

## TESTIMONY



**STATEMENT OF  
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Before the  
Permanent Subcommittee on Investigations  
Hearing on Cross-border Telemarketing Fraud

June 14, 2001

Good morning Chairman Levin and members of the Subcommittee. Thank you for this opportunity to speak with you today on behalf of Ohio Attorney General Betty D. Montgomery regarding the investigation and prosecution of cross-border fraud. I would especially like to thank the victim witnesses who testified today. Their commitment and effort to be here today and above all, their courage to speak out about the frauds perpetrated against them, serve as a reminder of exactly why we are all here today.

The stories told this morning by Mr. Hathaway, Ms. Hersom and Ms. Erb are simply remarkable, but unfortunately, not unique to the tens of thousands of Americans victimized each year. We know that violent crime has been on the decline in recent years, but that international economic crimes are dramatically increasing. We also know that those most often targeted are the elderly, whose life savings, retirement nest eggs or health care savings are stolen from them on a daily basis. The picture becomes even more grim with the understanding that as compelling as these stories are, only a small percentage of these economic frauds are reported each year.

Like our panel of witnesses this morning, the majority of victims we interview during investigations are not uneducated, reckless or feeble -minded folks who are carelessly throw away their hard-earned money. Their statements speak for themselves. We encounter victims like Mr. Hathaway, who are educated and hard working. Our most vulnerable populations are at risk as well to unscrupulous con artists who purchase telemarketing victim lists. These cross-border con artists are capitalizing on the globalization of communication, technological advances and limitations of law enforcement in combating these crimes without geographical constraints.

What are the stumbling blocks to investigating and prosecuting cross-border telemarketing cases? It will come as no surprise to you that the obstacles are many, including the fact that many states have only civil jurisdiction over telemarketing cases, or choose not to prosecute the crimes in their states due to the complexity of these cases. Ohio is one of the few states which has specific legislation requiring telemarketers to register with the Attorney General's Office and which prohibits certain conduct. Even so, our cases are often stymied. Certainly, as well, there is a need for more funding and a stronger commitment by the Canadian government to combat telemarketing fraud.

Understanding, however that we can do little, if anything to change the flow of resources for Canadian law enforcement, my comments will focus on workable solutions we can implement within the borders of the United States. Five years ago there was the need for such white-collar crimes to be recognized as the predatory,

life-altering crimes we know them to be today. Awareness of these crimes by law enforcement and the public is at a higher level than ever, yet adequate training and funding for law enforcement continues to be a problem. Combating cross-border fraud simply must be a priority; we are ultimately answerable to the victims of these horrendous crimes.

We believe improvements made in three key areas will facilitate investigation and prosecution of the criminals behind the cross-border economic crimes. First, the United States must follow through on its commitments to the Canadian authorities. Second, a reevaluation is necessary of the methods used to obtain information essential to a criminal case, and third, sufficient funds must be allocated for law enforcement to prosecute within our own borders and to assist in Canadian prosecutions. I will address each of these separately.

First, the United States must pledge and follow-through on its membership commitments made to the Canadian authorities on various task forces and its commitment to assist in Canadian prosecutions. In recent years, initiatives designed to specifically combat cross-border fraud between the United States and Canada have been created, such as Project Colt, Project Emptor, the Toronto Task Force and the Department of Justice's Joint Initiative on International Issues. The Project Colt task force consists of the six members from the Royal Canadian Mounted Police (RCMP), a provincial Attorney General, and a member each from the FBI, Customs and United States Postal Service. Project Colt's goal is to reduce, prevent and control fraudulent telemarketing operations in the Montreal area by utilizing strategies to intercept money sent by victims before it is received by the

telemarketer. Nearly 400 boiler rooms have been identified in the Montreal area alone!

Project Emptor is a similar operation in the Vancouver area of British Columbia. It is made up of four members of the RCMP, an investigator from the British Columbia Attorney General's office and one FBI agent. Project Emptor has had positive results in civil cases and criminal cases involving the seizure and forfeiture of assets, concentrating on the theory that the forfeiture of a criminal's assets has the most significant deterrent effect on them. The Toronto Task Force has members of the Toronto Police Service, Ontario Ministry of Consumer and Commercial Relations, the Ontario Competition Bureau, Industry Canada and the United States Federal Trade Commission. The Ohio Attorney General's Office has forged excellent relationships with members of the Toronto Task Force and just this week has been become a named member of the task force.

While these initiatives have been excellent resources, the United States must be more diligent in its commitment of assistance by the various federal agencies. On both Project Colt and Project Emptor, the presence of federal agencies has been sporadic or nonexistent. If we are to be truly dedicated to eradicating the victimization of Americans by cross-border telemarketing schemes, it is critical for us to honor our commitments to resources and membership.

Prosecutors from our office have spent a great deal of time with the law enforcement and legal communities in Vancouver, Montreal and Toronto. It is apparent that the Canadians have a limited understanding of the structure of our federal and state legal systems and their seemingly incongruous laws. At the same time, United States prosecutors struggle to understand the foreign Canadian legal system in order to assist in their investigations and prosecutions. Full time membership by the Unites States designee on these projects could be

an effective tool for sharpening the skills necessary to investigate and prosecute these cases. At a minimum, a true membership commitment on these task forces will help prosecutors on both sides of the border better understand the different regional approaches taken in combating telemarketing crimes.

In addition to the United States' membership commitments, we must remain vigilant in assisting Canadian authorities regarding the intricacies of our legal system. Perhaps dedicating and training a liaison position to respond to legal questions between the United States and Canada would prove useful toward prosecuting cases that otherwise remain dormant. A liaison could explain, for instance, Miranda rights, the right to appointed counsel or speedy trial rights. One idea is to fund the position similar to the position funded by the Department of Justice in the fight against computer crimes.

In Ohio, our most successful cross-border cases have been those in which we have acted in a support capacity for Canadian prosecutions. We assist in locating and identifying Ohio victims, follow up with obtaining victim interviews, witness statements and victim impact statements. We have even funded travel and expenses for experts and victims to travel to Canada for the prosecutions. We often hear that the targets of Canadian prosecutions do not face as severe of penalties in Canada as they would in the United States, but at least they are being prosecuted.

### **Evaluation of Methods Used to Obtain Evidentiary Information**

The second recommendation is to reevaluate the required federal process for states to obtain information essential to a criminal investigation and prosecution. Currently in cross-border cases, states are completely dependent on the federal government to assist in

obtaining information. While one can recognize the need for our nation to speak with a consistent, unified voice regarding international cases, the obstacles placed before those states willing to prosecute are a deterrent to their success. The methods of extradition for example, make states too reliant upon the federal government. In addition, the current system of obtaining information from Canadian authorities that may be used as evidence, is the use of an MLAT request, or Mutual Legal Assistance Treaty. These are available only through the United States Department of Justice, Office of International Affairs. An MLAT (or other formal request) requires extensive paperwork, which will only be accepted in WordPerfect format before beginning the process of review by two government branches before final approval or denial. We have also encountered differing opinions from the Office of International Affairs regarding when an MLAT is needed for admissibility in court. Overall, the MLAT process takes a considerable amount of time and is quite intimidating.

Meanwhile, telemarketers are adapting their scams based upon the availability of new technology with pre-paid digital phones, laptops and personal digital assistants. We've seen the rapid increase of boiler rooms that are transient and fly by night operations. In the time it may take to obtain information through a formal MLAT, there is a substantial likelihood that today's telemarketing operations will have moved on to their next scam.

The Ohio Attorney General's Office has worked hard in establishing an excellent network with Canadian authorities. Currently, we have five Canadian telemarketers under indictment and arrest warrants have been issued. We anxiously await them to cross into United States borders! Our relationships have allowed us to obtain information on an informal basis by circumventing MLAT requests. The information can be used to develop cases but it is of no evidentiary value in

court because of the manner in which it was obtained. Thus we still must obtain admissible evidence and prepare appropriate state charges against Canadian targets. For these reasons, we suggest an examination of workable, cooperative means to shorten the time it takes to obtain information through an MLAT or to develop new ways that states may obtain evidence that would be admissible in a court of law.

Finally, perhaps our best resource comes through funding. All white collar crimes, including telemarketing cases, are very document intensive. Suspects, witnesses and victims are often separated by literally thousands of miles. Direct funding for the states for witness travel to Canada for pre-trial matters and trial would go along way in support of foreign enforcement efforts. Funding to aid in case preparation, such as purchasing videoconferencing facilities to preserve the testimony of our elderly victims, would be helpful. In addition, some flexibility in the rules at the Department of Justice's Bureau of Criminal Assistance would enable the National Association of Attorneys General (NAAG) to earmark grant funds for witness travel. In conclusion, I would simply concur and reiterate the comments of General Sorrell regarding the states' perspective on funding issues.

In sum, we believe the three recommendations outlined, if implemented, will go far in assisting United States and Canadian prosecutions. I ask that you again consider the stories told by the victims. Our focus should be on the victims, their feelings of regret, shame and fear that their adult children will now see them only as a 'victim', no longer able to live independently, take care of their own finances or care for themselves.

As you consider what you have heard today from all the panels, I urge you to step into the shoes of an Ohio Attorney General investigator or prosecutor. Every week they have the unenviable task of sitting next to

victims like Mr. Hathaway, faced with his loss of money and dignity, and attempt to explain why we can not get back his money, or that prosecution of the criminals is highly unlikely. As difficult as our task is after today to find a better approach to fighting cross-border fraud, it is not nearly as difficult or regrettable as that task.

Thank you for the opportunity to testify.

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