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**Testimony of Vermont Attorney General William H. Sorrell  
Before the Senate Permanent Subcommittee on Investigations  
Of the Committee on Governmental Affairs  
Regarding**

**Cross Border Telemarketing Fraud:  
Hurdles to Effective Investigation and Prosecution  
June 15, 2001**

In Vermont, as in other states, the number of cases of telemarketing fraud originating in Canada is extremely high. Of the 90 cases our office has investigated in the past eighteen months, involving several hundred victims, all but four involved Canadian telemarketers. Prosecution of these cases is extremely difficult because of a number of factors, several of which could be addressed with assistance from Congress.

My testimony will cover the concerns which Vermont, in consultation with other states, has identified regarding the effectiveness of investigating and prosecuting cross-border telemarketing fraud crimes under current conditions. I will also provide recommendations for how Congress could improve this situation, as well as my answers to the specific questions posed by the Subcommittee.

**I. Mutual Legal Assistance Treaty and Extradition Processes are Unduly Slow**

**Problem** – In the few cases where states have tried to extradite indicted criminals from Canada, the extradition process on both sides of the border has been unduly slow. According to anecdotal information from law enforcement, it is not unusual for a two-year or longer wait in the extradition process before an indicted defendant is turned over to US authorities. In some cases, an extradition request may not get a preliminary review for six months at the United States Department of Justice's Office of International Affairs, and only then will OIA request revisions. After revisions are made, it might be another year before the extradition request is sent to Canada.

A representative from Project Colt, a US/Canadian multi-agency telemarketing fraud enforcement task force based in Montreal, has told us that if a Mutual Legal Assistance Treaty (MLAT) request comes into their offices during an active time in the one large case they handle at a time, the request will sit untouched until that case is resolved. It is his belief that US prosecutors treat MLAT requests from Canada much the same way.

In an attempt to verify our anecdotal information, we asked the Department of Justice and the Federal Trade Commission for the average processing times for requests for assistance under MLAT. They were unable to give us that information readily, and as far as we know, they do not currently collect it.

Delays in MLAT and extradition are especially troublesome in state-based prosecutions. State cases typically have a smaller number of victims than larger federal cases. The death or serious illness of a key victim-witness will not infrequently doom a state prosecution, leaving a defendant indicted but not convicted.

**How Congress Can Help** – Congress should ask that DOJ, working with the FTC, the states and federal law enforcement, review its MLAT procedures and identify steps that would accelerate that process. To obtain more accurate information about the delays in the process, Congress could request from the US Department of Justice’s Office of International Affairs a periodic report containing the average processing times of the following stages of the MLAT process: (1) the time between initial request from a state and initial review at DOJ, (2) the time between the filing of a revised request and decision by DOJ to request or not request extradition, (3) for those cases in which extradition is requested, the total time between initial request and notice to Canadian authorities, and (4) the time between when notice is given to Canadian authorities and extradition is completed or denied.

In the past, the National Association of Attorneys General sponsored a fellowship program whereby an assistant attorney general was placed in the extradition office at DOJ, with travel and housing expenses paid by grant funds and the salary paid by the home state. This program is currently in existence for the computer crime/intellectual property section of DOJ. Funding to revive the position in the extradition office, as well as additional resources for the Canada desk at the Office of International Affairs, could help ease the delays currently experienced in the MLAT process.

## **II. Funding Investigator and Victim-Witness Travel to Canada**

**Problem** –Vermont and many other states have taken an active role in investigating telemarketing fraud crimes that target our residents. Many of these cases have originated in Canada. Often the goal is to prosecute the crime in the state where the victim lives (a victim venue case). Victim venue prosecutions are desirable for a number of reasons. When a crime is committed in a state, the residents of that state have a reasonable expectation that the wrongdoers will be held accountable in the courts of that state. Practically speaking it is often very difficult for senior citizen victims to travel to Canada for court proceedings. Additionally, courts, judges and juries in the states are more sympathetic to our victims than are Canadian courts, and courts in the United States are far more apt to impose meaningful sentences and restitution orders than are Canadian courts.

In order for Vermont or any other state to successfully investigate and prosecute a cross border crime we need investigative cooperation from Canadian law enforcement authorities. They typically have access to case specific information that is key to effective law enforcement action. This information can include, but is not limited to, facts about the perpetrator's aliases and true name, addresses, telephone numbers, known methods of operation, criminal record, associations with the business community, other past or pending criminal investigations, and locations to be searched for evidence.

In many instances these requests by the states do not require new investigation by Canadian authorities; rather, our requests are for information that is already in their investigative files and databases. Nevertheless, our investigators and prosecutors have been stymied in their attempts to effectively investigate and prosecute these crimes because of extreme difficulty in obtaining necessary investigative case information from Canada. Canadian investigators frequently tell us that they do not have the resources to answer states' requests for investigative information, even if that information may be in existing files and computers.

Because many state investigators have had difficulty obtaining information from Canadian officials through formal channels, some have developed individual relationships with Canadian law enforcement officers in order to obtain needed information on a timely basis. Trips to Canada for this purpose are expensive and not within the budgets of most states.

At the same time, Canadian law enforcement is unable to prosecute a large number of cases because of limitations in their resources. Their approach has been to focus on a small number of very large cases. For example, the head of the intercept team at Project Colt confirmed recently that Project Colt works one major case at a time, and when that is done, moves on to another one. To our knowledge, the Canadian criminal telemarketers target US victims; very few of the Canadian prosecutions involve Canadian victims. The effect is that many cases with US victims are not being investigated and prosecuted at anything approaching the rate they should be, even while states like Vermont stand ready to prosecute Canadian telemarketing criminals.

In the relatively few cases that are brought in Canadian courts against Canadian criminals, it is often essential that the US victims travel to Canada to testify. Canadian authorities have expected the states or the federal government to pay the attendant travel costs. Vermont's telemarketing fraud attorney, and the consumer protection project director and chief counsel at the National Association of Attorneys General (NAAG) have been told by Canadian law enforcement that many Canadian investigators and prosecutors will terminate an investigation or refuse to file charges against Canadian criminals without up-front assurances of funding for victim testimony. The effect is that some known criminals are never held to answer for their crimes, and US victims, often senior citizens, have their life savings and their dignity stripped, without ever having their day in court.

The importance of adequate funding for victim-witnesses to travel to Canada can be seen in the changes in pleas in Canadian criminal cases. Law enforcement in Toronto and the FTC have entered into a Memorandum of Understanding which includes FTC's commitment to engage in "best efforts" to provide funding for travel to Canada for victim-witnesses. When a Canadian criminal case file indicates that the FTC will pay for the victim to travel, plea bargains are more forthcoming than in those cases without that commitment.

The states do not have travel budgets that readily allow for travel of either investigators or victim-witnesses to Canada. Currently, the Bureau of Justice Assistance will not allow the states to use federal grant monies for such travel.

**How Congress Can Help** – Additional funding that is earmarked for state investigators and prosecutors to travel to Canada is essential if we are to overcome this hurdle to prosecutions in either Canada or the United States. Congress should appropriate money to the US Department of Justice that is earmarked for victim-witness and investigator travel to Canada. These monies should be distributed to the states, and should be available for state prosecutions or to assist in Canadian prosecutions. Congress could also increase BJA grants to NAAG to allow those monies for the same purposes.

In order to leverage the most from a congressional authorization, the money could be placed in a revolving fund to be replenished by payment of a fine or penalties once a prosecution is completed, assuming Canadian law allows for a monetary penalty to be used for reimbursement of expenses to another governmental entity.

Through discussions with appropriate Canadian authorities, Congress can assist the states in obtaining essential information on fraudulent telemarketing against US victims. This could take the form of discussions with the diplomatic service, the Royal Canadian Mounted Police, and other Canadian authorities.

### **III. Lack of Resources to Hire Canadian Legal Counsel to File Asset Freeze Requests in Canadian Courts**

**Problem** – An essential early step in the stateside prosecution of a Canadian based telemarketing criminal is to hire Canadian legal counsel to file asset freeze requests in Canadian courts. Canadian telemarketing criminals have stolen hundreds of millions of dollars from US victims before being closed down. For example, Blair Down, British Columbia telemarketer, is estimated to have stolen at least \$200 million in US funds from US victims in his scams.

Typically, the most promising way to obtain restitution for our victims is by freezing assets of the telemarketing criminals in Canada. (This is similar to an asset freeze in a RICO case in the states.) Freezing assets requires hiring Canadian legal counsel to appear in Canadian courts. Because of the complex nature of these cases, it is not unusual to hear that Canadian legal counsel require a \$15,000 to \$20,000 up-front retainer just to obtain an order. If the order is contested, Canadian counsel require another \$15,000 to \$20,000 to maintain the order. The most expensive asset freeze case of which we are aware, involving assets frozen in Belize and Antigua through a Canadian order, cost \$160,000.

Governmental attorneys on both sides of the border are reluctant to become embroiled in this type of litigation but few, if any, states have such funds to advance for representation by private counsel specializing in this area. Yet, without this important step, a successful prosecution for restitution or civil enforcement action is most unlikely. If the criminals have identifiable Canadian assets, they typically move them out of Canada at the first suggestion of a criminal prosecution. If this is allowed to happen, it is oftentimes impossible to trace and recover the assets so that they may be returned to the US victims as restitution.

**How Congress Can Help** – Congress can appropriate money to the US Department of Justice that is earmarked for states to retain Canadian legal counsel to file asset freeze requests in Canadian courts for state prosecutions. Congress can also increase BJA grants to NAAG that will provide monies for the same purpose. Again, in order to leverage the most from a congressional authorization, the money could be placed in a revolving fund to be replenished from the frozen assets once the prosecution is completed and before distributed of the assets to the victims for restitution.

## **Conclusion**

The Attorneys General of the various states have been investigating and preparing criminal prosecutions of fraudulent Canadian telemarketers. We want to bring these cases to protect our citizens from devastating losses of financial resources and harm to their personal well-being. We also want Canadian authorities to aggressively and successfully prosecute Canadians who prey on our consumers. There are more than enough cases to keep law enforcement in both countries busy far into the future.

In order to have effective prosecutions, we need your help. We hope that you can help to increase the speed of processing requests for assistance and extradition from the United States. We also need you to provide essential resources to facilitate travel by our victims and investigators to Canada to increase Canadian prosecutions and the amount of Canadian investigative information made readily available to US prosecutors. Finally, we need your financial assistance to ensure that whatever assets could be available to pay the costs of restitution and prosecution remain available for those purposes.

Thank you for this opportunity to share with you the experiences and recommendations of Vermont and the other states working to combat cross border telemarketing fraud.

## Answers to the specific questions posed by the Permanent Subcommittee

1. *That the governments and agencies of both countries clearly identify telemarketing fraud as a serious crime.*

**Status:                   Continuing**

January 1, 2000, the State of Vermont embarked on an 18-month project to combat telemarketing fraud through community education and prosecution. To date, the assistant attorney general working under that grant has conducted more than 175 workshops and distributed telemarketing fraud prevention materials to approximately 25,000 Vermont seniors and their families, advocates, and providers. She has trained 87 volunteers to go into senior housing and meal sites to provide information and support to actual and potential victims of telemarketing fraud. In May 2001, more than 60 volunteers participated in a Reverse Boiler Room in which over a two-hour period the volunteers placed more than 2500 calls, spoke with more than 1700 households, and provided requested follow-up information to nearly 400 persons.

In the last 18 months, our office has received more than 500 telemarketing fraud complaints, and has investigated 90 cases affecting several hundred victims. The attorney working under the grant is cross-designated as an assistant United States attorney, and is presently co-counseling with the US Attorney for the District of Vermont one major case involving multiple Canadian defendants and 18 different telemarketing scams. Approximately a dozen Vermont prosecutors and investigators have participated in the NAAG and National White Collar Crime Center multi-day telemarketing fraud enforcement trainings.

Along with Ohio, the Vermont Attorney General's Office is a primary state contact for communication between state and Canadian enforcers. It is through these offices that requests for investigative assistance (such as witness interviews and drive-bys of boiler rooms and mail drops) are coordinated.

2. *That both countries explore the use of remote testimony in criminal proceedings, by video-conferencing or similar means, to reduce costs.*

**Status:                   Underway**

Vermont has video-conferencing capability in federal court as well as in a publicly-available state facility. Our understanding is that although Canadian law has changed in the last several years to allow for testimony via satellite, many Canadian courtrooms do not have the necessary technology and do not have access to a "public access building" as would be required under their law. As far as we know, no Canadian prosecutor to date has been willing in cross border prosecutions either to be the first to take advantage of the new law, or to forego the effectiveness of live testimony. Interviews of US witnesses for Canadian prosecutions during the investigative stage have been done by US investigators, rather than by video-conferencing. In addition, some Canadian prosecutors have complained about the expense of video-conferencing. Consequently, money for travel to Canada is still needed.

3. *That the legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud be explored further.*

**Status: Completed per NAAG**

Vermont law allows for one-party consent to tape record telephone conversations. The National Tape Library serves as the central repository for tapes obtained by state and federal law enforcers. As only a handful of states have mooch lines, most of the tapes in the National Tape Library come from cooperators with the federal government.

4. *That both governments examine the regulation of telephone service providers and options for denying telephone services to telemarketing offenders.*

**Status: Outstanding per NAAG**

Vermont does not have, and has not considered, state legislation that would deny telephone services to telemarketing offenders. In the last legislative session, the first half of a biennium, the Vermont Attorney General's Office supported legislation that would provide for criminal penalties for a telemarketer who is not otherwise registered with the state to solicit in Vermont without first registering with the Vermont Secretary of State. That legislation has passed the Senate and one House committee and will be pursued during the second half of the biennium.

5. *That the scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing-fraud cases.*

**Status: Ongoing per NAAG**

The states welcome work at the federal level to speed the MLAT process, especially by increasing the federal resources dedicated to this work and the identification, on both sides of the border, of steps that would accelerate the process. Vermont has not taken any independent action with regards to this item.

6. *That both governments clarify the circumstance under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved.*

**Status: Ongoing per NAAG**

See response to question 5.

7. *That extradition arrangements be examined, and if possible modified to facilitate and accelerate extradition in telemarketing fraud cases.*

**Status: Ongoing per NAAG**

As with the MLAT process, extradition is a primarily federal concern and responsibility. Certainly, the states would welcome changes in Canadian and US processes to expedite the extradition process. Vermont has not taken any independent action with regards to this item.

8. *That federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud be reviewed, and that enforcement agencies be given information about when deportation may be an option.*

**Status: Unknown**

9. *That research be conducted into offenders, victims, and other aspects of telemarketing fraud to create effective educational materials and strategies to prevent it.*

**Status: Ongoing**

As part of the DOJ grant-funded demonstration project in Vermont, over the next year new research will be conducted by the National White Collar Crime Center into the effectiveness of our community education and outreach program.

10. *That governments and agencies cooperate as closely as possible in developing, maintaining and disseminating educational materials, and in coordinating education and prevention efforts.*

**Status: Ongoing**

Vermont participates in the various activities promoting education of telemarketing fraud being coordinated by NAAG such as the bi-monthly Telemarketing Fraud Bulletin and quarterly conference calls on telemarketing fraud attended by assistant attorneys general from each state active in telemarketing fraud prevention. Vermont encourages NAAG, AARP, the National White Collar Crime Center and the American Prosecutors Research Institute to produce, in conjunction with one or more states, additional telemarketing fraud videos for dissemination to public access TV and other educational outlets. Vermont's experience is that public access TV is a highly efficient and cost effective way to reach large numbers of consumers, especially seniors.

11. *That strategies to control telemarketing fraud be coordinated between Canada and the United States at the agency, regional and national levels.*

**Status: Ongoing**

The assistant attorney general devoted to telemarketing fraud prevention in Vermont serves as a conduit of information and investigatory assistance to Canadian enforcers, particularly those from Project Emptor in British Columbia and Project Colt in Montreal. She has met with Project Colt



officials on several occasions over the last 17 months. The Vermont Attorney General's Office has also served on the US Canada Working Group on Telemarketing Fraud.

12. *That an ongoing binational working group serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise.*

**Status: Ongoing**

See answer to question 11.

13. *That regional task-forces be encouraged to cooperate across the international border to the maximum extent possible.*

**Status: Ongoing**

The assistant attorney general devoted to telemarketing fraud prevention in Vermont regularly presents at the NAAG-coordinated telemarketing fraud trainings around the country and is able to meet with Canadian participants at those times. For example, just this week she attended the telemarketing fraud training in Raleigh, NC, which included east coast states and highlighted Project Colt. She works as closely as possible with her Canadian counterparts on investigations and prosecutions.

14. *That, to further coordination governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible.*

**Status: Ongoing per NAAG**

Vermont has not taken any independent action with regards to this item.