

## Partnerships in Fighting Consumer Fraud

This is a summary of the panel discussion on building partnerships to fight consumer fraud. Ideas from local, state, national, and international perspective were presented.

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### Introduction

Fraud..., Peter Yin (1985) calls it theft by deceit. A person unwittingly gives another person money and/or possessions under false impressions. Fraud can be disastrous at any age but for our elderly citizens it can be more so. Not only does the crime affect them financially but physically as well.

Life savings could be lost, with little or no chance to earn a second nest egg. The elderly person because of fear and embarrassment, becomes less active in the community at large. They become more dependent on others for care and many demand more in services such as meals on wheels or home health care.

Anyone, of any age, can be a victim of fraud. Who among us has not received a "you have won" card or letter? Or has never been tempted to visit a vacation resort to pick up our "guaranteed" prize? Some frauds are directed to victims at certain stages of the life cycle. Want ads for jobs, educational schools / programs and weight control programs are prolific with scams to attract young adults. Skin creams and other fountain of youth-products as well as get-rich schemes are aimed for middle age persons. Elderly persons are targeted for investment scams. Elderly persons are also caught up in emotional appeals to contribute to charities, etc. While anyone of any age can be victims of fraudulent schemes or fraud, the elderly are more often the mark. They are available in greater numbers than ever before, accessible, accommodating, and they have assets. Their ability to negotiate the increasing complex traditional marketplace becomes more difficult with increasing age. Historically, our elders do not report to law enforcement when they are victims of fraud. So accurate numbers of victimization is difficult, if not impossible to obtain.

Our behavior in questionable consumer situations are reflections of what I call life perspectives:

We are good people and deserve good things to happen to us. We shouldn't look a gift horse in the mouth or question authority. And, because we are good people, we do good things. How strongly we believe in these concepts dictates our acceptance of the deceit used by the con artist. For example, the "bank examiner" that convinces a trusted, good customer to allow their account to be used to catch the "bad guys." Or, a person is told that this is their lucky day, money left in a forgotten account is coming his/her way after a small handling fee is paid. Or, a "charity" that appeals to your good nature to take care of the less fortunate, the sick, homeless, abused animals, etc., without stating how much of the dollar actually goes to the charity.

The problem is not just a statewide problem, but is becoming world-wide as our population shifts and more elderly persons are becoming dependent on the younger generation. Interdisciplinary, educational programs are needed. But before these programs can be instituted some basic social issues must be addressed. Our panelist from Brazil, Miriam de Almeida Souza, identifies these concerns in her country. But can we say that all our American senior citizens have all of their basic needs met? Can we imagine a marketplace where the consumers have little input into consumer policy and regulations?

Betty Lipshutz provides us with examples of how the State of Georgia has created an Elder Consumer Abuse Program. It exemplifies how networks of agencies can be formed to attack the many forms of abuse to which our elders are exposed.

An example of a law enforcement partnership, TRIAD, formed at the national and state levels, is described by Betty Cantrell of the National Sheriff's Association. Local police departments, under TRIAD's guidance are finding creative ways to tackle consumer fraud.

Larry Norton, representing the Federal Trade Commission, reports on one of our largest government agencies' efforts to regulate those arenas in the marketplace where fraud is most likely to occur.

### **TRIAD Concept: An Approach that Works**

Triad is a cooperative approach to reduce crimes against older persons. Law enforcement leaders within a county and senior leadership agree to work together to fight crime and unwarranted fear of crime throughout the county. They involve seniors and those who work with seniors in the process, committing to a joint attack on problems facing older persons in the community.

The experts point out that the trauma of crimes against the elderly - generally the crimes of scams and fraud - is more serious than one might suspect and may lead to older persons becoming fearful, sometimes withdrawing to live behind locked doors.

The Triad concept is gaining in acceptance; there are about 150 programs in 39 states, plus Canada, as of this writing. Twenty-one states have signed statewide agreements (state sheriffs' and police chiefs' organizations, and state AARP signing a formal statement of cooperation) relating to Triad.

Triad leaders agree that an active local Triad can share the responsibility for crime-related problems, and also provide special assistance for older victims. A Triad enables older residents to participate more fully in solving problems in their communities.

Why is the Triad approach so important? The nation's older population is growing rapidly, some states experiencing a 30% increase in over-65 population during the decade of the 80's. The most rapidly growing segment of the population is the over-85 age group, which means there are more and more frail, vulnerable individuals. For every very old citizen, there are thousands of health, vigorous, experienced, self-sufficient persons who have time, energy, and ideas to apply to solutions to some of the crime-related issues.

The Louisiana Sheriff who organized the first local Triad in the nation, looked at the Triad strategy and noted, "There are many reasons why such a program, won't work, but there are 33,000,000 reasons why it must work," referring to the number of members of AARP.

To assist in organizing a successful Triad, most law enforcement leaders recommend involving an older person with leadership experience who can work closely with the law enforcement agencies. This individual may eventually lead a senior advisory council (sometimes called S.A.L.T. - Seniors and Lawmen Together) which surveys the senior population, serves as a channel of

information and ideas, and assists in crime prevention education, victim assistance, and a myriad of other programs for the senior community.

Triad programs are tailored to meet the needs and concerns of each community. The emphasis of each Triad reflects the types of crime - or the need for law enforcement services for seniors in the area.

The first Triad was formed in St. Martin Parish, Louisiana, where one of the first initiatives was an Adopt a Senior program to see that older persons living alone received a weekly visit from a law enforcement officer. Seniors received telephone calls and a personal visit from "their" deputy. One deputy travels to an island in the Achafalaya Basin to visit "his" senior, whose home is a 45-minute boat ride from St. Martinville.

A renewed emphasis on crime prevention education and information for seniors is the focus for Triad activities in many counties where seminars are regularly scheduled, hosted by the county wide S.A.L.T. council.

Many S.A.L.T. councils undertake a survey of seniors in the county and county wide municipalities to determine the concerns of older residents. Then the Triad can focus on seniors' identified concerns as program elements are developed.

Telephone reassurance programs become Triad activities in many communities. Older persons, living alone, perhaps in poor health, lacking close family ties nearby, etc., sign up for a daily call from a Triad volunteer. This can be a time to impart information about a current fraud or scam - or, in some cases, even a lifesaver.

Triads are designed to assess the needs of the older population and, with community leaders working together, develop strategies to meet these needs. The concept is in action in nearly 70 counties / communities across the nation. To receive information about Triad or be added to the mailing list for the quarterly Triad newsletter, contact TRIAD at 1450 Duke Street, Alexandria, Virginia 22314; (703) 836-7827.

### **Georgia's Elder Consumer Abuse Program**

In the 1994 legislative session, Lieutenant Governor Pierre Howard sponsored a broad package which was designed to protect older Georgians from many forms of abuse. As a result of this legislation, the Georgia Elder Consumer Abuse Program, better known as GECAP, was created with the Governor's Office of Consumer Affairs. In recent years, this Office has seen a tremendous increase in scams targeted specifically at older Georgians. They are perhaps the most vulnerable

group to suffer financial abuse as many live alone, have fixed incomes and lack necessary support systems. The primary scam directed at older Georgians is telemarketing fraud. Studies show that the older the age group, the more trusting they are in consumer transactions. This problem is exacerbated in the South where a generation was raised with a special emphasis on telephone etiquette.

GECAP, which became operational August 1, 1994, is presently directing its major investigative effort toward fraudulent telemarketers. The unit, comprised of three full-time and one temporary employee, has aggressively tried to establish a myriad of partnerships with many different groups and agencies. The chief investigator of this unit has a background in military and private law enforcement investigation, so he has been able to develop effective, cooperative partnerships with the FBI throughout the country as well as with many other city, county, and state law enforcement agencies. Police departments in small rural areas have been especially eager to work with us in many different ways with the goal of obtaining restitution for their older citizens who have been victimized by telemarketers located in Georgia. We have established effective partnerships with banking officials from all over the U.S. They sometimes alert us after noticing that one of their older customers has withdrawn a large sum of money from their account and after questioning them realize that they most likely have been targeted by a telemarketer. Many banks have been very helpful in promptly responding to our subpoenas by providing us with checking account information on suspicious telemarketers. The National Association of Attorneys General as well as the AG offices from many states not only help us by sharing information on principals, but have been a good source for sharing strategies on how to most effectively shut down these fraudulent operators. There is a library of audio tapes of telemarketers calling older citizens that some offices have shared with us when those particular telemarketers move into our state.

The Federal Trade Commission has also been a very helpful and effective partner. We exchange information with regional offices, as quite often the same principals are connected to numerous different telemarketing companies with locations that rapidly move from one city to another and from one coast to the other. Although our Office is not a subscriber to the FTC fraud data bank, they have been most generous in sharing information.

The networks that have been established within our state have been particularly valuable. Prior to the formation of the GECAP unit, we worked cooperatively with AARP, but that was one of our few ties to the older

citizens in our state. Members of the GECAP unit have attended numerous conferences sponsored by various organizations and agencies in the state whose principal constituency is the older population. Members of our unit have an opportunity to explain our programs as participants in the conference proceedings and also to develop one on one relationships with this community. As a result of all the contacts that have been established, the Area Agencies on Aging, the Council on Elder Abuse, community care and home health workers have all been contacting us when they find Georgia seniors that have lost money to telemarketers. The Area Agencies on Aging Information & Referral Service in several states have even gone out and interviewed seniors who are victims of Georgia telemarketers and provided us with affidavits that we can use in court.

We believe that proactive consumer education is a vital component in preventing elder financial abuse. Our Lieutenant Governor has temporarily assigned to our GECAP unit a member of his staff who has close connections with many grassroots aging centers and groups. This person speaks to a least ten different groups a week using actual telemarketing solicitations that have been taped to educate this constituency so they will not become victims of telemarketing fraud. We have used our aging and law enforcement networks statewide to help us in distributing consumer education materials as well as a specially designed GECAP poster.

### **The Case of Brazil**

Consumer fraud has been widespread in Brazil, and its prevention, in contrast to its repression, is a task still to be seriously undertaken by Brazilian laws and policy. No current cataloging of the relative incidence of certain types of fraud is available, but two examples may suffice. With the recent influx of imported cars, it is not unusual for models to be sold without the requisite parts and technical support, a fact unknown or misrepresented to the customer at time of sale. The law has also annulled the frequent allegations of health insurance companies, when called upon to pay a claim, that the condition invoked by the policyholder was pre-existent to purchase of the policy and therefore not covered.

Problems of fighting consumer fraud in Brazil must be understood in a broader socio-political context. Partly as a legacy of over three hundred years of Portuguese colonization, 1500-1822, Brazil has developed a paternalistic, centralizing, and top-down political style, often authoritarian and with a large role for the State in national life and the economy. Clientelism and alternations between democracy and dictatorship in this century have inhibited development of a freely

participative, grass-roots organizational style such as that of the United States. Although Brazil is now the fifth most populous country in the world, with the tenth largest economy, according to the World Bank it suffers from the most unequal income distribution of any nation in the world. The 1994 per-capita GNP of \$3140 is about 12% that in the U.S. Uneven development characterizes the economy; we are seventh in the world in steel production, but a majority of the population still lacks basic medical care. The military dictatorship of 1964-1985 occurred precisely as consumerism was sweeping the Western world, and Brazil was preoccupied with the struggle to end authoritarian rule, erase its legacy, and reestablish civil society and non-governmental organizations under a democratic regime.

In consonance with United Nations Resolution 39/248 of April 10, 1985 on the defense of the consumer, the Brazilian Constitution of 1988, the first since the military dictatorship, establishes in its general statement on basic rights, in Article 5, Section 32, that "the State will promote, in the form of law, the defense of the consumer." The National Congress, in pursuance of this provision and as part of the democratization and modernization trends of free enterprise then prevalent in the government, passed Law 8,078, of September 11, 1990, the Consumer Defense Code, heavily patterned after standard international practice.

For this Code to become truly effective against consumer fraud and for any system of partnerships to be developed, several principal obstacles must be overcome.

1. The average educational level of the population is insufficient to take full advantage of the law and the informational provisions it mandates, or to provide necessary feedback to authorities.
2. The skewed and inequitable distribution of income causes the majority of the population to live in a precarious economic situation, unable to concern themselves with quality and safety considerations regarding the relatively few products to which they actually have access.
3. The predominance over the years of an unrestrained capitalism with few social safeguards and in oligopolistic conditions has facilitated a culture of the pursuit of profits without social responsibilities, on the part of national or foreign capital.
4. In general, civic spirit is weak in the country, regarding citizenship and mutual responsibilities, while the population has shown

acquiescence and passivity in consumption patterns, without claiming its rights in a consistent and efficacious manner.

5. The Brazilian State has been paternalistic and a captive of elite interests, demonstrating irresponsibility in its duty of advancing the quality of life of the governed as a whole and the protection of the most vulnerable.
6. The adoption of a federal system of government, but with centralizing characteristics in Brasilia and little cooperation among states and localities, or public-private partnerships, has distanced the consumer-citizen from input into and oversight of the real decision-making systems. The 1990 Consumer Defense Code, for example originated in national government circles, not from citizen pressures or lobbying. We never had a Ralph Nader type of figure, and few states and localities have laws against consumer fraud.
7. Many consumer law cases in Brazil have historically been handled by special courts and resolved in isolation in our code law system, often as small claims matters of little importance, inhibiting the development of a coherent sense of consumer policy or a fully developed concept of consumer law per se among jurists and legislators.
8. Consumer protection has been understood principally in the context of prices, availability, and the fight against inflation, in the enforcement of business compliance with prices set by government agencies, rather than concerning fraud, quality, safety, and warranties as in developed countries.
9. Lack of a free internal or external market for many years, as a consequence of government regulation, allowed State corporations and private oligopolies to produce with a guaranteed market without contending with serious competition, a vigorous consumerist movement, or a consumer protection law during decades of industrialization. Consumer rights, the quality, price, and safety of products, and our international technological competitiveness have all suffered from such isolation.

One of the key measures to counteract these negative conditions regarding prevention of consumer fraud is a broad program of consumer education at all levels, starting even in kindergarten. This would involve continuing community education through popular literature, newspapers, and laws themselves, television spots, cartoons and comic books for children, the TV drama series (novelas) so broadly popular in Brazil and so influential in shaping public opinion, youth debates on consumer issues, public displays on consumer fraud, and, in general, the spreading into the culture of the idea of producer responsibility for products and services.

Remember that the matter of the consumer in Brazil, just a decade free of 21 years of military dictatorship, has to do with the re-organization of a disarticulated society whose normal leadership ranks and civic participation were repressed by the military regime. The term "empowerment", so common in the United States, still remains to be integrated into Brazilian language and practice. Thus, for us, to organize the consumers to prevent the fraud practiced against them is a matter intimately linked to the organization of society itself, of the economy, or politics, of household economies, of the balancing of the production/sales/consumption relationship, in the perfecting of democratic institutions that should be based on the larger principles of ethics and social responsibility among individuals, with the State, and among countries. Creating community awareness through education at different levels should not be a task of the government agencies alone, because the State should not make the consumer into a client. The State is also a suspect in collusion.

As Brazil integrates more fully into the interdependent world economy of the 1990s, including integration into the Mercosul common market, its emerging and vulnerable consumer policy faces the challenges of adapting to rapid global economic changes, increasing foreign investment, observance of sustainable development, greater democratization and administrative decentralization, and incorporation of the consumer as an element in the dialogues and negotiations previously reserved for management and labor. We consumer advocates in Brazil would do well to learn from partnerships successful elsewhere to promote tendencies of conciliation rather than confrontation among the forces of production, the consumer, and the public authorities.

#### **Activities at the FTC**

(These remarks reflect my own views, and do not necessarily reflect the views of the Federal Trade Commission or any one of its members.)

The Federal Trade Commission is the only agency with authority to enforce a variety of federal antitrust and consumer protection laws. The Commission seeks to improve the operation of the marketplace by eliminating unfair and deceptive practices, especially practices that may unreasonably restrict or inhibit the free exercise of informed choice by consumers. Through law enforcement actions, the Commission obtains remedies for consumers that are national in scope.

Cooperative efforts with state and local law enforcement authorities now characterize nearly every facet of the Federal Trade Commission's work. Indeed, these efforts are critical to effective law enforcement. Let me illustrate with just one example. In recent years, local crackdowns on fraudulent telemarketing have led to many successful prosecutions; however, those perpetrators who evade prosecution often migrate to other jurisdictions where there had been little telemarketing fraud in the past. This problem is being attacked in at least three ways: strike forces have formed in regions all over the country comprised of federal, state, and local officials; a common database tracking telemarketing scams is widely used; and joint prosecutions are flourishing. In all areas of consumer protection, the Commission routinely exchanges information with state officials, engaging in joint investigations and law enforcement actions, and coordinates efforts in consumer education.

One significant development where information-sharing has dramatically enhanced consumer protection is a telemarketing fraud database developed by the Federal Trade Commission, in conjunction with the National Association of Attorneys General ("NAAG"). This database is an electronic system for sharing consumer complaints received nationwide. The database allows law enforcement officials at every level to spot trends in law violations, to learn about ongoing investigations, and to identify prospective witnesses. Because fraudulent telemarketers are highly mobile--some folding tables, chairs and phones are all that's needed--officials can now identify scams and even individual salespersons who have abandoned one jurisdiction and opened for business in another. There are now 87 member organizations, including 42 state attorneys general, the Federal Bureau of Investigation, the Internal Revenue Service, and the Department of Justice.

There are many other ways the Commission is sharing information with other agencies involved in consumer protection. For example:

\* Over the past few years, the Federal Trade Commission and NAAG have jointly sponsored numerous seminars and conferences. Special summit meetings have addressed advance fee

loan and credit repair scams. In December 1994, the Commission, NAAG, and the North American Securities Administrators Association ("NASAA") met together for the first time for a Franchise Summit, where representatives addressed regulation and enforcement of the sale of franchises and business opportunities.

\* The Commission, NAAG, and the American Association of Retired Persons ("AARP") jointly produced an award-winning, multi-media campaign on telephone scams and older consumers.

\* A library of audiotaped telemarketing scams has been established in San Diego, California by the San Diego Boilerroom Task Force and state attorney general. These tapes are available to all law enforcement officials and provide compelling evidence in prosecutions.

The commission has also teamed with state and local law enforcement authorities to conduct joint investigations and bring coordinated prosecutions. In combatting telemarketing fraud, virtually every case filed by the Commission relies on some respect on information or other support received from state and local officials. These are just a few recent examples of cooperative law enforcement:

\* The Commission and 19 states worked together to resolve public concerns about the accuracy and privacy of TRW consumer reports. Commission staff and Assistant Attorneys General developed pleadings, devised negotiation strategies, and hammered out separate, but overlapping consumer agreements--one tracking state law violations, and the other federal. This cooperative effort produced an accelerated resolution of great benefit to consumers.

\* The Commission, in conjunction with the New York and Texas Attorneys General, joined forces to challenge deceptive product claims in infomercials and "automatic" shipment plans where consumers received unordered merchandise and were billed for it. The result: a Commission order providing for injunctions and \$3.5 million in consumer redress.

\* The Commission and state officials together inspected more than 1000 dealerships across the country to assess compliance with the Commission's Used Car Rule, which requires certain disclosures in connection with used car sales. This effort led to 60 Commission cases and hundreds of state actions.

To be sure, a unique role still exists for federal and state consumer protection agencies. States may respond more quickly to address areas of predominantly local impact, such as campground or timeshare sales, debt collection, and auto repair. Commission action is more appropriate where consistent standards are important and the interests of consumers nationwide are at stake. For example, the Commission has taken the lead in prosecuting third-party support systems that allow telemarketers to operate. Nonetheless, federal/state cooperation should continue to enhance the goals of all law enforcement agencies and ultimately benefit the public.

Lastly, I wanted to address some of the Commission's activities in the international arena. The Commission is a member of the International Marketing Supervision Network ("IMSN"), a forum of consumer protection organizations founded in 1992. Member countries exchange information about unfair and deceptive marketing practices that cross international borders and about law enforcement problems common to its members' countries.

The members of IMSN are the principal law enforcement organizations handling unfair and deceptive marketing in each OECD country. In general, this includes all Western European nations, the United States, Canada, Australia, New Zealand, and Japan. Organizations from countries that have observer status at OECD, such as Hungary, Poland, and Mexico, are also members of IMSN.

The IMSN carries out its activities in at least four distinct ways: (1) semi-annual meetings in the home country of the Secretariat; (2) the Network Bulletin, a published newsletter containing articles about scams and law enforcement techniques, and a list of contact persons from each member country; (3) formal requests between members for assistance and information relating to particular law enforcement targets; and (4) informal contacts.

In this era of shrinking government resources and an increasingly global marketplace, leveraging resources and effective communication will remain critical in order to protect consumers. I anticipate the Commission will continue to forge partnerships at the local, state, federal, and international level.

## References

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## Endnotes

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