abuse, or empty promises of lifelong care. Further, they usually try to isolate the victim from friends, family, and other concerned parties. By doing so, they prevent others from asking about the elder's well-being or relationship with the offender, prevent the elder from consulting with others on important financial decisions, and, perhaps most tragically, give the elder the impression that no one else cares about him or her.[35]

Many times the exploitation by family members, caregivers, and advisors is perpetrated through the misuse of legitimate legal and financial arrangements, including joint bank accounts, deed or title transfer, power of attorney or durable power of attorney, and living trusts and wills.[36] Hurme notes that the use of these arrangements makes it exponentially more difficult to detect fraud and recover money because such purportedly legal arrangements raise all sorts of issues such as consent, undue influence, and legal capacity that are complicated to prove in any subsequent litigation.[37]

The Division of Aging and Adult Services' Debbie Brantley adds, "It is appalling that family members use powers of attorney to rob their loved ones. Such cases are difficult because even if Adult Protective Services conducts an investigation and determines that financial abuse has occurred, oftentimes victims resist any enforcement action against their own children. Also, if victims lose all their money and become indigent, they very likely will need some type of public assistance." She notes that this chain reaction not only is detrimental to the victims but also has a substantial impact on the state budget due to the increased need for state services.

Nancy Warren is the program administrator for adult protective services at the Division of Aging and Adult Services in North Carolina. She says there are other ways to protect elders in this situation. "For instance," she says, "a social worker can serve as a liaison to Legal Services to procure a new power of attorney, and mediation and counseling can also be provided to families in distress."

Who Are the Victims?

Who among us has not fantasized about winning the lottery or wished that the sweepstakes car would stop in front of our house? Who also hasn't felt drawn in by the persistent telemarketers' pitch of a "really good deal"? It is human nature to want something for nothing or feel like one is getting a bargain. Whether the elderly are necessarily more vulnerable overall to such impulses than other age groups, however, is unclear.

Susan Grant of the Consumer Federation of America cautions that it is hard to generalize with respect to this issue:

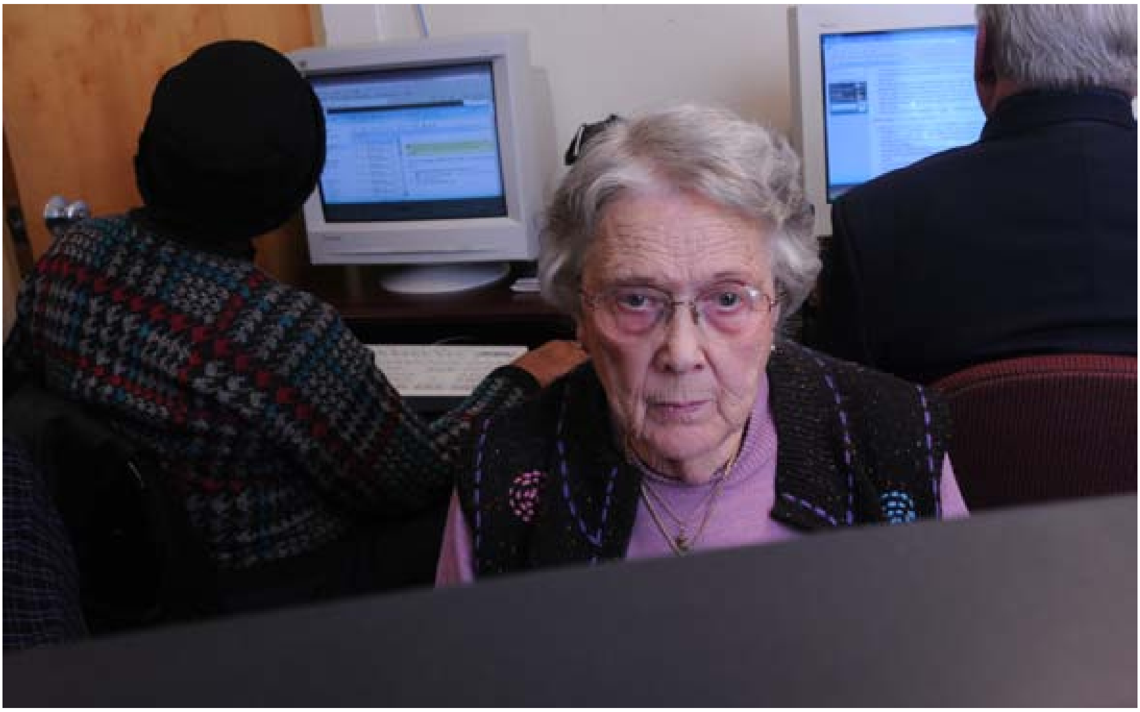
Reprinted with permission from www.cartoonstock.com

> There have been a lot of studies about telemarketing fraud that have exploded some myths about victims being not fully aware of what they are doing or incapacitated in some way or lonely or isolated—that actually isn't true. There will be instances where that's true, but it's not the general description of older telemarketing fraud victims. In fact, experience has shown us that not only are there a wide variety of older people but there's also a wide variety of different scams, and there are audiences for each of them.[38] Some of them, like door-to-door driveway paving scams, may be as simple as people of a certain age being home when the perpetrator comes to the door.[39]

The view that different frauds attract different audiences is supported by a recent study by the AARP Foundation in conjunction with the National Association of Security Dealers Investor Educator Foundation which found that lottery and investment fraud victims have very specific and different psychological profiles.[40] Although anyone can fall victim to these or any other scam, the study confirmed prior research showing that lottery victims are more likely to be female, older (75+), unmarried (often widowed), living alone and less educated (i.e., fewer college degrees) than non-victims.[41] They also tended to: (1) have significantly more negative life events; (2) describe themselves as "very religious" or "extremely religious;" and (3) be more likely to read materials or listen to sales agents whom they do not know.[42] Such victims also are less likely to have, and use, call-screening technology.[43]

In sharp contrast, the study revealed that investment fraud victims are more

> *It is more tolerable to be refused than deceived.*
>
> —Publilius Syrus, *Moral Sayings*
>
> 836 B.C., Translated by Darius Lyman



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likely to be married males with more education and higher income levels than non-victims.[44] Investment fraud victims also are more likely to: (1) listen to sales pitches; (2) rely on their own experience and knowledge when making investment decisions; (3) have experienced more difficulties from negative life events; and (4) be optimistic about the future.[45]

Although age alone is not necessarily a good predictor of likely victimization, as noted above, it is clear that many scam artists specifically target the elderly due to the following risk or lifestyle factors. First, the elderly are the most financially well-off population group and their assets tend to be liquid or easily converted into cash.[46] An article in *SeniorJournal.com* noted that over the next 20-year period, Baby Boomer retirees are expected to have an estimated investment capital of $15.5 trillion which will unquestionably continue to attract scam artists.[47]

Second, as retirees, older individuals are more likely to be at home to respond to telephone calls or door-to-door scams.[48] Especially vulnerable are the elderly "home-bound." As one telemarketing perpetrator admitted, "We targeted to people who were homebound. It was kind of like entertainment for the homebound."[49]

Debbie Brantley notes that for elderly home-bound citizens, the telephone sometimes is their primary vehicle for communicating with other people, and con artists are very adept at befriending them and obtaining the names of their loved ones, which can then be used for future schemes. She describes one case where the con artist learned the name of an elderly man's grandson, and later called pretending to be the grandson who needed his "grandpa" to help him out of a jam by wiring $5,000.

Third, "most older Americans are just too polite to hang up."[50] Helen Savage, associate state director for AARP-NC notes, "The scam artists know that seniors are reluctant to hang up due to long-held cultural practices. The con artist will keep pushing and cajoling and intimidating until the older person gives in." Brantley agrees that "individuals who are seniors now are generally more trusting. They grew up during the Depression when you could leave your doors open and trust your neighbor and take a person at their word."

In a similar vein, Keith Slotter, Assistant Director of Training and Development Division for the FBI Academy, writes, "Most of America's elderly population grew up in an era when trustworthiness was the norm, and a person's word was his bond. They find it hard to comprehend that salespeople could lie in such a straightforward and outrageous fashion, and they are so embarrassed by their losses, they find it difficult to report these crimes."[51]

In addition to the above lifestyle characteristics, one crime prevention expert has pointed to other factors such as "anxieties specific to the elderly—the fear of outliving one's savings, of losing one's financial independence, of failing health—[that] create fertile ground for all types of fraud and financial exploitation."[52]

Brantley agrees that those who become victims run the gamut in terms of their life situations. She described one victim, a retired government worker, who started getting involved in fraudulent sweepstakes after losing her husband in a car accident. The woman, who kept thinking that eventually she'd win, sent over $70,000 to a fraudulent Canadian sweepstakes. "It's really unfortunate. It's not any class; it hits the smartest people. And it just breaks your heart because they're at an age where they're not going to be able to recoup any of this," says Brantley.

Finally, although the elderly exploited by family members, caregivers, and advisors may share many of the same traits as those exploited by strangers, their victimization is different in kind because (1) there is no wish for financial gain that makes them susceptible—often the family member, caregiver, or advisor is robbing them blind behind their backs; and (2) they may fear what the perpetrator may do if they fail to comply with overt commands such as turning over control of their property through the execution of otherwise legal documents.[53]

…Most of America's elderly population grew up in an era when trustworthiness was the norm, and a person's word was his bond.…

Efforts by North Carolina To Combat Elder Fraud: Prevention and Enforcement

> *"Buddy," a 70-year-old divorced male, struggles with a longstanding bipolar disorder that has been controlled for years with medications, though he currently does not have a psychiatrist. His estranged daughter is now involved in his care after acquiring power of attorney. After following Buddy for a year, experts at Memory Clinic found him to be stable and with no diagnosis of dementia. But, Buddy lost $125,000 in a phony overseas sweepstakes after refusing to listen to his daughter, lawyer, or local police. Eventually, Buddy's name became a household word for scammers, who referenced him when calling other potential victims. One year later, Buddy was diagnosed for dementia based on his dealings with the lottery scammers. But, Buddy still scored well on dementia testing.*[54]

For a number of years, fraud against the elderly has been on the radar of a number of North Carolina governmental agencies including, for example, the AG's Office, the Division of Aging and Adult Services, and the Secretary of State, as well as consumer advocacy groups such as the AARP-NC and the Better Business Bureau Consumer Foundation. Those with front-line state responsibility for addressing elder fraud view this issue as a high priority for the state. The Division of Aging and Adult Services' Debbie Brantley states that "elder fraud is definitely a top priority and should be in light of the magnitude of the problem." Josh Stein, formerly of the AG's office, agrees, saying, "We care a great deal about fraud of any type and any type of victim and we work hard to fight fraud in whatever form it takes, but we do believe that it is appropriate to give special attention to senior victims who constitute a disproportionate percentage of victims."

The combined work of the above and other North Carolina entities mirrors what is widely viewed as a necessary two-front approach to combating fraud against the elderly: prevention and enforcement. As noted by Anita Flores, formerly with the AARP Foundation, "Prevention and enforcement are equally important and equally difficult in terms of prosecuting people on the law enforcement end and changing people's behavior on the prevention end."

An ounce of prevention is worth a pound of cure.

—Benjamin Franklin

Prevention: Prior and Ongoing North Carolina Initiatives

One of North Carolina's earlier efforts in prevention was the 1995 creation, by former Attorney General and then-Governor Michael Easley, of the Partnership for Consumer Education, a nonprofit organization with authority to secure financial and other support for the statewide education of consumers in identifying and avoiding fraud.[55] Although the Partnership was designed to address all types of fraud, it chose to focus on telemarketing fraud during its first year in light of a significantly increased prevalence of reported severe financial losses to that crime across the age spectrum.[56] A key partner in this early educational initiative was the North Carolina Cooperative Extension Service, whose county agricultural agents were uniquely situated to provide outreach education in all 100 North Carolina counties and the Cherokee Reservation after being trained and provided anti-telemarketing materials by Extension Specialists from N.C. State University and Consumer Protection Specialists from the N.C. Department of Justice.[57]

In contrast to this early fraud prevention initiative, which was designed to educate North Carolina consumers of all ages, in 1998, the AG's Office, the Division of Aging and Adult Services, and AARP-NC established the North Carolina Senior Consumer Fraud Task Force to focus specifically on North Carolina's elderly population. The Task Force, which was patterned after a successful Georgia model, was designed to bring together federal, state, and local law enforcement, consumer networks, crime prevention agencies, and North Carolina's aging network in an alliance to jointly address the financial exploitation of the elderly in North Carolina.[58] The primary goals of the Task Force are:

- To identify consumer fraud and deceptive trade practices in North Carolina in order to enhance awareness and prevention.
- To educate older North Carolinians about fraud and how to avoid being victimized and also what to do if they are defrauded.
- To use volunteers as a resource for law enforcement in the fight against fraud.
- To link various agencies to provide updated information on fraud and deceptive practices occurring in the state that target seniors.[59]

Bob Jackson, the State Director of AARP-NC, notes that the Task Force, which meets on a quarterly basis, has been very helpful in keeping all the various entities concerned about and instrumental in addressing elder fraud informed on statewide occurrences. "Everyone has an opportunity to learn from each other about what is happening in their communities," says Jackson. In addition, the Task Force has created a statewide e-mail distribution list that can be used in a fast and cost-effective manner to alert members and, in turn, thousands of their constituents, to new scams or important issues in this area. One report estimated that the e-mail alerts, typically originating in the AG's Office, reach approximately 475,000 individuals or nearly one quarter of the state's population.[60] In addition, many members of the Task Force, which receives no state funding, volunteer their time to give numerous speeches throughout the state to educate consumers and businesses about fraud against the elderly.

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In December 1999, a year after formation of the Task Force, the AG's Office was one of five governmental entities nationwide selected to participate in a pilot project funded by the Bureau of Justice Assistance in the U.S. Department of Justice, to fight against telemarketing fraud.[61] The AG's Office used the federal grant to establish a telemarketing fraud project within its Consumer Protection Division.[62] With respect to prevention efforts, the telemarketing fraud project's goals were to: (1) increase the availability of speakers and special consumer education materials addressing telemarketing fraud for the public at large and the business community; (2) identify and educate key businesses on methods to identify fraudulent schemes; and (3) train a corps of volunteers to continue these efforts.[63] The federal grant also had a law enforcement collaboration component which drew several professions and senior care agencies into the senior fraud awareness approach.

In implementing these goals, the telemarketing fraud project relied heavily on the existing Task Force to help in the dissemination of Senior Fraud Alerts using the above described distribution list.[64] In addition, the fraud project also created special public service announcements (PSAs) funded by settlements reached in civil actions against fraudulent businesses. Moreover, its staff gave numerous speeches throughout the state and alerted newspapers regarding classified advertisements involving fraudulent businesses that promised loans and credit cards for individuals with low credit ratings.[65] Stein says that newspapers are alerted to fraudulent ads through the N.C. Classified Advertising Association, which not only

> *[T]he best way to fight fraud is to stop it from happening in the first place by educating consumers.*
>
> —Roy Cooper, N.C. Attorney General

How do we as individuals and as a nation measure the value of life in old age? And why have we not done more to protect and defend our most vulnerable elders?

The mythology and customs of aging are ancient and varied. At one end of the spectrum is the wise elder, cared for and revered by the community. At the other is the frail elder, consuming precious food, no longer able to contribute to the tribe's needs, shunted off on an ice floe. We take solace in believing that we are not a nation that abandons our elders. But we have overestimated our civility. Because in the end, we subject many of our old people to a plight as bad as, if not worse than, the ice floe.

— MARIE-THERESE CONNOLLY, "A HIDDEN CRIME," *WASHINGTON POST*, SUNDAY, JANUARY 27, 2008, P. B1

will forward the fraud project's e-mail alerts to North Carolina papers, but also to papers in other parts of the country as well. "So it ends up having a real ripple benefit," says Stein.

With the exception of the PSAs—of which there are far fewer following North Carolina legislation prohibiting the use of a state agency or the voice of an elected official in such announcements—these and other efforts of the fraud project continue for now. However, Stein notes, "There are only trace amounts of the federal DOJ grant left at this point. The Governor's Crime Commission has recognized the importance of this effort, so they picked up funding with a two-year grant [2006-08]," which has been renewed so that the program will continue until June 2010. But, if funding sources dry up, the two consumer protection specialists and one support staffer will no longer be able to continue work in this area.

Other successful prevention efforts include SCAM Jams which are sponsored by AARP-NC in conjunction with numerous local, regional, and state offices including the Attorney General, Secretary of State, Department of Insurance, State Treasurer, and Area Agencies on Aging. These are typically half-day or full-day events where the elderly and other consumers are invited to listen to presentations and discuss consumer-related topics such as identity theft, telemarketing fraud, and investment fraud. According to Greg Tanner, Associate State Director of Community Outreach for AARP-NC, these events are held every other week, if not every week, between March and November and cover regions from Murphy to Manteo. "There is no destination that we will not go to get the word out," he says. Sometimes "Shred-a-Thons" also are held in conjunction with the Scam Jams. Tanner explains, "For those events, we bring along the Shred-a-Thon truck which contains a huge cross-cutter shredder so people can bring their outdated financial documents that contain personal information with them and shred them in a safe manner."

Despite the success of the above and other consumer education efforts, one abiding frustration is the need for constant vigilance in this area. Unfortunately, elderly consumers, like many other age groups, suffer from an "out of sight, out of mind" syndrome. As Jackson notes:

> [P]ublic education is always critical but it's tough to educate the public broadly on a regular basis. People unfortunately will see something one week and learn they have to watch out for that type of scam, and three months later it's out of their minds and they fall victim to it. It is tough to change a person's behavior. So we just need to have that constant education about the importance of making good decisions and looking into investments and knowing who you are giving money to.

The need for constant vigilance also can make consumer education a costly endeavor unless the state and consumer organizations are able to rely on volunteers. Flores notes that the AARP Foundation simply would not be able to do its many types of consumer education work without thousands of volunteers. Stein agrees that "volunteers play a very important role." As he explains, "[The AG's Office is] law enforcement. We do a lot of consumer education, but managing a nationwide consumer education program to counter the scam artists is not something that we're going to be the best suited to do. That's where we reach out to the AARP Foundation and others to get them to partner with us."

Prevention: Recent North Carolina Initiatives

North Carolina also is embracing the role of volunteers in two elder fraud initiatives. First, the Division of Aging and Adult Services has established the Victims Assistance Program in collaboration with the Attorney General's Office which uses trained volunteers who are assigned to individuals who are especially vulnerable and/ or those already victimized. The victim's assistant works intensively with individual consumers to change their behavior with respect to responding to scams, monitors their ongoing financial situation, takes steps to further shield them by changing their phone and bank account numbers and enrolling them on the Do Not Call registry, and works with the victims to try to get charge backs or reverse wire transfers.

In July 2003, the N.C. General Assembly enacted a state "Do Not Call" law that provides that North Carolinians who sign up for the national Do Not Call Registry will automatically benefit from state protections as well as the federal protections which are incorporated into the state law. In addition, it provides individual consumers and the N.C. Consumer Protection Division in the AG's Office with power to enforce

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the law against telemarketers through state court actions. In addition to preventing legitimate companies from pestering consumers, the primary anti-fraud role of the Do Not Call Registry is to serve as a warning bell for consumers. Stein says, "It has a lot of educational benefit because one of the things we say when working with victims is that if they are on the Do Not Call Registry and they receive a telemarketing call, then they know the callers are up to no good because, from the very outset, they are breaking the law."

In addition to the collaboration between the Division of Aging and Adult Services and the AG's Office, Brantley notes that they are also working with local law enforcement to spread the word. She states that such linkage is critical because often the first person victims might think to call may be the local sheriff's office. So in addition to training volunteers, they are printing bulletins to put where the local police dispatchers work so that local folks will know the victim's assistance program exists and know whom to call for assistance.

Another key linkage is with the county departments of social services because an individual who has lost a large sum of money may very well spend down to being eligible for Medicaid. For example, Brantley knows of one elderly woman in Eastern North Carolina who was estranged from her family and got involved in fraudulent sweepstakes deals. She ended up losing every penny of a sizable estate, went on Medicaid, lost her home, and is now in a long-term care facility. Warren, the administrator of Adult Services, emphasizes the importance of this point of contact. She says, "This is when the need for protective services can be evaluated, and if appropriate, a referral can be made. There is a need for prevention, enforcement, and protection."

Such extra efforts could have significantly positive results because individuals who have fallen victim to scams often are re-targeted and remain vulnerable to fraudulent inducements. Stein notes that the hope is that the victim's assistance program will truly help those individuals who are "super victims," i.e., those who get "reloaded" in the parlance of the perpetrators. As he explains, the con artists "come back at them again and again with a slightly different twist on the same scam. We found a simple phone call explaining that what happened was a crime and that you've been victimized wasn't enough to protect these people."

—continues on page 28

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Reloads, Super Victims, and North Carolina's Fraud Victims Assistance Project:

Excerpts from "Fraud, Vulnerability, and Aging: Case Studies"
By Virginia H. Templeton and David N. Kirkman

Reloads and Recovery Scams

The staff of the North Carolina Attorney General knows of one victim of telemarketing fraud in the state who tried to wire $250,000 to Canadian con artists in a single transaction. Reports of that kind of telemarketing scam remain quite rare. What the Attorney General and his law enforcement colleagues throughout North America usually observe is that elderly super victims of fraud lose their funds in a long series of transactions. The fraud artists accomplish this through a technique they call "reloading." Examples of this are follow-up phone calls from phony U.S. Customs agents or FedEx officials.

> *It appears that one of the surest ways to become a personal fraud victim is to have been a victim.*
>
> – Richard M. Titus, Ph.D.[1]

Each scam in the series sets up the next. When directing the victims to wire money overseas to pay taxes on the award, the scammer may mention "other expenses" that might arise before the prize is delivered, such as customs duties or insurance fees. Later in the series of scams, when the victim expresses skepticism or claims to be out of funds, the criminals shift tactics and exploit the victim's anxiety over having lost so much money already. The ensuing reloads are called recovery scams. In reloading the victim for yet another round of fraud, the scammers may claim to be foreign lawyers or law enforcement officials who have shut down the fraudulent operation and recovered the victim's money and prizes. They state that all the victim needs to do to recover his or her lost payments and undelivered prizes is to pay the taxes on the prizes, duties on the check, retainer fees for the phony lawyer, insurance on the delivery of the prize, etc. The North Carolina Attorney General's Office has encountered desperate victims who mortgaged their homes to make these requested payments.

In home repair fraud transactions, the scammers reload by asking to visit another part of the home to determine whether additional repairs are needed. They repeatedly invoke the specter of water intrusion and water damage. They will ask to visit the attic to determine whether the same water seepage that necessitated a new roof has damaged the rafters and the roof trusses inside the attic. As they emerge from the attic, they lie to the home owner about the rafters and trusses needing extensive bracing and, thereby, gain permission to start another expensive and unneeded project. Later, after invoking the specter of possible water damage yet again, they visit basements and other parts of the house, returning with warnings about other needed repairs.

Home repair scammers, like fraudulent telemarketers, execute recovery scams. Typically they are initiated via the Inspector Scam, wherein a member of the fraud group never seen by the victim arrives and says that the earlier repairs were done incorrectly and could result in the house being condemned if not redone immediately. Then other members of the fraud ring show up and perform the same unnecessary repairs all over again.

The story, above, about the supposed customs official in London's Heathrow Airport is just one example of the many "reload" ploys executed by the Nigerian 419 fraud groups. In 2005, the staff of the North Carolina Attorney General encountered citizens to whom these scammers represented themselves as officials with the Department of Homeland Security. Attempting a new form of reload scam, the bogus officials told them that the funds were sequestered in a special Treasury Department account in Washington, DC, that the funds' origins appeared unusual, and that a special audit needed to be conducted to ensure that they did not represent the proceeds of drug trafficking or fundraising for terrorists. Then they informed their victims that they had to pay the costs of the special audit themselves if they wanted the funds released; otherwise it would be sent back to the country of origin. The costs had to be wired to Washington, DC, immediately. Making this ploy even more believable was the ability of the overseas scammers to "spoof" phony caller ID displays on the victims' phone sets. It read "Dept. of Homeland Security" and gave a Washington, DC area code, 202 (See Case 1).

Case 1: The Florida-Mountains Resident

- 82-year-old part-time resident of NC mountains with background in finance; very bright; lives alone; resides half the year in Florida.
- Lost $110K to overseas sweepstakes and lottery scammers; poised to wire $30K more but bank convinced her to call state Attorney General first
- She told scammers the Assistant Attorney General had convinced her they were frauds; they called her back and convinced her they were the Assistant Attorney General and told her to "Go ahead and wire the money!"
- Real Assistant Attorney General then called; convinced her again not to send money
- Local fraud victim assistance volunteer placed with her that same day
- Transfers ceased

Some Traits and Behaviors of "Super Victims"

In the course of investigating and prosecuting the crimes described above, North Carolina law enforcement officials have encountered certain patterns among the repeat victims. These patterns include the following:

1. Victims tend to be bright, accomplished and capable of conducting their day-to-day affairs without assistance.
2. Victims tend to be in their late 70s or older.
3. Victims often live alone.
4. Victims are familiar with warnings about con artists who might prey upon the elderly.
5. Victims might acknowledge being scammed in earlier incidents, yet succumb to a similar fraud later that same day.
6. Victims often are quite secretive about their transactions.
7. Victims might promise to call law enforcement officials if the scammers contact them again, yet they fail to do so.
8. Many victims neglect their family, church or community activities as they await another call or visit from the con artists.
9. Most repeat home repair fraud victims are quite fond of their victimizers and resistant [to] suggestions that they have been cheated.
10. In the middle and latter stages of a series of scams, many victims respond as if by rote when directed to wire more money overseas or to pay for another home repair.
11. Most victims are worried about the adequacy of their savings or their abilities to remain in their own homes.
12. Repeat victims of phone fraud or home repair fraud often are victims of the other forms of elder fraud.
13. Victims worry about their adult children's reactions to the transactions and seem primed to believe that warnings about their victimizers from children or law enforcement are motivated by the latter's greed or officiousness.
14. Victims seldom complain to law enforcement about being defrauded; reports often are submitted by others who spot the signs of fraud.
15. Repeat victims tend to receive enormous numbers of pitches for lotteries, sweepstakes, and other contests in the mail; these mailings are openly displayed in their homes.
16. Cross-border fraud victims make repeated visits to MoneyGram or Western Union wire transfer counters at their local grocery store.
17. Home repair fraud victims often have the same trucks and vans parked in front of their homes; the "tradesmen" who own those vehicles often drive off when the home owner has a visitor.
18. In a strategy, they often refer to as "blocking the exits," the scammers frequently persuade victims that it is a bad idea to mention the transactions to anyone. For example:
    - Telling friends about the pending arrival of a big prize check could cause one to be robbed while taking the check to the bank.
    - Telling local officials about home repairs could cause them to send the building inspector out, and he might condemn the house before it is fixed.
    - Telling family members about the transactions might cause them to take the checkbook away.
    - Asking a consumer protection agency about the company could cause the agency to seize the check before it is delivered to ensure payment of state taxes.

Case 2: Retired Executive of Top-10 Corporation

- 80-year-old retired executive of a multinational company
- Married; avid golfer; appears very sharp; "high functioning"; and self-assured
- Wired $135K overseas thinking he had won an international lottery; more than 20 money transfers in 7 months
- Sent additional 15K in cash via FedEx after banks and wire transfer companies cut him off
- Ignored all advice from family, CPA, an Assistant Attorney General, and an FBI agent and demanded they prove to him each caller was a crook
- Kept sending money
- Trained fraud victim assistance volunteer assigned. Helped him look for signs of fraud rather than signs the callers were legitimate
- Transfers stopped

North Carolina's Senior Fraud Victims Assistance Project

The North Carolina Division of Aging and Adult Services and the North Carolina Attorney General secured a 2-year Governor's Crime Commission grant to train and place special volunteers with elderly repeat victims of telemarketing fraud last year. The grant is funded through the federal Victims of Crime Act.[3] The volunteers' responsibilities are as follows:

1. Become friends with the victims and counteract the false friendship that the scammers employ.
2. Help victims to recognize the telltale signs that a pitch may be fraudulent rather than looking for the signs (created by the scammers themselves) that the pitch may be legitimate.
3. Help victims to change bank accounts and phone numbers, thereby severing important links with the scammers.
4. Help victims to obtain charge-backs on unauthorized bank debits or to reverse wire transfers that have not been picked up by the scam artists.
5. Place victims' phone numbers in the national Do Not Call Registry and their mailing addresses in the Direct Marketing Association's Do Not Mail Registry; impress upon victims that marketers who contact them are not honoring those registries and should not be trusted.
6. Spot other frauds and scams that might be occurring and report them to authorities.

This program, still in its early stages, has produced some promising results. Of the nine victims who have been assigned volunteers since the initiation of the program, only one has been revictimized by telemarketing con artists.[4]

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Footnotes

[1] Richard Titus, *The Victimology of Fraud*, a paper presented at the Restoration of Victims of Crime Conference, Melbourne, Australia, Sept. 1999.

[2] Neal Shover and Glenn Coffey, *The Origins, Pursuits and Careers of Telemarketing Predators,* Final Report to the National Institute of Justice, U.S. Department of Justice, Washington, DC, 2002.

[3] 42 U.S.C. § 10601 *et seq.*

[4] As of publication, 45 victims have been assigned volunteers, and only three have been revictimized.

I didn't want the one-time (victim),
I didn't want the two-timer.
I wanted to sell these people 10 times!

– Interview quote from a telemarketing con artist[2]

—*continued from page 24*

Second, AARP-NC and the AG's Office are working together to develop a Fraud Fighter's Program. In July 2007, they began training a number of Fraud Fighter speakers to go into community groups, civic groups, clubs, and churches and present a 30-minute presentation on elder financial exploitation. As Jackson explains, "This is a shortened version of the Scam Jam which enables us to reach more people throughout the state in smaller groups." As part of this initiative, the AARP-NC and AG's Office have created an e-mail database of fraud fighters who monitor scams in their local communities across the state. For example, the Fraud Fighters monitor the types of fraudulent mail and phone calls received by members of their community and then report back to the AG's Office for investigation. Jackson says, "The goal is to have a pool of hundreds of people across the state with their eyes and ears open to what's going on in their communities."

Prevention: The Role of Businesses

Although preventive efforts are often geared at educating the public, equally important is educating and enlisting the support of local and national businesses, especially financial institutions which are in a front-line position to assist in detecting and halting fraudulent transactions.

One success story in this area is a 2005 agreement with Western Union that was negotiated by N.C. Attorney General Roy Cooper and nine other attorneys general on behalf of 48 states to protect consumers from telemarketing scams effectuated through fraudulent wire transfers by adequately warning consumers who wire money, educating high-risk consumers, and changing Western Union's practices. This agreement was sought in light of an analysis by North Carolina and six other states finding that "nearly one-third of Western Union transfers of more than $300 from the U.S. to Canada, where many telemarketing rings operate, were the result of fraud in 2002 [and] [a]lmost 65 cents of every dollar wired from North Carolina to the four largest provinces in Canada went to fraud artists."[66] According to Stein, under the agreement, Western Union has agreed to institute better warnings on their materials and in their offices, train their clerks to recognize the telltale signs that a transaction is fraudulent, and pay $8.1 million for consumer counseling to be coordinated by the AARP Foundation over a five-year period.

In summer 2008, according to Kirkman, North Carolina's assistant attorney general, 47 states and territories entered into an agreement with the MoneyGram wire transfer network that is similar to the deal previously struck with Western Union. Says Kirkman, "MoneyGram will be paying $1 million to support the same AARP Foundation senior fraud prevention initiative established under the Western Union agreement. Under both agreements, MoneyGram and Western Union will block overseas wire transfers by vulnerable seniors if the state AG identifies them as fraud victims and requests a block. This has been a very helpful anti-fraud tool."

Another important partnership has developed between the AG's Office, the Division of Aging and Adult Services, and the State Employees Credit Union (SECU), in which one out of every seven North Carolinians is a member, to train SECU employees to recognize and report signs of financial exploitation of their elderly members.[67]

North Carolina consumer advocates have been less successful to date in getting the North Carolina Bankers Association and its local and national member banks on-board. However, efforts by banks in other states have demonstrated the huge dividends in taking such steps. According to Susan Grant, director of consumer protection at the Consumer Federation of America,

> West Suburban Bank in Illinois has demonstrated that if you talk to your customers better about these scams, you can really reduce the instances of fraud. In one year, it reduced losses to these scams by 85 percent by doing three things: (1) training the tellers to talk to people more fully

> when they ask questions and explain the difference between funds "being available" and the check "being good"; (2) handing everybody who comes in to deposit a check of $1,000 or more or withdraw $1,000 or more a flier about fake check scams; and (3) using technology in the back room to try to flag suspicious checks. That's an example of business stepping up to the plate and protecting itself and its customers and there needs to be more of that.

According to the EdComm Group, which provides training on elder fraud to the banking industry, 15 states require all businesses, including banks, to report any suspected abuse: Delaware, Indiana, Kentucky, Louisiana, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Wyoming.[68] Four other states—California, Florida, Georgia, and Mississippi—require bank employees to specifically report financial elder abuse. For example, in January 2007, California's Financial Elder Abuse Reporting Act of 2005 (FEAR Act) went into effect.[69] The FEAR Act requires all employees of financial institutions to report suspected financial abuse of the elderly and dependent. A financial institution's willful failure to do so could result in a fine of between $1,000 and $5,000.[70]

Grant notes that there are other examples of situations where financial institutions and other types of businesses could be much more proactive. For example, phishers will use e-mail addresses and web addresses that are very similar to the addresses of whomever they are impersonating. Grant suggests, "If banks and other entities that are commonly spoofed by phishers bought up all the website addresses that were remotely similar to theirs, it would deprive the phishers of the ability to use those addresses. That's an example of a small investment that could reap huge rewards in terms of protecting a company's brand name from being abused while at the same time protecting their customers from being fooled and defrauded."

Karen Tam

Another helpful action would be the posting of information by on-line auctions such as eBay about where to report fraud. Grant notes, "There are lots of things that businesses can do—depending on the kind of fraud. They have a responsibility morally and also because we all end up paying—all of the customers end up paying ultimately."

Enforcement

There is no question that fraud against the elderly is a multi-jurisdictional problem that presents a role for local, state, federal, and international law enforcement. As Stein states, "It's really all hands on deck." Ensuring that all the various law enforcement parts are working in conjunction with each other, however, can be a very difficult process. Lessons learned from involvement in the Telemarketing Fraud Prevention Project were that enforcement efforts: (1) appeared most successful in jurisdictions where the perpetrator's fraudulent operations were located; and (2) faced greater challenges where the fraudulent operators and the victims were located in multiple jurisdictions because this factor requires more interagency cooperation and greater resources.[72]

In North Carolina, unlike a number of other states, the AG's Office does not have original criminal jurisdiction; thus, criminal prosecutions either have to be referred to federal authorities who prosecute telemarketing cases under, for example, wire or mail fraud statutes,[73] or to local district attorneys who prosecute under state laws against obtaining property by false pretenses.[74] Both these options, however, can be problematic because many times the amount of the loss fails to satisfy federal guidelines, and local district attorneys may be ill-equipped financially and time-wise to handle cases that can be complex and resource-draining in light of the multi-jurisdictional issues.[75]

According to Stein:

> [W]here there are the face-to-face home repair con artists—you absolutely would need a local district attorney to prosecute, and the AG's Office has a history of working with local DAs to break up home repair fraud rings. But when you have a telemarketing fraud unit that is based in Canada, it is very difficult for a local DA to achieve a prosecution. That's where it's important that the state and federal governments enhance their collaborations with Canadian law enforcement so that, through extradition of suspects to the U.S. or original prosecutions in Canada, more enforcement actions can be taken.

Stein is unaware of any efforts to expand the jurisdiction of the AG's Office to include criminal prosecutions.

Despite the limitation on its powers, the AG's Office has been very active in prosecuting civil claims under the North Carolina Unfair and Deceptive Trade Practices Act.[76] According to Stein, the AG's Office has used the authority very successfully over the last few years to prosecute more than 30 different actions that dealt with shutting down telemarketing and other scammers who are targeting North Carolina's senior citizens. For example, North Carolina's AG Office was the first to pursue Canadian telemarketers in 1994—Regent, Inc., and Darrin Lake of Toronto—and they have filed a half-dozen other cases against Canadian entities since then and currently are planning another.

Also, in October 2006, N.C. Attorney General Roy Cooper obtained a preliminary injunction against two sister companies who were targeting seniors using deceptive sales practices to pressure them into buying living trusts and annuities unsuitable for their life circumstances. In one instance, an elderly Charlotte couple was induced to cancel an insurance policy, cash in their investments, and put all of their savings into an annuity that the agent promised would earn 7 percent interest. The agent failed to disclose, however, that the promised rate was good for only one year and that early withdrawal came with steep penalties. Only later, when the couple considered buying a house using funds from the annuity, did they learn that they would forfeit nearly 20 percent of their money in fees.

In another instance, an elderly woman in Cary was induced to cash in a $67,000 IRA that she depended on to provide $1,700 a month to cover her living expenses. The agent fraudulently informed her that the IRA would be depleted in five years while the annuity would not and failed to disclose that switching to the annuity would cut her monthly income from $1,700 to $300. As Stein noted, "These companies were going after seniors because these were folks who were starting to focus on what their financial estate was going to look like, and they were able to scare them about probate as opposed to a living trust and strip them of their wealth and put them in unsuitable annuities."

> *Because of the multi-state nature of crime, telemarketing fraud is a nationwide problem requiring the commitment of state and federal law enforcement. Vigilant law enforcement is necessary to respond to telemarketing fraud, to punish those who perpetrate it, and to deter others from entering the arena.*
>
> —Kathryn Landreth,
> U.S. Attorney for the District of Nevada

In addition to focusing on crimes and deceptive practices that have already occurred, one enforcement area that needs additional attention is preventing lead or list brokers—who locate, recommend and select lists of contact information for targeted groups of consumers (e.g., elderly consumers) from vast consumer and residential databases—from selling lists of elderly targets to illegitimate businesses for use in perpetrating the fraud. According to Stein, this is a potentially difficult area for the AG's Office because "the line between civil and criminal can be close." However, he noted, "We are aware of purely criminal enterprises that engage in penny-ante fraud of $10 or less just in order to create lists in order to sell to the Canadians for bigger telemarketing fraud scams. They are looking for a certain potential victim and if you

—continues on page 34

Mebane Rash

Adult Protective Services: Abuse, Neglect, and Exploitation

County departments of social services receive and evaluate reports of abuse, neglect, and exploitation to determine whether disabled adults are in need of protective services and what services are needed, as required by North Carolina General Statute Chapter 108A, Article 6. Disabled adults or disabled emancipated minors present in North Carolina who are reported to be abused, neglected, or exploited and in need of protective services are eligible to receive this service without regard to income. Adult protective services (APS) receives reports alleging mistreatment, evaluates the need for protective services, and plans with and supports the disabled adult and the family or caregiver to identify, remedy, and prevent problems that result in abuse, neglect or exploitation. APS also mobilizes essential services on behalf of the disabled adult. Evidence of mistreatment is reported to the local district attorney and regulatory agencies, and court action is initiated as necessary to protect the disabled adult.

The North Carolina APS law requires that "*any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director*." Therefore, the first response when one suspects exploitation of a disabled adult's assets should be to contact APS at the Department of Social Services (DSS) in the North Carolina county where the adult is living. The local county directory is available online at *http://www.ncdhhs.gov/dss/local/index.htm* The reporter's name will be kept confidential unless a court of law requests the name. It is the responsibility of APS to notify the district attorney and law enforcement.

General Indicators of Exploitation:

North Carolina General Statute Chapter 108A-101 defines 'exploitation' as the "*illegal or improper use of a disabled adult or his resources for another's profit or advantage.*" General indicators of exploitation include:

- The victim has a sudden change in behavior.
- The victim tells others someone is taking advantage of them.
- The victim develops new close relationships with someone brand new in their life (for example, a telemarketer who calls daily 'just to say hello').
- The victim has someone living in their home who has no income.
- The victim has someone living in their home who has addictions.
- The victim makes changes in their will to suddenly include a new friend.
- Financial misuse—sudden change in bank accounts, unexplained or unauthorized withdrawal.
- Property misuse—missing personal possessions/antiques, transfers of car titles.
- Real estate misuse—unexplained transfer of real estate, deeds, second mortgages.

Factors Contributing to Victimization:

- Having recently lost a spouse
- Making purchases by phone or on the Internet
- Donating to a charity
- Having a home in need of repairs
- Fear of losing independence
- Disabilities
- Gambling problems
- Belonging to organizations that distribute membership information (potential scam perpetrators may get phone lists)

There are three general categories of perpetrators:

1. *Family members as perpetrator:* Adult children are the most frequent perpetrators of elder abuse. Elder victims of exploitation may believe their adult children, grandchildren, or other relatives are providing financial assistance when in fact they may be using their credit or taking money or property from them. This is the largest category of offenders, and sadly this abuse is often not recognized until the adult's assets have been depleted. Many times these family members feel they are entitled to what they take as they believe they will "get it" eventually anyway.
2. *Professional caregiver:* Caregivers can offer invaluable assistance for those who need help to live independently. However, many times they intercept credit applications, forge or alter checks, take jewelry or other valuables, and may even trick the adult into transferring property to the caregiver's name.
3. *Close friends or others in a position of trust:* These may include persons holding a power of attorney, legal guardians, neighbors, handymen, bank tellers, investment advisors, etc. In general, these offenders may encourage investments and expenditures that benefit only them. They may steal money, property, or arrange for changes in wills, trusts, or mortgage financing for their own benefit.

There are generally two types of perpetrators:

1. The first type of perpetrator includes persons who have low self-esteem who may be abusing substances, feeling stressed, or feeling the weight of care-giving responsibilities. They don't generally seek out victims, but instead take advantage of opportunities as they arise.
2. The second type of perpetrator is someone who methodically seeks out and targets vulnerable adults, establishes power over them, and obtains control over the assets.

NC Adult Protective Services (APS) Register Report State Fiscal Year 2007-08

- 1,504 reports of exploitation of assets evaluated
- Exploitation of assets confirmed in 429 of the reports
- 22% of the confirmed reports involved adults 16 to 59 years old
- 60% of the confirmed reports involved adults 60 to 84 years old
- 18% of the confirmed reports involved adults 85+
- 33% were male victims
- 67% were female victims
- The average number of days to complete an APS evaluation for exploitation was 32.

By Nancy Warren, Program Administrator for Adult Protective Services, Division of Aging and Adult Services, Raleigh, NC. Information about the Division is available on the Internet at http://www.ncdhhs.gov/aging/index.htm

—*continued from page 31*

are a victim of small fraud, you're more likely to be a victim of big fraud. For that reason, those lists have value." Stein indicated that these types of list brokers definitely exist in North Carolina, and this is an issue on which the AG's Office is working.

Future Elder Fraud Trends

> *By the time "Mrs. D" reached her early eighties, she had no support network left. She had left her church and had no family nearby. Mrs. D became a repeat sweepstakes fraud victim, and she knew it. An investigator for the Attorney General intercepted and returned a $10,000 check that Mrs. D had written to the scammers and made her promise to call him before sending money again. Mrs. D responded, "Oh, I've learned my lesson!" The next morning, however, Mrs. D called the investigator and said, "I think I made another mistake last night…"*[77]

The expectation is that fraudulent telemarketers will begin to increasingly use computer technology, including spam e-mails, to contact potential victims because the aging population of Baby Boomers tends to rely on computers *twice* as much as the current generation of older Americans.[78] The implications of this in terms of elder fraud could be significant. In a report titled "Are 'Wired Seniors' Sitting Ducks?," Susannah Fox, Associate Director of Pew/Internet, writes:

> Currently, the vast majority of Americans age 65 and older do not go online. But that will likely change in a big way as the "silver tsunami" of Internet-loving Baby Boomers swamps the off-line senior population in the next 10 years.[79] That demographic shift, paired with a rising tide of viruses, spyware, and other online critters, is cause for concern since there is evidence that older users are less likely than younger ones to take precautions against software intrusions and fraud.[80]

Stein agrees that "even though the crimes are the same basic structure that have gone on through time immemorial, now with technology, a single criminal can touch so many more people. The combination of decreasing costs through technology and the increasing number of seniors, especially seniors with wealth, is a worrisome combination."

Grant notes that the National Consumer League's (NCL's) Fraud Center already is starting to see a gradual growth of Internet fraud complaints overall and from the 60+ population: "Right now, about a third of the people we hear from about telemarketing fraud are 60+ and about 8 percent of Internet fraud victims are older people. It goes up by a percentage every year and I think it is just going to gradually increase over time."

One foreseeable implication of this potential shift in terms of state funding is that law enforcement and prosecutors will have to become fully knowledgeable about how to investigate and prosecute telemarketing fraud and identity theft conducted through the Internet.[81] Such training also will have to include educating prosecutors and investigators on how to obtain and present electronic evidence to juries.[82]

Another troublesome trend identified by the American Prosecutors Research Institute is the scam artists' increased use of "disposable technology such as calling cards, cellular phones, and laptop computers, to avoid identification. [Such] tactics pose immense barriers to successful investigation and prosecution."[83]

Finally, consumer advocates in North Carolina are becoming concerned about the increased targeting of elderly people in the early stages of dementia or Alzheimer's. Stein notes that the Consumer Protection Division has found that those individuals who are most likely to become repeat or "super-victims" are those with mild dementia versus severe dementia because "the community around them has not yet appreciated that they're having memory disorders." Brantley notes that the Division of Aging and Adult Services consumer advocates also spot this trend, but so far, all remain puzzled as to how the con artists are obtaining information concerning who falls within this category. The targeting of this subset of elders, however, creates significant enforcement problems because these victims are unlikely to make good witnesses due to their impaired memory function.

North Carolina's public and private consumer advocates have made great strides in implementing programs and creating ongoing partnerships that address the financial exploitation of older adults. However, from defining mistreatment of the elderly to gathering data on the extent of the problem to finding solutions, all agree more needs to be done.

The Center's Recommendations on the Mistreatment of Elders

Ethel and Fred were Christians and without any children of their own, they chose to give all of their discretionary income to the local Methodist church, which they attended every Sunday, or to televangelist ministries, which they watched day and night. Ethel loved church on TV, singing along as she watched the choir, nodding her head as she affirmed the minister, and raising her hands as she reached towards heaven. Once Ethel and Fred were homebound, the television shows gave meaning to their lives. Somewhere along the way, Ethel and Fred saw an evangelist on television who wanted to spread Christianity in the Middle East. They started giving money to the minister who lived across the country, and over time they became acquainted, and he started visiting them at their home in western North Carolina.

Eventually, Fred needed more care than Ethel could provide at home, so he moved to a local nursing home. One day, the minister visited them in the nursing home. He brought legal documents that had been drafted by a local attorney, and the minister asked them to sign health care powers of attorney, general powers of attorney, wills, and a deed to their house, retaining only a life estate. All of the money was to go to his ministry. The owner of the nursing home called the sheriff. The documents were destroyed, and Medicare fraud charges were investigated. However, Fred passed away shortly thereafter, and Ethel was not able to testify because of her mental capacity. The charges were never filed.

The minster returned weeks later, and Ethel signed the legal documents again. This time, there was no one there to protect her, no one to call the sheriff. How do we protect Gramps and Grandma?

The Definition

Fraud against the elderly, or the financial exploitation of older adults, is just a part of the problem. No one knows how many older adults in America suffer from elder fraud, abuse, and mistreatment. According to the National Center on Elder Abuse, a program of the U.S. Administration on Aging, "While evidence accumulated to date suggests that many thousands have been harmed, there are no official national statistics."[1] Even the definitions vary, and in the absence of a uniform reporting system for states or a nationwide tracking system, information on the prevalence of this problem is hard to come by.

To assess this issue, the National Institute on Aging and the National Research Council convened a panel of experts to evaluate the current state of knowledge in the area of mistreatment of the elderly. In 2003, the panel published a book, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*, which found:

> Elder mistreatment is a recognized social problem of uncertain, though probably increasing, magnitude. According to the best available estimates, between 1 and 2 million Americans age 65 or older have been injured, exploited or otherwise mistreated by someone on whom they depended for care or protection. The frequency of occurrence of elder mistreatment will undoubtedly increase over the next several decades, as the population ages. Yet little is known about its characteristics, causes, or consequences or about effective means of prevention.[2]

1 The N.C. Center for Public Policy recommends that the N.C. General Assembly clarify and strengthen N.C. General Statute Chapter 108A, the Protection of the Abused, Neglected, or Exploited Disabled Adult Act. The statute has not been amended since 1981, and it needs to support a broader system of protection for older adults. The definition of abuse should include physical abuse, emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. The act should cover vulnerable adults instead of limiting it to disabled adults. In defining vulnerable, the functional limitations of an individual should be considered in addition to any diagnosis, and the act should also cover vulnerable adults who are at substantial risk of being abused. For those elders that have the capacity to consent to services, the statute should cover voluntary interventions as well as involuntary interventions. And, in keeping with the definition in the federal Older Americans Act, older adults should be defined as those 60 and over.

The National Center on Elder Abuse uses a very broad definition: "Elder abuse is any knowing, intended, or careless act that causes harm or serious risk or harm to an older person—physically, mentally, emotionally, or financially."[3] The intention is to include in the definition physical abuse, emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment.

In 1973, North Carolina enacted the first elder abuse law in the United States, "The Protection of the Abused, Neglected, and Exploited Disabled Adult Act."[4] Disabled adult is defined to include "organic brain damage caused by advanced age or other physical degeneration in connection therewith," and abuse is defined as "the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health." While well-intentioned and ahead of its time, this act has not been updated since 1981. It needs to be amended to support a broader system of protection for older adults. The North Carolina Study Commission on Aging's 2009 Report to the Governor and the General Assembly contained a recommendation to fund a two-year pilot program to assess needed changes to the adult protective services statutes.

The definition of abuse should include physical abuse, emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. The act should cover vulnerable adults instead of limiting it to disabled adults. In defining vulnerable, the functional limitations of an individual should be considered in addition to any pertinent diagnosis. For those elders that have the capacity to give informed consent to services, the statute should cover voluntary interventions as well. It also should cover vulnerable adults who are at substantial risk of being abused. In keeping with the definition in the federal Older Americans Act, older adults should be defined as those 60 and over.[5] In the past, the N.C. Department of Health and Human Services has supported many of these proposed changes to the law.[6]

The Numbers

2 The Center recommends that the N.C. General Assembly require reporting on the statewide incidence and prevalence of mistreatment of the elderly, expanding North Carolina's current data collection system.

In July 2008, the *Journal of Gerontology: Social Sciences* reported on the first population-based, nationally representative study to ask those aged 57 to 85 about mistreatment. Thirteen percent of those involved in the study reported mistreatment—9 percent was verbal, 3.5 percent was financial, and 0.2 percent was physical.[7]

Estimates of the population in North Carolina by age indicate that there were 1,451,352 persons aged 57 to 85 in July 2008.[8] If 13 percent of those were mistreated, then we are looking at a prevalence of about 188,672 persons. The state needs better data if it is to tackle this problem in a meaningful way.

In February 2006, the National Committee for the Prevention of Elder Abuse and the National Adult Protective Services Association prepared a report for the National Center on Elder Abuse, entitled "The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older." The report highlights information that needs to be collected at the state level. "Accurate and uniform data must be continuously collected at both the state and national levels so that abuse trends can be tracked and studied. A concerted effort is necessary to create uniform definitions of, and measures for reporting abuse. … States should collect detailed age and gender specific information on race and ethnicity of victims and alleged perpetrators. … It is critical that states collect outcome data in the clients served."[9]

In May 2006, the American Bar Association released a policy paper it authored for the National Center on Elder Abuse on "The Availability and Utility of Interdisciplinary Data on Elder Abuse."[10]

The paper recommends a national incidence and prevalence study. "Population-based surveys of elder mistreatment occurrence are feasible and should be given a high priority by funding agencies," says the National Research Council to Review Risk and Prevalence of Elder Abuse and Neglect.[11]

In response to national studies that document the importance of establishing reliable information on incidence and prevalence of elder mistreatment, the Center recommends that the N.C. General Assembly require reporting on the statewide incidence and prevalence of mistreatment of the elderly, including statistics on age, gender, and ethnicity of victims and perpetrators, as well as information on outcomes.[12]

North Carolina currently collects information about adult mistreatment in the Adult Protective Services Register database. Having more comprehensive information about how widespread elder mistreatment is in North Carolina and the frequency of its occurrence would enhance the data that is now collected and what is known about these vulnerable adults and the perpetrators.

The Role of the Banks

3 The Center recommends that the N.C. General Assembly establish a study commission to examine how the N.C. Commissioner of Banks, the financial management industry, and law enforcement agencies can partner to prevent fraud against the elderly. The study commission should assess whether training for bank employees can help them recognize, report, and reduce the incidence of fraud against the elderly.

"Banks are on the first line of defense against these scams because they are in the best position to give consumers information at the key moment they need it—when they are depositing the checks or withdrawing the money to send to crooks," said Susan Grant in a speech at the 2007 Interagency Consumer Complaint Conference.[13]

In 2004, Wachovia Corporation instituted a loss management elder fraud abuse prevention program, noting that such a program was a win-win: "We are not only able to protect our clients from being exploited, but early detection also reduces the bank's exposure for fraud losses." Despite the program, the *New York Times* reported in 2007 that "Wachovia accepted $142 million of unsigned checks from companies that made unauthorized withdrawals from thousands of accounts, federal prosecutors say. Wachovia collected millions of dollars in fees from those companies, even as it failed to act on warnings, according to records."[14]

According to a report by the American Bar Association, *Can Bankers Tell?,* banks are in the best position to report an unusual volume of banking activity, banking activity inconsistent with a customer's usual habits, sudden increases in debt where the elder appears unaware of transactions, withdrawal of funds by a fiduciary or someone else handling the elder's affairs with no apparent benefit to the elder, and implausible reasons for banking activity if given by the elder or someone accompanying the elder.[15] According to the report, "The major obstacle to widespread participation of banks in reporting projects is concern about potential legal liability. … The primary concern is the possibility that the bank may incur civil and/or criminal penalties for violation of federal and state laws regulating the disclosure of personal financial information."

The report notes that "the primary purpose of mandatory reporting laws is to induce those in a position to observe abuse to bring their suspicions to the attention of APS [Adult Protective Services]. The goal is to encourage reporting, rather than punish potential reporters for failing to report." Mandatory reporting may actually protect banks. "The bank is in a better position to defend itself in such a suit if the bank made the report under a mandatory reporting law than under a voluntary reporting law—that is, the bank would have the defense that it was legally obligated to make the report." A good faith effort to follow policies and protocols for identifying, preventing, and reporting elder fraud will also mitigate the chances that a bank is exposed to liability.

According to the EdComm Group, which provides training on elder fraud to the banking industry, 15 states require all businesses, including banks, to report any suspected abuse: Delaware, Indiana, Kentucky, Louisiana, Missouri, New Hampshire, New Mexico, **North Carolina,** Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Wyoming.[16] Four other states—California, Florida, Georgia, and Mississippi—require bank employees to specifically report financial abuse of the elderly. In North Carolina, this requirement is derived from North Carolina General Statute 108A-102(a) which requires that any person, not just businesses or banks, "having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director [of the county Department of Social Services]. According to the American Bar Association report, however, it is "the presence of a mandatory reporting law … coupled with educational efforts and/or a formal bank reporting project, [that] can have a significant impact."[17]

The N.C. General Assembly should establish a study commission to examine how the N.C. Commissioner of Banks, the financial management industry, and law enforcement agencies can partner to prevent fraud against the elderly. The study commission should assess whether training for bank employees can help them recognize, report, and reduce the incidence of fraud against the elderly.

The Role of the Attorney General

4 The Center recommends that the N.C. General Assembly consider giving the N.C. Attorney General authority to initiate prosecutions for fraud against the elderly. Only five states do not give their Attorney General any authority to initiate local prosecutions—North Carolina, Arkansas, Connecticut, Texas, and West Virginia.

In North Carolina, unlike a number of other states, the Office of the Attorney General does not have original criminal jurisdiction. Thus, criminal prosecutions for fraud against the elderly either have to be referred to federal authorities (who prosecute telemarketing cases under, for example, wire or mail fraud statutes),[18] or to local district attorneys (who prosecute under state laws against obtaining property by false pretenses).[19] Both these options, however, can be problematic. Many times the amount of the loss fails to satisfy federal guidelines. And, local district attorneys may be ill-equipped financially and time-wise to handle cases that can be complex and resource-draining in light of the multi-jurisdictional issues.[20]

Consumers in the Tar Heel state lodged 14,846 fraud complaints in 2007 and 23,128 in 2008. In addition, North Carolina consumers lodged 6,069 identity theft complaints in 2007 and 7,609 in 2008. Overall, in 2008, North Carolina ranked 24th among the 50 states in the number of fraud complaints, and 21st in the number of identity theft victims. Nationwide, in 2008, 30 percent of all consumer fraud complaints and 26 percent of identity theft complaints are lodged by individuals aged 50 and over. [21]

According to Josh Stein, former director of the N.C. Consumer Protection Division and now a state Senator, situations involving face-to-face home repair con artists require prosecution by a local district attorney. Historically, the AG's Office often has worked with DAs to break up locally-based home repair fraud rings. However, situations involving foreign-based telemarketing fraud units present substantial barriers to prosecution by a local DA. In such cases, it's critical for state and federal governments to be able to collaborate with foreign law enforcement.

Only five states do not give their Attorney General any authority to initiate local prosecutions—North Carolina, Arkansas, Connecticut, Texas, and West Virginia.[22] Thirty states give their Attorney General the authority to initiate local prosecutions under certain statutes for particular crimes.[23] The N.C. General Assembly should consider giving the N.C. Attorney General the power to prosecute fraud against the elderly.

Conclusion

For Gramps and Grandma, the wolves are often those they least expect: a minister, a daughter, a next-door neighbor, a trusted caregiver. To prepare for its aging population, North Carolina needs to update its laws to protect vulnerable adults age 60 and over. The panel of experts convened by the National Institute on Aging, noted in their book, "The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and increasing numbers of older persons require long-term care."[24] The Baby Boomers are a wealthy generation, and the more money Gramps and Grandma have and the longer they live, the more conniving the wolves will be.

— Alison Gray and Mebane Rash

Footnotes

[1] Fact Sheet on Elder Abuse Prevalence and Incidence, National Center on Elder Abuse, Washington, DC, 2005, p. 1.

[2] Richard J. Bonnie and Robert B. Wallace, Editors, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*, National Academies Press, Washington, DC, 2003, p. 1 of the Executive Summary.

[3] "15 Questions &Answers About Elder Abuse," National Center on Elder Abuse, Washington, DC, June 2005, p. 5.

[4] N.C. Gen. Stat. § 108A-99 to -111. See also 10 N.C. Administrative Code § 71A.

[5] 42 U.S.C. § 3002 (35).

[6] Adult Protective Services Task Force, Report to North Carolina Study Commission on Aging and House Study Commission on State Guardianship Laws Pursuant to Session Law 2005-23, 2006 (presented on May 10, 2008), pp. 20-23.

[7] Edward O. Laumann *et al.*, "Elder Mistreatment in the United States: Prevalence Estimates From a Nationally Representative Study," *Journal of Gerontology: Social Sciences*, Vol. 63B, No. 4, July 2008, pp. S248-S254.

[8] On the Internet at *http://www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/demog/ncages00.html*

[9] Joanne M. Otto, "The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older," the

National Committee for the Prevention of Elder Abuse and the National Adult Protective Services Association for The National Center on Elder Abuse, Boulder, CO, Feb. 2006, p. 6.

[10] Erica F. Wood, American Bar Association, "The Availability and Utility of Interdisciplinary Data on Elder Abuse: A White Paper for the National Center on Elder Abuse," Washington, DC, May 2006, p. 8.

[11] *Ibid*.

[12] See the National Center on Elder Abuse, *The National Elder Abuse Incidence Study*, 1998, for an example of how such a study can be constructed.

[13] Susan Grant, 2007 Interagency Consumer Complaint Conference, Houston, TX, Oct. 16, 2007, p. 4.

[14] Charles Duhigg, "Bilking the Elderly, With a Corporate Assist," *New York Times,* May 20, 2007, p. A1.

[15] Sandra L. Hughes, J.D., "Can Bankers Tell?—Legal Issues Relating To Banks Reporting Financial Abuse of the Elderly," American Bar Association, Washington, DC, 2003, pp. 8-9, 11, 13-14.

[16] Email from EdComm dated Aug. 25, 2008.

[17] "Can Bankers Tell?," note 15 above, p. 27.

[18] 18 U.S.C. § 1343 and 18 U.S.C. § 1341. These statutes carry a maximum term of imprisonment of five years. Other federal statutes that can be invoked include: (1) conspiracy to commit wire or mail fraud statute, 18 U.S.C. § 371, which also carries a maximum five-year sentence; (2) money laundering statutes (if fraudulent telemarketing proceeds are used to pay the costs of the illegal business activities), 18 U.S.C. §§ 1956-57, which carry maximum 20- and 10-year sentences, respectively, and provide the U.S. Department of Justice with a basis to obtain criminal forfeiture of the telemarketers' property; and (3) financial institution fraud statute (if the telemarketers have misled banks when they applied for merchant accounts to process victims' credit card charges), 18 U.S.C. § 1344, which carries a maximum term of 30 years. In addition, under a statute enacted in 1994 as part of the Senior Citizens Against Marketing Scams Act, 18 U.S.C. § 2326, "federal courts can impose an additional term of up to five years' imprisonment where the mail, wire, or bank fraud offense was committed in connection with the conduct of telemarketing, and can impose an additional term of imprisonment of up to 10 years' imprisonment if the offense targeted persons 55 and older or victimized 10 or more persons 55 and older." On the Internet at *http://www.usdoj.gov/criminal/fraud/telemarket/ask/doj.html#disconnect*

[19] N.C. Gen. Stat. § 14-100. North Carolina law also makes identity theft a felony. N.C. Gen. Stat. § 14-113.20.

[20] Sean Morgan and Rebekah Finley, "Telemarketing Fraud Prevention and Prosecution," American Prosecutors Research Institute, July 2003, p. 27.

[21] *Consumer Fraud and Identity Theft Complaint Data, January-December 2007,* FTC, Feb. 2008, p. 53, on the Internet at *http://www.ftc.gov/opa/2008/02/fraud.pdf* and *Consumer Sentinel Network Data Book for January-December 2008,* FTC, Feb. 2009, p. 51, on the Internet at *http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2008.pdf*

[22] The Council of State Governments, *The Book of the States,* Vol. 40, Lexington, KY, 2008, Table 4.21, pp. 235-36.

[23] *Ibid*.

Footnotes

[1] Although precise legal definitions vary according to jurisdiction, in broad terms, "financial exploitation is the illegal or improper use of a vulnerable adult's funds or property for another person's profit or advantage." Sally Hurme, "Keeping the Wolves from Grandma's Door: Financial Exploitation of the Elderly," Speech Before the United Nations (June 15, 2006), on the Internet at *http://www.aarp.org/research/frauds-scams/fraud/june15_06_shurme.html* There also is no precise definition of "elder" or "senior citizen." The AARP defines its membership as those 50 and older, whereas the National Consumers League (NCL), which is the nation's oldest consumer organization, defines elder fraud victims as those over 60. Federal legislation also is inconsistent. The Older Americans Act of 1965, 42 U.S.C. § 3001, *et seq*., which established the federal Administration on Aging, and provides funding to the states, authorizes programs for those 60 and older. By contrast, under a 1994 statute enacted as part of the Senior Citizens Against Marketing Scams Act, 18 U.S.C. § 2326, enhanced penalties are authorized where the mail, wire or bank fraud targets persons 55 and older. On the Internet at *http://www.usdoj.gov/criminal/fraud/telemarket/ask/doj.html#disconnect*

[2] In 2000, there were 34 million U.S. citizens over the age of 65. That figure is projected to more than double by 2030. U.S. Department of Justice, *Justice for All*, "Department of Justice Focuses on Protecting Elderly Americans," Oct./Nov. 2000, on the Internet at *http://www.usdoj.gov/archive/jmd/fs/jfa112000.htm,* and Jennifer Cheeseman Day, "*Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1993 to 2050*," U.S. Bureau of the Census, Current Population Reports, P25-1130, U.S. Government Printing Office, Washington, DC, 1996, on the Internet at *http://www.census.gov/prod/1/pop/p25-1130/p251130.pdf* ("The number of people age 65 and over is projected to increase from 39 million in 2010 to 69 million in 2030. This is when the surviving Baby Boomers will become 65+. About 20 percent of the total population would be over 65 in 2030, compared to about 13 percent now.") In 2005, persons 65 and older constituted 12.1 percent of North Carolina's population (1,054,098 elders) which was on par with the national average of 12.4 percent (36,790,113 elders). On the Internet at *http://quickfacts.census.gov/qfd/states/37000.html*

[3] Virginia H. Templeton and David N. Kirkman, "Fraud, Vulnerability, and Aging," *Alzheimer's Care Today*, Vol. 8, No. 3, Lippincott Williams & Wilkins, Hagerstown, Md., July-Sept. 2007, p. 268.

[4] In November 1991, the U.S. House of Representatives Committee on Government Operations' Subcommittee on Commerce, Consumer, and Monetary Affairs issued a report entitled "The Scourge of Telemarketing Fraud: What Can Be Done Against It?" in which the Committee estimated that only 1 in 10,000 victims of telemarketing fraud report the crime. See also Hurme, note 1 above ("One study has estimated that there are at least 5 million financial abuse victims in the United States each year, but officials only hear of about perhaps 1 in 25 cases."). A 2003 study by the AARP Foundation "found that 73 percent of investment fraud victims did not acknowledge having lost money, and only half of lottery fraud victims reported recent losses." On the Internet at *http://www.aarp.org/research/fraudsscams/telemarketing/a2003-08-13-telemarketing.html*

[5] On the Internet at *http://www.nocallsnc.com/telemarketing.htm* The FTC receives data from its own toll-free hotline and online complaint forms as well as outside data from contributors such as the FBI's Internet Crime Complaint Center (IC3), Canada's Phonebusters, local Better Business Bureaus, the U.S Postal Inspection Service, the Social Security Administration's Office of Inspector General, the NCL's Fraud Center and numerous state and local law enforcement agencies including the North Carolina Department of Justice. Lois C. Greisman, "Identifying and Fighting Consumer Fraud Against Older Americans," Prepared Statement of the FTC Before the Senate Special Committee on Aging, July 27, 2005, p. 2 of Greisman Statement, on the Internet at *www.ftc.gov/os/testimony/050727confraudolder.pdf* All complaints are

entered into the FTC's Consumer Sentinel system, "a web-based network that links more than 1,300 law enforcement agencies throughout the United States, Canada, and Australia to more than 2 million fraud and identify theft complaints" which can then be used to develop cases, locate witnesses, and seek enhanced penalties. Greisman Statement, pp. 2-3. See also *Consumer Sentinel Network Data Book for January-December 2008,* FTC, Feb. 2009, at Appendices A2 and A3, pp. 70-71, on the Internet at *http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2008.pdf* As a result of efforts by N.C. Attorney General Roy Cooper and the N.C. Consumer Protection Division, North Carolina trails only California as the state with the most number of Consumer Sentinel law enforcement agency members ranging from small-town sheriff departments, to more urban police departments, to the N.C. Attorney General's Office. Online since 1997, Consumer Sentinel recognizes that sharing information among local, state, federal, and international law enforcement entities makes law enforcement stronger and more effective by enhancing cross-border consumer education and prevention efforts.

[6] On the Internet at *http://www.fraud.org/toolbox/2005_Telemarketing_Fraud_Report.pdf*

[7] *Consumer Sentinel Network Data Book*, note 5 above, pp. 10 and 13.

[8] Hurme, note 1 above.

[9] *Consumer Fraud and Identity Theft Complaint Data, January-December 2007,* FTC, Feb. 2008, p. 53, on the Internet at *http://www.ftc.gov/opa/2008/02/fraud.pdf* and *Consumer Sentinel Network Data Book,* note 5 above, p. 51.

[10] *Consumer Sentinel Network Data Book*, note 5 above, p. 82.

[11] Greisman Statement, note 5 above, p. 1, and *Consumer Fraud and Identity Theft Complaint Data*, *January-December 2007,* note 9 above, p. 53.

[12] *Consumer Sentinel Network Data Book*, note 5 above, p. 51.

[13] *Consumer Fraud and Identity Theft Complaint Data*, *January-December 2007,* note 9 above, p. 53, and *Consumer Sentinel Network Data Book*, note 5 above, p. 51.

[14] *Consumer Sentinel Network Data Book*, note 5 above, p. 14.

[15] Internet Crime Complaint Center, *North Carolina's IC3 2007 Internet Crime Report,* on the Internet at *http://www.ic3.gov/media/annualreport/2007/North%20Carolina%202007%20Report.pdf* See also the Internet Crime Complaint Center, *IC3 2008 Internet Crime Report,* on the Internet at *http://www.ic3.gov/media/annualreport/2008_IC3Report.pdf* At the time of publication, the state reports for 2008 were not available.

[16] *Consumer Sentinel Network Data Book*, note 5 above, p. 15. The other North Carolina metropolitan areas that were included in the 2008 study but fell outside the top 50 consumer fraud ranking were: (1) Asheville (1,412 complaints); (2) Burlington (489 complaints); (3) Fayetteville (1,424 complaints); (4) Goldsboro (314 complaints); (5) Greensboro-High Point (2,257 complaints); (6) Greenville (655 complaints); (7) Hickory-Lenoir-Morganton (1,393 complaints); (8) Jacksonville (587 complaints); (9) Lumberton (384 complaints); (10) Raleigh-Cary (3,914 complaints); (11) Rocky Mount (545 complaints); (12) Wilmington (1,231 complaints); and (13) Winston-Salem (1,528 complaints). *Ibid*. at Appendix D1, pp. 83-90.

[17] *Ibid.*, p. 16.

[18] "Some Frauds, Scams and Questionable Business Practices Currently Targeting Our Seniors," N.C. Department of Justice, 2007, on the Internet at *http://www.ncdoj.com/DocumentStreamerClient?directory=Publications&file=NCSeniorFrauds.pdf* This report identifies 21 different telemarketing scams, 11 home repair fraud scams, predatory mortgage lending practices, 20 miscellaneous consumer fraud scams, and five troublesome or deceptive business practices that have been reported to the N.C. Consumer Protection Division.

[19] Templeton and Kirkman, note 3 above, p. 269.

[20] On the Internet at *http://www.nclnet.org/news/2007/2006_fraud_trends_01232007.htm*

[21] *E.g.*, "Off-the-Hook: Reducing Participation in Telemarketing Fraud," AARP, 2003, on the Internet at *http://assets.aarp.org/rgcenter/consume/d17812_fraud.pdf*

[22] *E.g., http://www.ftc.gov/reports/Fraud/fraudcon.shtm* ("Scam artists are ruthless and relentless in their pursuit of older American consumers.")

[23] On the Internet at *http://thomas.loc.gov/cgibin/query/F?r103:1:./temp/~r1032VA1Df:e434573*; Sean Morgan and Rebekah Finley, "Telemarketing Fraud Prevention and Prosecution," American Prosecutors Research Institute, July 2003, pp. 2-3 (citing U.S. Department of Justice/Federal Bureau of Investigation, Operation Disconnect Press Briefing Material 10 (1993)) on the Internet at *http://www.ndaa.org/pdf/telemarketing_fraud_web.pdf*

[24] On the Internet at *http://www.ftc.gov/reports/Fraud/fraudcon.shtm*

[25] *Ibid.* (referencing testimony from the U.S. Attorney for the District of Nevada before the U.S. Senate Special Committee on Aging).

[26] Charles Duhigg, "Bilking the Elderly, With a Corporate Assist," *New York Times*, New York, NY, May 20, 2007, Section 1, p. 1.

[27] *Ibid.*

[28] Keith Slotter, "Hidden Faces: Combating Telemarketing Fraud," *FBI Law Enforcement Bulletin*, Vol. 67, No. 3, Washington, DC, Mar. 1998, p. 10.

[29] *IC3 2008 Internet Crime Report,* note 15 above, p. 1.

[30] *Ibid.,* pp. 23 and 25.

[31] Kelly Dedel Johnson, "Financial Crimes Against the Elderly," U.S. Department of Justice, Office of Community-Oriented Policing Services, Problem-Oriented Guides for Police, Problem-Specific Guides Series No. 20, 2004, p. 5, on the Internet at *www.cops.uddoj.gov*

[32] "Some Frauds, Scams and Questionable Business Practices Currently Targeting Our Seniors," N.C. Department of Justice Report, on the Internet at *http://www.ncdoj.com/DocumentStreamerClient?directory=Publications&file=NCSeniorFrauds.pdf*

[33] Hurme, note 1 above, n. 15 (*citing Owens v. Mazzei*, 2004 Pa. Super. 106, Apr. 7, 2004).

[34] Chris Berendt, "Elderly Clinton Man Robbed by Caretakers," *The Sampson Independent*, Clinton, NC, Dec. 29, 2004. On the Internet at *http://www.zwire.com/site/news.cfm?BRD=1117&dept_id=88473&newsid=13638178&PAG=461&rfi=9*

[35] Johnson, note 31 above, p. 6.

[36] *Ibid.*; Hurme, note 1 above (noting use of coercion, duress with threats, persuasion, and professed affection to commit financial exploitation).

[37] Hurme, note 1 above.

[38] The Fraud Center's 2006 list of the top 10 telemarketing and Internet scams revealed that consumers age 60 and older represented: (1) 32 percent of those who reported telemarketing fraud and were especially vulnerable to magazine sales scams, prizes/sweepstakes, and phishing by phone; and (2) 8 percent of those who reported Internet fraud and were especially vulnerable to phishing, lotteries/lottery clubs, Internet access services, prizes/sweepstakes, and Nigerian money offers. In contrast, people under 30 accounted for: (1) 15 percent of telemarketing fraud overall and were especially vulnerable to opportunities to borrow or make money; advance fee loans, work-at-home plans, and bogus credit card offers; and (2) 27 percent of all Internet fraud complaints and were especially vulnerable to auctions, general merchandise, advance fee loans and fake check scams. "Fake Check Scams, Wire Transfers Dominate 2006 Fraud Lists (January 23, 2007)," on the Internet at *http://www.nclnet.org/news/2007/2006_fraud_trends_01232007.htm*

[39] In contrast to the exhaustive telemarketing fraud studies,

Grant contends that no group as of yet has sufficiently studied Internet fraud to determine what types of victims are more prone to that type of fraud. The FTC defines an Internet-related fraud as one that "concerns an Internet product or service; the company initially contacts the consumer via the Internet; or the consumer responds via the Internet." Greisman Statement, note 5 above, p. 5.

Internet-related fraud drops off substantially for consumers age 70 and older. *Ibid*.

[40] *Off-the-Hook Again: Understanding Why the Elderly Are Victimized by Economic Fraud Crimes*, May 12, 2006, p. 9. On the Internet at *http://www.nasdfoundation.org/WISE_Investor_Fraud_Study_Final_Report.pdf* This study followed up on a 2003 study by the AARP Foundation entitled "Off-the-Hook: Reducing Participation in Telemarketing Fraud," 2003; on the Internet at *http://assets.aarp.org/rgcenter/consume/d17812_fraud.pdf*

[41] *Ibid.*, p. 8.

[42] *Ibid.*

[43] On the Internet at *http://www.aarp.org/research/frauds-scams/telemarketing/a2003-08-13-telemarketing.html*

[44] *Off-the-Hook Again*, note 40 above, p. 6.

[45] *Ibid.*, p. 7.

[46] APRI Report, note 23 above, p. 2.

[47] Elizabeth Wilkerson, "States, SEC Work to Protect Elderly Investors," *SeniorJournel.com* (July 12, 2006), on the Internet at *http://www.seniorjournal.com/NEWS/Alerts/6-07-12-StateSECWork.htm*

[48] APRI Report, note 23 above, p. 2.

[49] On the Internet at *http://www.usdoj.gov/criminal/fraud/telemarket/ask/sound.html* (Transcript of sentencing hearing in *United States v. St. Marie* (Central District of California))

[50] APRI Report, note 23 above, p. 2.

[51] Slotter, note 28 above, p. 17.

[52] Johnson, note 31 above, p. 13.

[53] *Ibid.*

[54] Templeton and Kirkman, note 3 above, p. 270.

[55] Janice Holm Lloyd, "Preventing Consumer Fraud," *The Forum for Family and Consumer Issues,* Vol. 1, No. 1, Raleigh, NC, Winter 1996. On the Internet at *http://www.ces.ncsu.edu/depts/fcs/pub/fraud.html*

[56] *Ibid.*

[57] *Ibid.*

[58] On the Internet at *http://www.dhhs.state.nc.us/aging/fraud/alert.htm* There are currently about 30 active members of the Task Force including, for example: (1) the Better Business Bureau Consumer Foundation, Charlotte, N.C.; (2) Better Business Bureau of Eastern North Carolina; (3) Corporation for National Service; (4) Federal Bureau of Investigation; (5) State Bureau of Investigation; (6) local police departments in Chapel Hill, Charlotte, and Raleigh; (7) Governor's Advisory Council on Aging; (8) N.C. Coalition on Aging; (9) N.C. Senior Tar Heel Legislature; (10) Governor's Crime Commission; (11) N.C. Association of Area Agencies on Aging; (12) National Association of Retired Federal Employees; (13) N.C. Cooperative Extension Service; (14) N.C. Division of Aging and Adult Services; (15) N.C. Office of the Attorney General; (16) N.C. Secretary of State; (17) N.C. Senior Citizens Federation; (18) SAFE, Inc.; (19) Seniors Health Insurance Information Program; (20) U.S. Department of Justice; and (21) U.S. Postal Inspection Service. *Ibid.*

[59] *Ibid.*

[60] APRI Report, note 23 above, p. 25.

[61] Other participants included the California Department of Corporations, the Georgia Governor's Office of Consumer Affairs, the Vermont Attorney General's Office, and the Hillsborough County (Florida) State Attorney's Office. APRI Report, note 23 above, p. v.

[62] *Ibid.*, p. 24.

[63] *Ibid.*, pp. 24-25.

[64] *Ibid.*, p. 25.

[65] *Ibid.*

[66] On the Internet at *http://ncdoj.gov/DocumentStreamerClient?directory=PressReleases/&file=western%20union%20final.pdf*

[67] *SECU, State Partner on Elder Financial Abuse* (June 1, 2007); On the Internet at *http://www.cuna.org/newsnow/printer_version.php?story_id=31509*

[68] Email from EdComm dated Aug. 25, 2008. See N.C. Gen. Stat. § 108A-103(a), which requires any person and not just businesses and banks to report.

[69] On the Internet at *http://dca.lacounty.gov/artElderFinancialAbuse.html* ("California Bank Teller Law")

[70] *Ibid.*

[71] Kathryn Landreth, *Tele-Scams Exposed: How Telemarketers Target the Elderly*, Statement Before the U.S. Senate Special Committee on Aging, 104th Congress, 2nd Session, Mar. 31, 1996. On the Internet at *http://www.ftc.gov/reports/Fraud/fraudcon.shtm*

[72] APRI Report, note 23 above, pp. v-vi.

[73] 18 U.S.C. § 1343 and 18 U.S.C. § 1341. These statutes carry a maximum term of imprisonment of five years. Other federal statutes that can be invoked include: (1) conspiracy to commit wire or mail fraud statute, 18 U.S.C. § 371, which also carries a maximum five-year sentence; (2) money laundering statutes (if fraudulent telemarketing proceeds are used to pay the costs of the illegal business activities), 18 U.S.C. §§ 1956-57, which carry maximum 20- and 10-year sentences, respectively, and provide the U.S. Department of Justice with a basis to obtain criminal forfeiture of the telemarketers' property; and (3) financial institution fraud statute (if the telemarketers have misled banks when they applied for merchant accounts to process victims' credit card charges), 18 U.S.C. § 1344, which carries a maximum term of 30 years. In addition, under a statute enacted in 1994 as part of the Senior Citizens Against Marketing Scams Act, 18 U.S.C. § 2326, "federal courts can impose an additional term of up to five years' imprisonment where the mail, wire, or bank fraud offense was committed in connection with the conduct of telemarketing, and can impose an additional term of imprisonment of up to 10 years' imprisonment if the offense targeted persons 55 and older or victimized 10 or more persons 55 and older." On the Internet at *http://www.usdoj.gov/criminal/fraud/telemarket/ask/doj.html#disconnect*

[74] N.C. Gen. Stat. § 14-100. North Carolina law also makes identity theft a felony. N.C. Gen. Stat. § 14-113.20.

[75] APRI Report, note 23 above, p. 27.

[76] N.C. Gen. Stat. §§ 75-1.1 *et seq.*

[77] Templeton and Kirkman, note 3 above, p. 272.

[78] APRI Report, note 23 above, p. 41. According to a 2007 survey by the Pew Internet & American Life Project, Internet usage by age group was as follows: (1) 87 percent of 18-29 year olds; (2) 83 percent of 30-49 year olds; (3) 64 percent of 50-64 year olds, and (4) 32 percent of those 65 and older. "February 15-March 7, 2007 Tracking Survey, Demographics of Users," Pew Internet & American Life Project, on the Internet at *http://www.pewinternet.org/trends/User_Demo_6.11.07.htm*

[79] The term "silver tsunami" was coined by William Kreager, a Seattle architect, to describe the tidal wave of Baby Boomers about to impact the housing market. Linda F. Ettinger, "Reaching Asynchronous Learners within the Silver Tsunami," University of Oregon, Applied Information Management Master's Degree Program; on the Internet at *http://www.sloan-c.org/publications/jaln/v10n3/pdf/v10n3_4ettinger.pdf*

[80] Susannah Fox, "Are 'Wired Seniors' Sitting Ducks," Pew/Internet, Pew Internet & American Life Project, Apr. 2006, on the Internet at *http://www.pewinternet.org/pdfs/PIP_Wired_Senior_2006_Memo.pdf*

[81] APRI Report, note 23 above, p. 41.

[82] *Ibid.*

[83] *Ibid.*, pp. 41-42.