

National District Attorneys Association
at the National Advocacy Center



191204



*A Manual for
Prosecutors*

Home Improvement Fraud Against Seniors

1999 by the American Prosecutors Research Institute for the National District Attorneys Association at the National Advocacy Center. The American Prosecutors Research Institute (APRI) is the nonprofit research, training and technical assistance affiliate of the National District Attorneys Association (NDAA).

American Prosecutors Research Institute

99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
(703) 549-4253
Fax (703) 836-3195

National District Attorneys Association

99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
(703) 549-9222
Fax (703) 836-3195

NDAA at the National Advocacy Center

1620 Pendleton Street
Columbia, SC 29201
(803) 544-5050
Fax (803) 544-5060

This project was supported by Grant Number 98-LS-VX-0002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this publication are those of the author and do not represent the official position or policies of the of the United States Department of Justice, the National District Attorneys Association, or the American Prosecutors Research Institute.

Prosecuting Home Improvement Fraud
A Trial Advocacy Approach
Course Agenda
October 4-8, 1999
Columbia, South Carolina

Monday, October 4, 1999

- 8:00am - 8:30am **Registration (Auditorium 114)**
- 8:30am - 8:45am **Welcome and Opening Remarks**
Tom Charron, Director of Education,
NDAA at the National Advocacy Center
- 8:45am - 9:30am **Introduction to the Workshop and Icebreaker:**
Caren Harp, Senior Attorney,
American Prosecutors Research Institute
- 9:30am - 10:15am **The Victims**
◦ Senior citizens as targets.
◦ Consequences for seniors.
Patrick Sainsbury, Chief Deputy Fraud Division
King County Prosecutor's Office
Seattle, Washington
- 10:15am - 10:30am **BREAK**
- 10:30am - 11:30am **Identifying the Offenders**
◦ Local Contractors
◦ Transient Offenders
Joe Livingston, Senior Agent
South Carolina Law Enforcement
Columbia, South Carolina
Louis Sgro, Investigator
Major Crimes Unit, Philadelphia, Police Department
Philadelphia, Pennsylvania
- 11:30am - 1:00pm **Lunch (Group photo, front lobby NAC)**
- 1:00pm - 2:30pm **Investigating Home Improvement Fraud**
◦ Identifying fraudulent schemes.
◦ Important steps in the investigation.
Robert Emmons, Deputy Chief, Special Inv. Bureau
Nassau County District Attorney,
Mineola, New York

2:30pm - 3:15pm

Pre-Trial Considerations

- Bond hearings
- Additional victims
- Charging decisions
- Anticipating defenses

Howard Wise, Chief Prosecutor, Public Protection
Massachusetts Attorney General
Boston, Massachusetts

3:15pm - 3:30pm

BREAK

3:30pm - 4:00pm

Pre-Trial Considerations Continued

4:00pm - 5:00pm

Discussion of Mock Trial Case File and Exercises
Caren Harp

Adjourn for the day

*****There will be a group dinner at the Rhino Room in downtown Columbia Monday night. Participants should meet in the lobby, and take either the 5:50pm or 6:10pm Vista trolley (50 cents) to the intersection of Gervais St and Gadsden St. The restaurant is located at 807 Gervais St. You will have your choice of chicken, filet mignon, and yellow fin tuna for main courses. *****

Tuesday, October 5, 1999

8:30am - 9:30am

Trial Strategies

- Importance of a theme
- Jury selection
- Order of witnesses

Mike Frawley, Chief Deputy D.A. of Special Operations
Ventura County District Attorney
Ventura, California

9:30am - 10:15am

Direct Examination of the Elderly Victim

- Pre-trial interviews.
- Preparation for court.

Patrick Sainsbury

10:15am - 10:30am

BREAK

10:30am - 11:30am

Use of Experts

- Gerontologists
- Inspectors
- Contractors

Howard Wise

Robert Emmons

11:30am - 1:00pm

Lunch

1:00pm - 3:00pm

Cross Examination of the Defendant and Defense Witnesses

- Preparation
- Building on a theme

Mike Frawley, Robert Emmons, Howard Wise

3:00pm - 3:15pm

BREAK

3:15pm - 4:30pm

Opening Statements / Closing Arguments

- Creating the theme and seeing it through
- Making a complicated case appear simple

Mike Frawley

Wednesday, October 6, 1999

8:30am-10:15am

Direct Examination Exercise and Critique (Courtrooms)

- Participants conduct direct examination of the elderly victim in mock trial case file.
- Participants are video taped and critiqued.

10:15am-10:30am

BREAK

10:30am-11:30am

Continued Direct Examination Exercise (Courtrooms)

11:30am

Lunch

Afternoon Free

Thursday, October 7, 1999

- 8:30am - 10:15am **Cross Examination Exercise (Courtrooms)**
- Faculty member (acting as defense counsel) conducts direct examination of the defendant in the mock trial case file.
 - Participants conduct cross examination of the *defendant* in the mock trial case file.
 - Participants are video taped and critiqued.
- 10:15am -10:30am **BREAK**
- 10:30am - 11:30am **Cross Examination Exercise Continued (Courtrooms)**
- 11:30am - 1:00pm **Lunch**
- 1:00pm - 3:00pm **Opening Statement / Closing Argument Exercise (Courtrooms)**
- 3:00pm - 3:15pm **BREAK**
- 3:15pm - 4:00pm **Discussion (Auditorium 114)**
Faculty Panel

Friday, October 8, 1999

- 8:30am-10:15am **The Value of Prevention (Auditorium 114)**
Patirick Sainsbury
- 10:15am-10:30am **BREAK**
- 10:30am-11:30am **Closing Session**
- **Course Evaluation**
 - **Presentation of certificates**

Adjourn

Home Improvement Fraud A Trial Advocacy Approach

Faculty Roster

BOB EMMONS

Deputy Chief
Special Investigations Bureau
272 Old Country Road
Mineola, NY 11501
T: (516)571.2100
F: (516)571.0806

MICHAEL FRAWLEY

Chief Deputy D.A. of Special Operations
4245 Market Street, Suite 205
Ventura, CA 93003
T: (805)289-1991
F: (805)289.1970
E mail:
Mike.Frawley@mail.co.ventura.ca.us

CAREN HARP

Senior Attorney
APRI
99 Canal Center Plaza, Suite 510
Alexandria, VA 22304
T: (703) 518-4380
F: (703) 836-3195
E-mail: Caren.Harp@ndaa-apri.org

JOE LIVINGSTON

Senior Agent
South Carolina Law Enforcement
P.O. Box 21398
Columbia, SC 29221
T: (803)737.9000
F: (803)896.7595
E-mail: sled102@yahoo.com

JIM MCCUNE

2901 SW 41st St., #308
Ocala, Florida 34474
T: (352)895-9340
F: (352)620-3365

COLLIN O'DONNELL

Special Investigations Bureau
272 Old County Road
Mineola, NY 11501
T: (516)571-2100

PATRICK SAINSBURY

Chief Deputy, Fraud Division
King County Prosecuting Attorney
900 4th Avenue, Suite 1002
Seattle, WA 98164
T: (206)296.9078
F: (206)296.90
E-mail: pat.sainsbury@metrokc.gov

LOUIS SGRO

Philadelphia Police Department
Major Crimes Unit
3900 Lancaster Avenue
Philadelphia, PA 19104
T: (215).685.9486
F: (215).685.9481
E-mail: LSGRO@aol.com

HOWARD WISE

Chief Prosecutor, Public Protection
Massachusetts Attorney General
1 Ashburton Place
Boston, MA 02108
T: (617)727.2200 ext. 2516
F: (617)727.5778
E-mail: howard.wise@ago.ma.us



**National District Attorneys Association
National Advocacy Center
Roster of Students, Course Id: 01-00-HI1**

Winifred L. Acosta WS:9-37
Assistant Statewide Prosecutor
1300 Riverplace Blvd., Ste.405
Jacksonville FL 32207
(904)348-2720 Fax: (904)348-2783
winifred_acosta@oag.state.fl.u

Jerri Byerly WS:7-20
Assistant State's Attorney
Williamson County Courthouse
Marion IL 62959
(618)997-5449 Fax: (618)993-5805

David W. Glanzer WS:6-10
Deputy District Attorney
251 South Lawrence
Montgomery AL 36104
(334)832-2550 Fax: (334)832-1615

Cliff Herberg WS:9-43
Division Chief
300 Dolorosa
San Antonio TX 78205
(210)335-2311 Fax: (210)335-2773

Andrew Jacobsen WS:8-31
Deputy County Attorney
555 South 10th Street
Lincoln NE 68508
(402)441-7321 Fax: (402)441-7336

Sandra L. Lascari WS:7-23
Assistant Prosecutor
Court Street, 3rd Flr.
P.O. Box 900
Morristown NJ 07963
(973)285-6225 Fax: (973)285-6226

Pam Nash WS:8-33
Assistant District Attorney
400 Carleton Ave.
Central Islip NY 11722
(516)853-4104 Fax: (516)853-5844

Thomas E. Bracken WS:6-14
Assistant Prosecutor
19-21 High Street
Newton NJ 07860
(973)383-1570 Fax: (973)383-4929

David Chen WS:6-15
Assistant District Attorney
80-02 Kew Gardens Rd.
Kew Gardens NY 11415
(718)286-5887 Fax: (718)286-6566

John Gutierrez WS:7-21
Assistant County Attorney
111 North Summit
Girard KS 66743
(316)724-6780 Fax: (316)724-6790

Katherine Howard WS:8-28
Deputy District Attorney
201 West 8th Street, Suite 801
Pueblo CO 81003
(719)583-6030 Fax: (719)583-6666
howardk@rmi.net

Chris Lackmann WS:7-24
Assistant District Attorney
111 Union Square
Albuquerque NM 87102
(505)841-7100 Fax: (505)841-7260

Randal Lee WS:9-38
Deputy Prosecuting Attorney
1060 Richards Street, 10th Floor
Honolulu HI 96813
(808)523-4516 Fax: (808)547-7390

Jim Noble WS:6-17
Assistant District Attorney
150 N. Seguin St.
New Braunfels TX 78130
(830)620-5533 Fax: (830)620-5599
jimnobleada@hotmail.com

Gary R. Brown WS:9-42
Assistant District Attorney
Love County Courthouse
Marietta OK 73448
(580)276-9441 Fax: (580)276-9442

Augusta R. Clarke WS:6-12
Assistant State's Attorney
SAO/Civil 505 N. County Farm Rd.
Wheaton IL 60187
(630)682-7709 Fax: (630)682-7048

Cheryl Hawkinson WS:6-16
Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus OH 43215
(614)466-3965 Fax: (614)466-8898

Roy J. Hubert WS:7-19
Deputy District Attorney
1100 "I" Street, Room 200
Modesto CA 95354
(209)525-5550 Fax: (209)525-5545

Scott P. Larson WS:8-30
Assistant State's Attorney
37W777 Rt. 38, Ste. 300
St. Charles IL 60175
(630)208-5126 Fax: (630)232-6508

Thomas A. McDermott WS:8-34
Assistant Solicitor
209 Beaty Street
Conway SC 29526
(843)248-1309 Fax: (843)248-4836

Thomas C. Orr WS:7-22
Deputy City Attorney
435 N. Ryman
Missoula MT 59802
(406)523-4627 Fax: (406)523-4895
torreci.missoula.mt.us

**National District Attorneys Association
National Advocacy Center
Roster of Students, Course Id: 01-00-HI1**

Michael J. Provost WS:8-29
Assistant State Attorney
3301 East Tamiami
Naples FL 34102
(941)774-8470 Fax: (941)774-6251
mjp@sao.cjis20.org

Paul Sullivan WS:6-13
Assistant Prosecuting Attorney
415 East 12th Street, 10th Floor
Kansas City MO 64106
(816)881-3555 Fax: (816)881-3821

Candace K. Vogel WS:9-41
Chief, White Collar Crime Unit
25 Delaware Ave.
Buffalo NY 14202
(716)858-2424 Fax: (716)858-2587

Brian Pugh WS:6-11
Chief Assistant Statewide Prosecutor
2075 W. 1st St., #202
Ft. Myers FL 33901
(941)338-2440 Fax: (941)338-2304
Brian.Pugh@ogg.state.fl.us

Kent Sutton WS:7-26
Supervising Attorney, Criminal Unit
500 E. San Antonio, #203
El Paso TX 79901
(915)546-2050 Fax: (915)546-2133
kafkaxs@aol.com

George B. Waldron WS:9-40
Deputy County Attorney
Route 10
Grafton County Courthouse
N. Haverhill NH 03774
(603)787-6968 Fax: (603)787-2026

Timothy Randolph WS:8-32
Assistant City Attorney
431 Prater Way
Sparks NV 89436
(775)353-2320 Fax: (775)353-1617

Michael Ulharik WS:9-39
Assistant District Attorney
1 Bullfinch Place
Boston MA 02108
(617)619-4000 Fax: (617)619-4270

Joseph F. Wheeler WS:8-35
Deputy Prosecuting Attorney
2000 Lakeridge Dr., SW., Bldg.2
Olympia WA 98502
(360)786-5540 Fax: (360)754-3358
wheelej@co.thurston.wa.us

**Robert Emmons
Deputy Chief
Nassau County District Attorney
Mineola, NY**

Robert Emmons received his Juris Doctor from Fordham University School of Law in 1980. He received his Bachelor of Arts degree (Summa Cum Laude) from Fordham University in New York City in 1977.

Robert Emmons has been the Deputy Chief of the Special Investigations Bureau since 1995. Prior to that, he was the Deputy Chief of the Commercial Frauds Bureau from 1988 through 1995. As of November 1, 1999, he will be the Chief of new criminal frauds bureau. Mr. Emmons has been a member of the District Attorney's Office for 19 years, specializing in fraud cases for the last 17 years.

Mr. Emmons has handled numerous high profile fraud cases, including embezzlement cases by professionals, insurance fraud, financial crimes against the elderly, and home improvement fraud. He is a member of the Home Improvement Fraud Against Seniors group, and has assisted in writing a manual on home improvement fraud. He also assists the Nassau County Elderly Abuse Committee in various prevention programs, as well as participates in training programs for A.A.R.P. members.

In addition, Mr. Emmons has given numerous speeches on a wide variety of fraud topics. He is a frequent contributor to local and national television and the print news media on fraud topics. He is a regular guest on a New York area radio show, Scams and Flim-Flams.

Mr. Emmons has also been in charge of creating numerous undercover consumer sting operations over the last 15 years. His office, led by District Attorney Denis Dillon, has taken a pro-active approach in fighting fraud. Some of the stings are in the area of home improvement fraud, auto repair, doctor/lawyer insurance fraud, as well as other consumer fraud areas.



Caren Harp
Senior Attorney
American Prosecutors Research Institute

Caren Harp is a senior attorney at the American Prosecutors Research Institute. She serves as Program Manager for the Home Improvement Fraud Against Seniors project, and the Juvenile Justice Prosecution Program. Prior to joining APRI, Ms. Harp was a deputy prosecuting attorney in Arkansas for nine years. Coming from a rural jurisdiction, she prosecuted a wide variety of cases including fraud, sexual abuse, domestic violence, rape, robbery and murder. She also practiced extensively in juvenile court and trained deputy prosecutors newly assigned to juvenile court.

Ms. Harp is a member of the Arkansas Bar and is licensed to practice in the Eastern and Western District Courts of Arkansas. She is also a Certified Instructor for the Arkansas Commission on Law Enforcement Standards and Training. She has done extensive training of law enforcement personnel in the areas of criminal procedure, civil liability and juvenile law. Before joining APRI, Ms. Harp was adjunct faculty at South Arkansas University and South Arkansas Community College teaching courses in criminal procedure and evidence, criminal investigative techniques, juvenile justice and constitutional law.

Ms. Harp received a bachelor of science degree in agriculture in 1983 from the University of Arkansas, Fayetteville. She completed a master's degree in agricultural economics in 1985 and a juris doctorate in 1988. She is a past president of the Union County Bar Association and former board member at the Union County Family Violence Center. She has also provided training for personnel with the Union County Rape Crisis Clinic, Family Violence Center and Court Appointed Special Advocates (CASA).



Joseph Livingston

Mr. Livingston is a Senior Agent with the South Carolina Law Enforcement Division Criminal Intelligence Unit. As an agent with the Criminal Intelligence Unit, Mr. Livingston has gained knowledge and experience about transient groups known as gypsies or travelers.

Mr. Livingston attended the University of South Carolina where he received a degree in Professional and Applied Sciences. He also received an Associates Degree in Police Science and Administration from Spartanburg Methodist College.

Due to his expertise regarding the crime of home improvement fraud, Mr. Livingston has appeared on national television programs such as 20/20, 48 Hours, and Dateline and also presented more than thirty lectures on the subject. He is a member and former president of the National Association of Bunco Investigators (NABI).



Colin F. O'Donnell
Assistant District Attorney
Nassau County District Attorney's Office
Mineola, NY

Colin F. O'Donnell received his Juris Doctor from Seton Hall University School of Law, Newark, New Jersey, in 1987. He received his Bachelor of Arts degree in Economics and Political Science from Bucknell University, Lewisburg, Pennsylvania.

Mr. O'Donnell is admitted to practice in the States of New York and New Jersey and is admitted to the Federal District of New Jersey, and the Eastern and Southern Districts of New York. He has served as an Assistant District Attorney in Nassau County for seven years, where he has prosecuted numerous felony and misdemeanor cases. He has served in the District Court Bureau and the Special Investigations Bureau where he has been Chief of the Bias Crime Unit and is currently the supervisor in charge of all the investigations and prosecutions regarding home improvement cases in the county. Mr. O'Donnell has lectured numerous times to community, school, civic and senior citizen organizations regarding criminal frauds and home improvement scams.

Between 1990 and 1995, Mr. O'Donnell was the managing partner of Kelly, Muraca & O'Donnell, a law firm which specialized in white collar criminal defense at the state and federal level, real estate, wills, and corporate law. He is a member of the Nassau County and New York State Bar Associations and is active in the Northeast Chapter of the High Technology Crime Investigation Association, an organization of law enforcement and private sector individuals who exchange information regarding computer and Internet crime.



**Patrick Sainsbury
Chief Deputy Prosecuting Attorney
Fraud Division
Seattle, WA**

Pat Sainsbury is a graduate of Stanford University and Stanford University Law School. He also studied at NYU Graduate School of Business night school while working at Citibank between college and law school.

Mr. Sainsbury freely admits he started out to be a business and tax lawyer, until he found out how much more fun it is to investigate and prosecute con men and other clever criminals.

He spent two years in a downtown Los Angeles business law firm, traveled for six months in South America, and worked about a year in Raleigh, NC for the National Association of Attorneys General before becoming a prosecutor. He is a member of the California, North Carolina, and Washington bars.

He has worked for over 25 years in the Fraud Division of the King County Prosecutor's office. The first 10 years he worked as a fraud investigator and prosecutor, including aggravated consumer frauds, employee thefts, real estate and investment frauds, and insurance frauds. Since 1982 he has been the Chief Deputy of the Fraud Division, overseeing fraud investigations and prosecutions, complex asset forfeiture cases, and investigations and prosecutions of organized theft and fencing, narcotics, vice, and official corruption and abuse of office. These include all the state racketeering cases brought in King County.

He has taken a special interest in legislation, including insurance fraud, electronic surveillance, racketeering, forfeiture, money laundering, reporting financial abuse of the elderly, consumer protection, bail bondsman licensing and regulation, and tax evasion legislation. He was the primary drafter of Washington's money laundering, drug case one party consent, and pen register/trap and trace statutes and was one of two prosecutor representatives on a bar association task force responsible for the final version of Washington's racketeering law.



Louis A. Sgro
Major Crime Division
Philadelphia Police Department
Philadelphia, PA

Louis Sgro has been a member of the Philadelphia Police Department for 33 years. In those 33 years he has experienced all types of police work including routine patrol duty and various plain clothes duties in high crime areas.

For the last ten years Louis has been assigned to the Major Crimes Division. In the course of investigating crimes committed against the elderly and in conjunction with organizations dealing with elder crime, the C.A.R.E. Unit (Crimes Against Retired and Elderly) was created. The C.A.R.E. Unit investigates and assists in the prosecution of all types of crimes and abuse directed toward the elderly and in any type of frauds and gypsy criminal activity.

Louis serves on the Board of Directors of N.A.B.I. (National Association of Bunco Investigators). In this capacity he lectures throughout the country to investigative agencies on crimes committed against the elderly and how to investigate and prosecute these types of crimes. He also lectures in conjunction with the Magloclen Network.

Louis conducts seminars on confidence crime prevention for area agencies and community organizations. Participants in television and radio programs to bring an awareness of the crimes and abuse suffered by the elderly to the attention of the general public and to discuss the victimization of the elderly. As a member of the Pennsylvania Attorney General's Task Force for the Elderly he has testified relative to various confidence games and non-traditional organized crime groups and their effect on the public, the elderly in particular. He has helped sponsor Pennsylvania House bills dealing with home repair fraud and nursing and boarding home abuse.



Howard Wise
Chief Prosecutor, Public Protection
Boston, MA

Howard A. Wise received his Juris Doctor from the Washington College of Law in Washington D.C. in 1988. He received his Bachelor of Arts degree from Emory University in Atlanta Georgia. Mr Wise is also a graduate of the NDAA Career Prosecutor Course.

Mr Wise has been the Chief Prosecutor of the Public Protection Bureau of the Massachusetts Office of the Attorney General and a Special Assistant United States Attorney since 1997. He specializes in criminally prosecuting consumer frauds and other white collar crime. He previously served as an assistant attorney general in the Attorney General's Special Investigation and Narcotics Division and as an assistant district attorney in Middlesex County Massachusetts

Mr. Wise is a trial lawyer who has been involved in several high profile prosecutions and has been involved in all facets of criminal law. Recently, Mr. Wise has implemented Attorneys General Scott Harshbarger and Tom Reilly's Home Improvement Fraud initiatives and has developed a model for these prosecutions. Mr Wise recently authored the state Identity Fraud legislation that was enacted in Massachusetts in 1998.

Mr Wise has written articles on a variety of subjects including consumer frauds involving private insurer health care fraud, home improvement fraud, search and seizure and evidentiary motions practice. He has lectured for state and local police and prosecutors and at Harvard Law School and Suffolk University Law School. He has been on the faculty of Massachusetts Continuing Legal Education, Inc. and is on the Hearing Committee of the Massachusetts Bar of Board Overseers.



Jim McCune
Assistant State Attorney
Florida's 5th Circuit State Attorney's Office
Ocala, FL

Jim McCune received his J.D. degree from the Valparaiso University School of Law in Valparaiso, IN, in 1982. He received his B.A. degree from Washington & Lee University in Lexington, VA, in 1977. He also has earned a LL.M. degree from Emory University in Atlanta, GA, in 1985.

Upon receiving his J.D. degree, Mr. McCune worked for 3 ½ years as a law clerk to one of the Justices of the Indiana Supreme Court in Indianapolis. After completing his LL.M. at Emory, Mr. McCune worked for 2 ½ years as an Assistant Attorney General for the State of Florida. In that position, he was assigned to the R.I.C.O. Section of the Economic Crimes Litigation Unit and handled civil R.I.C.O. cases all over Florida. Since February, 1989, Mr. McCune has been an Assistant State Attorney in Florida's 5th Judicial Circuit. The 5th Judicial Circuit is comprised of 5 counties in the north-central part of Florida in-between Orlando to the south and Gainesville to the north.

While working at the State Attorney's Office, Mr. McCune has held several assignments. During his 1st year he managed the general felony trial docket for an entire county. Mr. McCune then was transferred to the Circuit's headquarters to be responsible for the prosecution of the major economic crime cases throughout the Circuit. Within a year, he was allowed to put together and manage the State Attorney's Public Interest Unit. P.I.U. is a special prosecution unit of attorneys, investigators and staff assigned the responsibility of investigating and prosecuting the Circuit's major economic crimes including crimes against the environment, government and elderly. The Unit's responsibilities also include prosecuting the Circuit's unfair trade practice cases. Mr. McCune was supervisor of P.I.U. for 5 ½ years.

Since July, 1996, Mr. McCune has been assigned to the Homicide Division of the 5th Circuit S.A.O. In this current position, he has been generally responsible to oversee the handling of the Circuit's 21 death penalty cases that are in various stages of appellate or post-conviction litigation. Mr. McCune also has been assigned some 1st degree murder cases to take to trial. Included among those cases was 2nd chair responsibility for the "vampire cult" murder cases in 1998 that received national coverage on Court-TV. During the later part of September, 1999, Mr. McCune handled the trial of a 1st degree murder case that lasted 7 days and included 43 state witnesses ranging from forensic experts, bank and credit card representatives, crack addicts and prostitutes.

Mr. McCune is happily married to a wonderful woman named Jessica. At present, he is president of Habitat for Humanity of Greater Ocala.



Michael K. Frawley
Chief Deputy District Attorney
County of Ventura

Mr. Frawley earned a Bachelor of Arts degree from the University of Notre Dame in 1982. Following graduation, he joined the Holy Cross Associates as a volunteer for one year and worked in Oakland, California, providing legal assistance to the indigent.

In 1987, Mr. Frawley earned a law degree from McGeorge School of Law and joined the Ventura County District Attorney's Office. He prosecuted a variety of misdemeanor offenses and completed special assignments in domestic violence. During this time, he also worked as a crisis line counselor at the Rape and Sexual Abuse Center of Ventura County.

Mr. Frawley was next assigned to the Sexual Assault/Career Criminal Prosecution Unit, where he prosecuted career criminals, habitual offenders, child molestation cases, adult sexual assault cases, and felony spousal abuse cases.

In March of 1992, Mr. Frawley assumed the duties of supervisor of the Misdemeanor Unit, comprised of approximately 18 attorneys that handle over 25,000 cases a year.

In June of 1993, he was assigned to the Major Crimes Unit to prosecute homicides. He was promoted to Senior Deputy District Attorney on January 1, 1995. Mr. Frawley prosecuted numerous murder cases, including 4 death penalty cases before taking the position of Chief Deputy of the Special Operations Division in 1997. The Special Operations Division prosecutes all types of fraud, consumer and environmental cases, asset forfeiture, fish and game, juvenile, and political corruption cases.



TABLE OF CONTENTS

Table of Contents

Preface and Acknowledgments

Introduction

Chapter One: The Victims

Chapter Two: The Offenders

Chapter Three: The Scams

Chapter Four: The Investigation

Chapter Five: Pre-Trial Considerations

Chapter Six: The Trial

Chapter Seven: The Federal Option

Chapter Eight: Prevention

Reference Materials

Resource Directory

Weblinks





PREFACE

PREFACE

The National District Attorneys Association at the National Advocacy Center, and the American Prosecutors Research Institute (APRI), in cooperation with the Office of Justice Programs' Bureau of Justice Assistance, are pleased to provide prosecutors nationwide with training and materials to assist them in prosecuting home improvement fraud committed against senior citizens.

The contents of this binder were designed not only as a complement to the workshop, but also as a stand-alone manual. The manual is organized by subject matter into eight chapters, reference materials, a resource directory and a page of weblinks. The chapters include checklists and outlines designed for easy access and to allow users to quickly locate information. APRI hopes that the manual will serve as a reference guide for prosecutors in the investigation and prosecution of home improvement fraud offenses committed against senior citizens.

APRI is committed to assisting prosecutors in their efforts to eradicate crime against the elderly. We at APRI encourage prosecutors to use the policies and strategies learned in the workshops and contained in this manual in the investigation and prosecution of home improvement fraud against seniors.

NEWMAN FLANAGAN
Executive Director
National District Attorneys Association
President
American Prosecutors Research Institute

J. KEVIN O'BRIEN
Deputy Director
National District Attorneys Association
Chief Administrator
American Prosecutors Research Institute

This workshop is supported through Grant # 98-LS-VX-0011 from the Office of Justice Programs' Bureau of Justice Assistance. Points of view or opinions expressed are those of the presenters and do not necessarily reflect the official position of the Department of Justice, NDAA, APRI, NAC or BJA.

ACKNOWLEDGEMENTS

ACKNOWLEDGEMENTS

The National District Attorneys Association at the National Advocacy Center, and the American Prosecutors Research Institute (APRI), in cooperation with the Office of Justice Programs' Bureau of Justice Assistance, are pleased to provide prosecutors nationwide with training and materials to assist them in prosecuting home improvement fraud committed against senior citizens. The workshop and manual are the result of a collaborative process which drew on the expertise and materials of many persons. We owe our sincere gratitude to all those who participated.

A core Advisory Group guided the development of the workshop, manual, and supplemental materials:

Michael Frawley, Chief Deputy D.A. of Special Operations, Ventura, California; Bob Emmons, Deputy Chief of the Special Investigations Bureau, Mineola, New York; David Schiller, Assistant U.S. Attorney, Eastern District of Virginia, Richmond, Virginia; Sharon Hermanson, Public Policy Institute, AARP, Washington, DC; William Young, Director, Consumer Affairs for the National Association of Home Builders, Washington, DC; Patrick Sainsbury, Chief Deputy, Fraud Division for the King County Prosecuting Attorney; Louis Sgro, Philadelphia Police Department, Major Crimes Unit, Philadelphia, Pennsylvania; Joe Livingston, Senior Agent, South Carolina Law Enforcement, Columbia, South Carolina; Jeanne Zielinski, Vice President, Counsel of Better Business Bureaus, Arlington, Virginia; Howard Wise, Chief Prosecutor, Public Protection, Massachusetts Attorney General, Boston, Massachusetts.

HOME IMPROVEMENT FRAUD AGAINST SENIORS

We wish to thank Mr. Wingate Grant, Assistant United States Attorney, Eastern District of Virginia, Richmond, Virginia for his contribution on the topic of forfeitures in the chapter entitled "The Federal Option."

NDA and APRI recognize the outstanding work of APRI staff who played key roles in the development of the workshop and the manual. Dr. Heike Gramckow, Director of Management and Program Development, served as project director. Caren Harp, Senior Attorney, served as the Program Manager. They were assisted in preparation of the manual and workshop by Jean Holt, Publications Director, National District Attorneys Association.

APRI is most grateful to the Bureau of Justice Assistance for their financial support of the project. In particular, APRI recognizes the guidance and support of Martin Kamen, grant monitor with Bureau of Justice Assistance.

Again, welcome to *Prosecuting Home Improvement Fraud Against Seniors*.

NEWMAN FLANAGAN
Executive Director
National District Attorneys Association
President
American Prosecutors Research Institute

J. KEVIN O'BRIEN
Deputy Director
National District Attorneys Association
Chief Administrator
American Prosecutors Research Institute



INTRODUCTION

THE FACTS¹

In 1997, Americans spent more than \$118 billion on contracted home improvement projects and do-it-yourself home repairs.² Home improvement is important for preserving both the safety and value of a homeowner's property.³ Improvements can further increase a home's value and allow owners to "age in place" by adapting their home to meet their changing needs.

According to the most recent American Housing Survey (AHS, 1995),⁴ approximately one half of all homeowners age 65 and older had repairs or maintenance work performed on their homes during the previous two-year period. Common home improvements needed by older homeowners included replacing doors and windows, roof repairs, and repairs to driveways.⁵

Home repair is also big business. Consumer spending for six common home improvements show that average home repair costs over a two-year period ranged from \$1,813 for homeowners under age 25 to \$4,435 for homeowners between the ages of 45 and 54 (Figure 1).

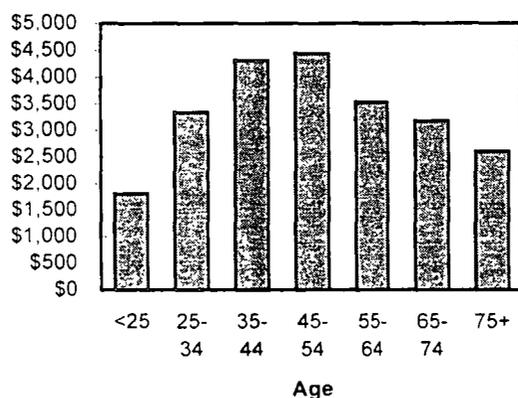
¹ Adapted from *Home Improvement Contractors*. Fact Sheet Number 75. Washington, DC: AARP, 1999.

² Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing*, 1998, p. 24. More than \$85 million was spent on improvements to owner-occupied housing and \$33 million on improvements to renter-occupied housing.

³ "Home improvement" is defined here to include all repairs and improvements made to existing structures. New construction activities are excluded.

⁴ U.S. Department of Commerce. Bureau of the Census. *American Housing Survey for the United States in 1995*.

Figure 1. Home Repair Costs*



* Source: AHS, 1995

While most contracted home repairs are completed professionally and satisfactorily, tens of thousands of homeowners annually receive inadequate, unprofessional, or fraudulent home repair work. The National Association of Consumer Agency Administrators (NACAA) and the Consumer Federation of America (CFA) report that nationally, in 1997, complaints about home improvement contractors ranked number two, second only to complaints regarding auto sales.⁶ According to a 1999 American Association of Retired Persons (AARP) survey,⁷ approximately one in five (21%) consumers reported having had a bad experience related to home repairs.

⁵ *Progress in the Housing of Older Persons*. Washington, DC: AARP, (forthcoming).

⁶ 1995 AHS data on average repair costs for owners who made at least one repair of any type in the two-year period prior to the survey interviews, which were conducted between August 1995 and February 1996.

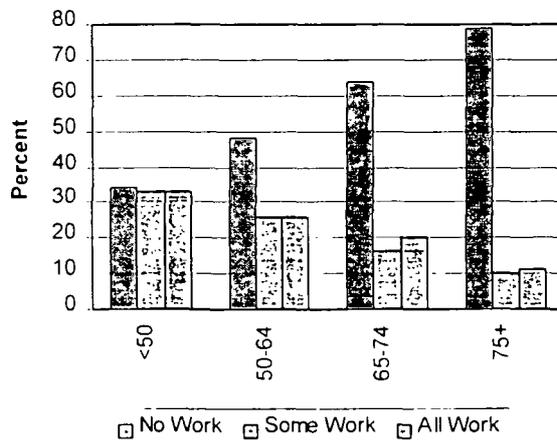
⁶ *Seventh Annual NACAA/CFA Consumer Complaint Survey Report*. Washington, DC: NACAA/CFA, November 24, 1998, p. 1.

⁷ *Consumer Behavior, Experiences and Attitudes*. (1999). AARP.

THE VICTIMS

Older homeowners have a greater need for hiring home improvement contractors than younger homeowners for two reasons. First, persons 65 and older have higher rates of homeownership, and they tend to own older homes that are more likely to need repair.⁶ Second, as homeowners age, they are less likely to undertake home repairs themselves (Figure 2). According to 1995 AHS data, of homeowners 75 and older reporting home repair work over a two-year period, eight in ten (79%) did none of the repairs themselves.

Figure 2. 'Do-It-Yourself' Home Repair Projects by Age*



* Source: AHS, 1995

⁶ AARP analysis of 1995 AHS data. (U.S. Department of Commerce. Bureau of the Census. *American Housing Survey for the United States in 1995*).

In addition, older homeowners are often more vulnerable than younger homeowners because they are more likely to:⁹

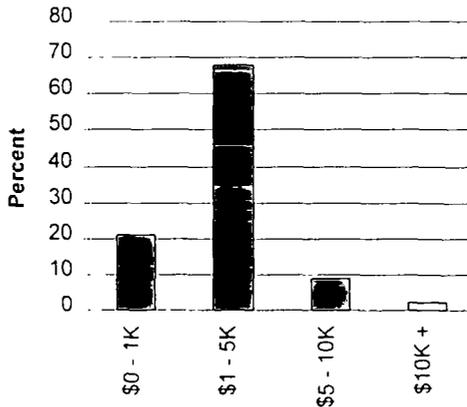
- be home during the day when fraud perpetrators tend to operate; be females living alone; be too trusting of door-to-door salespersons; and be owners with more physical and mental limitations;
- have relatively large amounts of cash on hand or readily accessible in a checking account; and
- be less likely than other homeowners to take action against fraudulent home improvement contractors. A recent AARP study (1999),¹⁰ found that of those persons aged 65 and older who had a home repair problem, 44% took no action to address the problem. Older homeowners tend to be less knowledgeable about their rights as consumers, less suspecting of deceptive sales practices, and more susceptible to fears they will be deemed incompetent to remain in their homes and manage their own affairs should they complain.

IMPACT OF THE PROBLEM ON SENIORS

Older persons may pay out of their life savings for shoddy home repairs or work that is never finished, sometimes leaving them with no money and no legal recourse. Figure 3 shows that losses associated with home improvement fraud against older persons (persons 65 and over) typically range from \$1,000 to \$5,000, though some older homeowners have been defrauded of more than \$10,000.

⁹ Friedman, M. Confidence Swindles of Older Consumers, *The Journal of Consumer Affairs*, Vol. 26, No. 1, 1992, pp. 23-41.

**Figure 3. Financial Losses of Older Homeowners
Resulting from Home Improvement Fraud Cases***



* Source: Friedman, 1992

Additionally, losses may occur when homeowners "sign paperwork" authorizing fraudulent contractors to obtain mortgages or assign liens against their property. In these cases, the dollar value of the loss is typically higher than losses due to actual home improvement fraud.

HOME IMPROVEMENT OFFENDER PRACTICES

Offender techniques can take the form of high-pressure sales or softer approaches, such as persuasion or manipulation. Often they are a combination of both.¹¹ Common

¹⁰ *Consumer Behavior, Experiences and Attitudes*. (1999). AARP.

¹¹ *Ibid.*

fraudulent home improvement practices include: charging high prices for low quality materials; misrepresenting the need for repairs, the work to be performed, or the materials to be used; and using deceptive pricing.

HOME EQUITY LOAN SCAMS

Home repair is necessary for preserving both the safety and value of a homeowner's property; when the need for home repair arises, the elderly have a particular vulnerability, "[t]hey're afraid that if their house falls apart they will be put in a home."¹²

The older homeowner may be "cash poor," while possessing tremendous equity in the home he/she owns, after many years of paying off a mortgage.¹³ A home equity loan can provide the older homeowner with the money necessary to complete home improvement projects that prevent deterioration of the home and its value. A 1999 AARP survey showed that thirty-one percent (31%) of older persons had taken out a home improvement or home equity loan from a bank, credit union, or other institution.¹⁴ Door to door salespeople offering home equity loans to finance home repair prey on this vulnerability.¹⁵ The homeowner's hard-earned equity becomes the collateral for a "roof

¹² David Schiller, Assistant U.S. Attorney quoted in "Remodeling Rip-offs" *Good Housekeeping*, Bob Trebilock, February 1999, page 89.

¹³ Eighty-three percent of older homeowners own their homes free and clear. The median home value for owners age 65-74 was \$61,200 and \$52,100 for owners age 75 and older. See *Progress in the Housing of Older Persons*. Washington, DC: AARP, LR5453 (297) D16376, 1997.

¹⁴ *Consumer Behavior, Experiences and Attitudes*. (1999). AARP.

¹⁵ A Boston couple in their late 70s, who owned the triple-decker house in which they had lived for thirty years, fell prey to a door-to-door home improvement salesman who prepared a contract obligating the couple to repay almost \$100,000, at a 24% interest rate. Paying monthly payments of almost \$2,100 was obviously impossible for the couple -- both disabled -- whose total monthly income was only \$800. Nevertheless, a local mortgage

repair" loan – but the loan may operate as a second mortgage. Often, homeowners face the risk of foreclosure because the loan that they signed required monthly payments well beyond the means of the older person's fixed income.

HOME REPAIR RIP-OFFS IN DISASTER AREAS

In the aftermath of a natural disaster,¹⁶ the potential for home repair fraud is high. Disaster areas frequently serve as magnets attracting unscrupulous or unqualified contractors. The reason is apparent: When a large number of homes suffer sudden, severe damage, there will likely be too few qualified contractors in the area to handle all the work. At the same time, homeowners may be receiving large sums of money from insurance settlements and government emergency aid, and they are anxious to start rebuilding.^{17,18}

company approved this contract. The contractor never completed the renovations and disappeared; the mortgage company foreclosed on the home and sold it. See AARP's *Senior Consumer Alert*, Fall 1992 p. 2, citing Gary Chavetz & Peter S. Canellos, "Elderly poor losing homes in loan scams," *Boston Globe*, May 6, 1991 (p. 1).

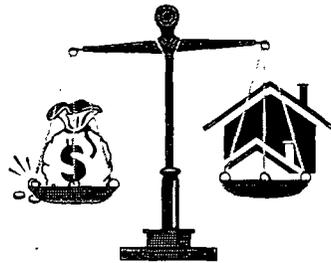
¹⁶ In August 1992, Hurricane Andrew completely destroyed 63,000 homes in Dade County, Florida, leaving 250,000 people homeless, 10,000 of whom were older people. AARP's *Senior Consumer Alert*, Fall 1995, p. 4, citing Alan T. Dimond, *Hurricane Andrew: From Devastation and Chaos to Rebirth and Renewal*, 17 *Nova*. L. Rev. 1003, 1004 (Spring 1993).

¹⁷ *Supra*, note 13.

¹⁸ For example, shortly after the 1994 Los Angeles earthquake an 84-year old woman received a call from someone who said that she worked for the Federal Emergency Management Agency (FEMA). The woman thought that the documents she signed as a follow-up to their conversation were applications for FEMA assistance and food stamps. In fact, they were for an \$18,000 mortgage to finance what ended up being only about \$5,000 worth of repair work. Case history reported by Manuel Duran, Bet Tzedek Legal Services, Los Angeles, at National Consumer Law Center's Consumer Rights Litigation Conference, 1994, reprinted in AARP's *Senior Consumer Alert*, Fall 1995 p. 1.

THE CRIMINAL JUSTICE RESPONSE

Historically, issues of home improvement fraud have been handed off as civil matters, partially because of a lack of understanding of the magnitude of impact on the elderly victim, and partially because of a lack of understanding of how to prosecute the case. Both police and prosecutors must explore ways to encourage collaboration and understanding among themselves and the allied professionals that provide services to the elderly. While the service providers have traditionally played a critical role in the protection of seniors, they can also be a vital resource in the enforcement and prosecution of these cases, and the prevention of these crimes.



CHAPTER ONE: THE VICTIMS

INTRODUCTION

Since 1900, the percentage of Americans over age 65 has more than tripled (4.1% in 1900 to 12.7% in 1997), and the number has increased 11 times (from 3.1 million to 34.1 million). Almost 2 million persons celebrated their 65th birthday in 1997 (5,335 per day). In the same year, the hundreds of people in this age category increased by 214,000 (587 per day). This growth is expected to continue as the "baby boom" generation reaches age 65. The burgeoning population of senior citizens will impact the work of law enforcement professionals and prosecutors alike.

For law enforcement officials, senior citizens represent a unique category of victims. They are vulnerable to virtually every type of crime, from a wide variety of criminals. Many seniors own their own homes, and have bank accounts and credit cards, which make them targets for innumerable confidence crimes and fraudulent schemes. Many of the elderly have physical infirmities, which make them easy targets for strong-armed robberies and home invasion thefts. When their physical infirmities leave them house bound, many senior citizens become the targets of physical and sexual abuse, or neglect.

The criminals that perpetrate these offenses can be family members, friends, neighborhood predators, caregivers, or the non-traditional organized crime groups that travel throughout the United States targeting the elderly. Senior citizens have other unique qualities, which will be discussed in detail in this chapter, that unfortunately serve to make them "good" victims. Law enforcement officials must recognize that major crimes are

routinely being committed against an ever-growing population of elderly victims, and future enforcement efforts must be aimed at protecting this group of victims, and aggressively pursuing the suspects.

For prosecuting attorneys, the changing demographics mean that the elderly become a significant part of victim populations. Through local community involvement and participation in national organizations, older Americans are making this, and other related concerns, known to public officials. Historically, older Americans register and vote in higher proportions than any other age group. Seniors play a pivotal role in national and local elections, and that role is likely to become even more important as the elderly population grows from one in eight Americans currently, to one in four Americans in the new millennium. Prosecutors must be ready to address the special needs of senior citizens when they are the victims of crime and aggressively prosecute the perpetrators.

SENIOR CITIZENS AT SPECIAL RISK

The victimization of older Americans, especially in connection with consumer fraud, is attributable to certain generation specific attitudes, economic factors, and physical characteristics detailed below that make seniors especially vulnerable.

Trust

Seniors grew up in an era when business was done on a handshake. A study by the American Association of Retired Persons (AARP) has found that older people are quicker to believe promises and slower to take steps to protect their legal rights.

Predictability

The elderly tend to be creatures of habit. They are more likely to wake up and go to sleep at the same time each day, go to the same stores, and take walks on the same streets or in the same parks. They may do their banking on the same day each month and frequently keep their cash in the same place all the time. Their routines make them easily accessible targets for criminals.

Assets

Older Americans own a lot of assets. They have worked hard all of their lives and now own their homes, property, and often, one or more vehicles. Seniors usually have some money from Social Security and employer pensions, IRA or 401(k) savings, and, if they are widows, the proceeds of their late husband's life insurance.

Inexperience

A large majority of fraud crimes committed against the elderly are perpetrated against elderly females. These victims have historically been the silent partner in a marriage when it comes to issues of home improvement and finances. When presented with a fraudulent proposition, they fail to recognize it for what it really is.

Loneliness

The power of loneliness on the elderly contributes to their vulnerability. Seniors with no family members or people that visit regularly are often starved for attention. Con artists and other perpetrators can easily become like family members to seniors because they are the

only people who show any interest in the senior. The perpetrators often use "pet" names for the senior or refer to them as "grandma" or "grandpa" to further exploit the victim's need for human contact. Some elderly victims actually know they are being victimized, but they are willing to pay that price for the attention they so desperately need.

Embarrassment

Many seniors, are deeply embarrassed and humiliated at being victimized. These victims are usually 30 to 40 years older than the perpetrators who defraud them and they feel foolish for having been "taken in" by someone so much younger. The senior feels as though he/she should have been smarter or seen through the scam. These feelings contribute to late reporting or non-reporting of the criminal conduct.

Independence

One thing most senior citizens value and fiercely protect, is their independence. Often, seniors feel that reporting that they have been the prey of con artists will affect their independence. Family members may think the senior can no longer handle his/her personal affairs and seek to gain control over the senior's bank accounts. Some seniors fear that family members will turn to the courts to establish a legal guardianship and eventually commit them to a nursing home. The intense anxiety they develop over losing their independence actually makes senior fraud victims prone to fall for repeat scams in the hope of replacing some of the money lost before so their family members will never know.

Physical Impairments

Many older Americans live with physical infirmities or limitations that make them susceptible to coercion. Whether it's a heart condition, high blood pressure, arthritis or other debilitating illness, many senior citizens are fragile. One or two people standing next to them, persistently urging them or pressuring them to do something, can be enough to overcome their will or their better judgment. Just the physical presence of a stranger in their home, their zone of privacy, can have a very intimidating effect on some seniors. Con artists know this all too well and use it to their advantage.

Death

The most disturbing fact that makes the elderly prime targets for consumer fraud and other crimes is the seniors' limited remaining life expectancy. The criminals that prey on this vulnerable population of victims know first hand the meandering and complicated path these victims face when they turn to the criminal justice system for help. The investigation, usually given a low priority by most police departments, can take months. Once the case makes it to the prosecutor's office, it can languish for several more months while the prosecutor decides if it's a civil or criminal matter. If the case actually makes it into the court system, it can be more than a year before the case actually goes to a jury trial. Continuances always favor the defendants in these matters. The physical and mental health of the victim can decline rapidly after he/she has been traumatized even just by a non-violent crime. Many con artists target senior citizens in the hope that they will die before trial. In many cases, the criminals get what they hoped for.

Characteristics that put Senior

Citizens at Risk of Crime:

- * Trust * Predictability * Assets*
- * Inexperience * Loneliness *
- * Embarrassment * Independence *
- * Physical Impairments * Death *

If the criminal justice system is to respond effectively to crimes committed against seniors, everyone in the system must recognize the unique qualities associated with this victim population.

Like child victims whose cases are given priority on the court docket, or sexual assault victims who are shielded by limitations on evidence and provided

with victim advocates, senior citizens must be viewed as a class of victims with special needs as they go through the criminal justice system. Prosecutors and law enforcement officials must establish policies and practices that aggressively charge the offenders, expedite the trial process and assist the victim during trial preparation and trial.

CONSEQUENCES OF CRIME AGAINST SENIOR CITIZENS

Criminal conduct can leave even the most resilient victims financially damaged and emotionally unsettled. When the victims are elderly, the consequences escalate. Age, physical and mental infirmities, and fixed economic resources magnify the effects of crime on senior citizens.

- **Finances**

Most older Americans live on tight budgets. They survive on social security, interest payments on savings accounts, and retirement fund checks. Unlike younger victims who are still in the workforce, when senior citizens are defrauded out of their savings or retirement funds, they have *no ability to replace* what has been stolen. They are often left with nothing but a meager social security check to live on. This precarious

financial situation hastens their loss of independence as family members seek to take control over their remaining finances.

- **Loss of Independence**

Often, when con artists have victimized seniors, family members intervene in the senior's affairs and slowly take control of his/her finances and personal matters. This is usually a prelude to establishing a guardianship over the senior and eventually placing him/her in some type of managed care facility. Once placed in a living center or nursing home, seniors are completely dependent for virtually all of their needs.

- **Deep Despair/Deteriorating Health**

Senior citizens experience a profound sense of despair when they are victimized. The realization that their nest egg, something they worked their entire lives to create, could be taken from them so quickly and easily, is devastating to them. Add to this the fact that financial ruin is the harbinger of total dependence on family members or society, and the situation becomes unbearable for most seniors. Their health often deteriorates, they become extremely fearful and reclusive, and they second-guess all of their decisions. Their basic sense of security is lost. It is easy to see why seniors are unable to participate effectively at trial or even die prior to trial as a result of this traumatic event.

In order to effectively apprehend and prosecute the criminals in our society that prey on the elderly, all members of the criminal justice system must take the time to educate

themselves on the special characteristics and concerns of senior citizens. Both the investigation and prosecution of these cases must be streamlined, and they must be given priority when they come into the system.



CHAPTER TWO: THE OFFENDERS

INTRODUCTION

Home repair contractors are businesses involved in painting, waterproofing, lightning rod sales and repairs, asphalt paving and seal-coating or variations thereof, home repairs, landscaping, yard work, pest extermination or appliance repairs. While this list is not exhaustive, it does highlight some important characteristics about these types of businesses. Each of the services mentioned involve inviting a stranger into the victim's home or zone of privacy, a place where the victim is particularly vulnerable but normally feels safe. The offender gains access to the victim and his/her home through establishing a trust or confidence relationship with the victim. The contractor has specialized knowledge in his/her field, and uses language or jargon unfamiliar to most people. The potential victim is at a disadvantage before the work even begins.

The criminals who commit these crimes usually fall into two categories. They are either **local contractors** who live and work in the community, or they are **transient offenders** who pass through town and victimize as many people as they can before they leave.

LOCAL CONTRACTORS AS OFFENDERS

Home improvement fraud committed by local contractors usually involves schemes such as overcharging for work, performing unnecessary repairs or services, and performing shoddy work or similar scams that are difficult to detect by unsuspecting homeowners. The elderly are particularly susceptible to these scams because they are usually physically

unable to observe or inspect the work. Unlike transient offenders, most local contractors are monitored by licensing agencies and must take some type of standardized competency test. The licensing board may also field complaints against the contractors and seek to resolve disputes.

Ties to the community make local contractors easier to apprehend than transient offenders, but sometimes the former are more difficult to prosecute. Even though they defraud many of their customers, local contractors may enjoy good business reputations in the community. Historically, prosecutors are easily persuaded to view home improvement fraud complaints against local contractors as civil in nature or simple contract disputes. More often than not, however, the conduct complained of is more than a civil wrong. It is part of an intentional scheme to defraud the homeowner, or part of a pattern of conduct by the contractor designed to defraud many different homeowners.

TRANSIENT OFFENDERS

For many years, bands of roving thieves who are experts in committing scams and confidence crimes have plagued societies. Traditionally, law enforcement has treated these "transient criminals" and their activities with low priority. The crimes are usually classified as "property" crimes and considered to be isolated in nature. Prosecutions have been relatively few, and if arrests are made, restitution without prosecution is usually the accepted result. This limited enforcement has served only to move the problem from one jurisdiction to another. In recent years, as law enforcement agencies started to share information about the "transient criminals," the need for a different perspective began to be recognized. It has been found through numerous criminal investigations that these "transient criminals" should actually be considered a form of non-traditional organized crime. It has been documented

that these criminals are networking among themselves when choosing their victims and committing their crimes. Also, their criminal activity has been found to be much more prevalent than initially thought, with very high financial losses to the many victims, most of whom are elderly.

Investigations have revealed that a large percentage of these "transient criminals" can be linked to two large groups. These groups are generally known as self proclaimed "**Gypsies**" and the "**Travelers.**" Understanding how the criminal elements within these transient groups operate can assist law enforcement in the apprehension and appropriate prosecution of these criminal suspects.

Cultural Similarities between the Travelers and the Gypsies

Both of these "transient groups" have retained cultural practices and have similarities that can be documented. These similarities are useful when tracking the "criminal element" within these groups. However, the "criminal element" has demonstrated the ability to adapt its lifestyle and criminal activity when needed. Therefore, caution should be used when drawing definitive conclusions about the "transient groups" and the "transient criminals."

Cultural similarities among the Gypsies and Travelers include:

- ≈ Maintenance of a "closed society" by limiting their social contact with persons outside of their group.
- ≈ A nomadic lifestyle, with personal associations across the country, even worldwide.
- ≈ Marrying within their own group, with some marriages arranged.
- ≈ A distinct language unique to each group.
- ≈ A patriarchal family structure.

- ≈ The family livelihood passed down among family members,
- ≈ Limited use of public schools,
- ≈ Frequenting casinos and race tracks,
- ≈ Favored types and styles of motor vehicles.

Additional Similarities among the "Criminal Element of Transients"

In addition to their cultural similarities, the Travelers and criminal Gypsies share other characteristics that highlight their methods of operation and aid in identification. These similarities include:

- The criminal element makes up a large percentage of the transient group,
- Some condone underage marriages,
- Targeting the elderly in their criminal activity,
- Mastery of numerous theft crime offenses,
- Mastery of confidence scams, insurance and credit frauds,
- Federal and state tax evasion,
- Local business licenses not obtained, or are fraudulent,
- Practice high pressure sales tactics,
- Make extensive use of aliases and false documents,
- Criminal expertise passed down among family members,
- Masters of "Illusion and Confusion."

Other Transient Offenders

There are other transient criminals who do not fit into the aforementioned transient groups. These criminals are members of small groups that specialize in particular types of

THE OFFENDERS

crime. They can be of either sex and have varied ethnic backgrounds. The type of crime they commit is usually the only linking factor among the group members. The crimes committed are commonly referred to as confidence scams or con games, and generally require some level of planning.

Early detection of the criminal conduct and identification of the perpetrator are keys to successful prosecution in these cases. Unlike local contractors, transient offenders disappear across jurisdictional boundaries and are seldom heard from again. They simply move on to another town and continue their criminal enterprises.





CHAPTER THREE: THE SCAMS

Home improvement fraud can be broken into three basic categories of scams:

1. Fraud stemming solely from the alleged home improvement work itself, including the sub-categories of:
 - (a) Scams and Flim Flams
 - (b) Padded Bill fraud
 - (c) Unnecessary Work
 - (d) Bust-outs
 - (e) Business Failure
2. Scams where proposed home improvement work is a means to commit other crimes, including:
 - (a) Theft of credit cards
 - (b) Check fraud
 - (c) Theft of cash and personal property
 - (d) Assault and crimes of violence
 - (e) Sexual assault
 - (f) Investment fraud
 - (g) Identity fraud
3. Home repair loan schemes

Each of the categories will be discussed in the following section, to provide a basic understanding of the many variations of home improvement fraud.

FRAUD STEMMING SOLELY FROM HOME IMPROVEMENT WORK ITSELF

A. Scams and Flim-Flams

This category covers scenarios where the defendant proposes home improvement work that he/she never intends to do, or offers to provide a service that he/she ultimately fails to provide. The offender's goal is to get as much money from the victim, and complete the "service" or "work" as soon as possible. Travelers, Gypsies, and local contractors alike commit scams of this type. Some of the more common ones are:

Driveway Scams—The offender will offer to pave or seal the driveway. The work is usually unsolicited, and the products used are generally a cheap mix of inadequate cheap materials to give the appearance that the driveway has been paved or water-sealed. The pavement or sealer will usually wash away with the first rainstorm.

Roof Scams—There are several types of roof scams. One variation is a proposal to water-seal a roof. Proposed as a cheap alternative to a complete roof repair, it again involves spraying water and/or useless chemicals to give the illusion that the roof is now protected from the rain and snow. A second scam involves a claim that the roof is warped and going to cave in, when in fact there is no problem. The offender will propose an illusory repair job to get money from the victim.

Chimney Repair—A defendant may cause damage to a chimney him-/herself to support a claim that repairs are needed, or may claim that a blockage is causing a fire hazard or backup of deadly carbon monoxide gas. These statements are intended to gain a large payment for a repair job that is never done.

Extermination Scams—The fraudulent exterminator will claim that major termite or other insect problem exists, and extensive pest control measures must be taken, when, in

fact, no problem exists. Often the offenders will bring the insects with him/her, or use common insects to falsely claim that it is an insect that causes damage to a house.

Radon or Gas Leaks—Defendant will offer to perform routine inspection for radon or carbon monoxide gas. The target will claim to find a non-existing problem that will involve elaborate and expensive repair to boiler, chimney, soil or basement. At times he/she will suggest expensive radon or gas detectors where reliable, low cost alternatives exist; and then charge a high price for the low cost model.

Barn/House Painting—A salesman will sell a paint job with a verbal quote. After a crew performs work with inferior or thinned paint, the salesman will inflate the amount of paint used, and attempt to collect a larger payment than what had been initially quoted to the victim.

"Splash Game"—Defendant sprays cola or a similar substance on a ceiling to make it appear that there is a water spot. He/She will claim it is evidence of a leak, and offer to "seal" or repair the attic or roof.

B. Padded Bill Fraud

Padded Bill Fraud is a more subtle form of fraud, but equally criminal. In these cases the contractor will in fact do some work, but charge for large or small items that are never used, tasks that are never done, and/or charge for high quality materials where cheaper ones are used. Seniors are particularly vulnerable to these scenarios, as the defendants rely on the victim's inability to check out the work him/herself. Some of the more common problems are:

Roof Work—Defendant will claim that extensive wood repair or replacement is needed under the roof's surface. Defendant will do minimal or no wood replacement, but charge a substantial amount for this task as part of the overall bill. Since the proof is under the roof's surface and cannot be seen by the consumers, they pay for work that is never done.

Chimney Repair—Chimney liners are a high cost repair that cannot be checked by the average consumer without going onto the roof. Dishonest contractors will perform the obvious work, i.e., new chimney cap, but will not do the liner work; or claim to have installed a 6 foot steel liner, where a 2 foot liner of cheap material is, in fact, used.

Quality of Material Scams—The offenders will claim that a window, roof, chimney, or interior repair job needs expensive material to properly repair the problem. The contractor will charge for the higher price material, but, in fact, purchase and use cheaper supplies or material.

C. Unnecessary Work Schemes

Unnecessary work schemes involve a variation of the previous listed scams, except that the contractor/defendant actually does the work and uses the materials for which he/she bills though the work was not needed. These are the most difficult for the prosecution to prove, since it is almost impossible to establish what the condition of the home had been before the unnecessary work done. The defendants use this to their advantage to charge consumers for expensive repairs that are not needed. The damage to the victims is the same as in other scams, since they paid hundreds or thousands of dollars for a roof, chimney, or driveway repair that was not needed.

D. Bust Out Schemes

Bust-out schemes involve contractor/defendants who take down payments from multiple consumers, do little or no work and invoke a dispute with the consumers over its completion. In the case where a small amount of work is done, the defendant often induces a dispute, and then walks away refusing to return any money. These complaints are among the most difficult to prove, and usually a successful investigation will need to show a pattern of such conduct, and the personal use of funds paid for the work in question.

E. Business Failure

In business failure cases, the contractor goes purposefully broke, leaving one or more homeowners with numerous liens from unpaid subcontractors and materials suppliers. The difficulty for proving the fraud is that most business failures are not criminal, and a planned bankruptcy is difficult to show. Like the bust outs, a successful prosecution will show the defendant's personal use of homeowner's money that was paid for the job.

HOME IMPROVEMENT WORK AS A MEANS TO COMMIT OTHER CRIMES

The second category of home improvement related crimes is even more invasive, potentially dangerous, and often financially more costly to the consumer. As noted earlier, at times home improvement work is used as a front to gain access to the home of the victim. As cases across the country have shown, seniors in particular are the targets of this activity. The scenario could involve any of the scams earlier described, such as the driveway repair, or the roof sealing. However, the goal of these offenders is not just to gain the mere

payment for the proposed job, but access to the home and, in some cases, the bank account of the senior victims.

The scenario frequently begins with an unsolicited visit to the consumer's home. The offenders may tell the victim that they were doing work in the area, and were left with extra materials. They offer to do immediate work for the consumer using these materials. If the consumer does not bite, they may switch to a simple request to use the bathroom or get a glass of water. While a front man occupies the homeowner's attention, an accomplice enters the home and attempts to take jewelry, cash, credit cards, checks, or other items of value.

Especially when the victim is a senior, the suspects will return and attempt to get other money or property. Relying on the fact that the senior may be too frightened or concerned to alert law enforcement or a family member, at times the victim may later be sold additional unnecessary home improvement work, or talked into a phony investment scheme. The offenders may again take checks or property, or alter checks for payment by increasing the amounts on a check, i.e., from \$200.00 to \$2000.00. Travelers often carry out these schemes, but unscrupulous local contractors or repairmen, who look to maximize their theft from the vulnerable victim, also perpetrate them.

The following is a description of other scams, that may be committed in connection with home improvement fraud scams, and are targeted at the elderly, designed to gain access to the victim's home. These scams have been detected and prosecuted in various jurisdictions around the country.

The Pigeon Drop

- Location: Primary contact is generally made in commercial areas, examples: banks, shopping centers, senior citizen centers.
- Offenders: Most common team is two females - male and female team occasionally.
- Example: The victim is approached and shown a small package with an address or a name of a place and asked if she knows where the address is. The addresses are always bogus. At this time a second person approaches and asks if she can be of any help. A conversation takes place between the two offenders which leads to the opening of the package which contains what appears to be a large sum of money. The second offender states that she works nearby and will show it to her boss. The two offenders and the victim then go to a bank or other building. The second offender goes inside and comes out 5 - 10 minutes later and states there is a large sum of money and claims that her boss found a note in the package indicating the money may be from an illegal activity. It is then suggested that the three could share in the money but they must put in other monies for a show of good faith or serial numbers of the good money could be used by the boss. The second female puts up what appears to be a large sum of cash and the victim is asked if she has any money to put up. They then take the victim to the bank where she usually withdraws a large sum of cash for the offenders. The offenders drive back to the alleged boss' location. One offender reenters the building. When she comes out she advises the victim to go in and ask for the manager

(sometimes even a name is given) and she will be given her share. When the victim comes out the offenders are gone and so is her money.

Stop Back as Police Officer

- Location: Victim's home
- Offenders: Two males, male and two females
- Examples: Generally played on the victim of a pigeon drop. The offenders will go the victim's house and claim to be police officers investigating the persons who stole her money (sometimes bringing back the original offender in handcuffs). The victim is then told that her assistance is needed in apprehending other alleged offenders. They then advise the victim to go to the bank and withdraw whatever money she has left. They then tell the victim not to cooperate with anyone but them even if other police contact her.

Bank Examiner

- Location: Victim's home
- Offenders: Usually one to two males
- Example: The victim receives a phone call from the offender who claims to be either a bank official, FBI agent or police officer and that someone in the bank has been stealing his money, but they will put back the money if he cooperates in apprehending the guilty person in the bank. He is then advised to go to the bank and withdraw a sum of cash and meet Agent ____ and give him the money and he will give the victim a receipt. The victim is instructed before

going into the bank if asked why he is withdrawing a large sum of cash, to inform the teller to mind her own business.

Home Invasion Burglary

Location: Victim's home

Offenders: Generally two - three females/male driver

Examples: A knock on the door by one of the females claiming to have a package to be delivered to a neighbor. She asks the victim if he would kindly get a pencil and paper so the offender can leave a note. The offender follows the victim into the house and while distracting him (usually holding up a tablecloth), one or two other females will enter the residence, usually undetected, and search the house for valuables.

Utility Impostor Burglary

Location: Victim's home

Offenders: Two or more males

Examples: A knock on the door by one of the men claiming to be from the water department. While the victim is distracted the second offender(s) searches the house for valuables. There are generally four to five groups who travel around the country committing these types of crimes.

A pattern of violence is emerging in Home Invasion and Utility Impostor Burglary. Most of the violence occurs when the victim becomes aware of the distraction and tries to prevent the

criminals from taking the valuables. In these cases, the suspects overcome the resistance offered by the victim with force and the offense turns into an assault and robbery. In the last few years several suspects appear to incorporate violence in lieu of the distraction as a method of operation.

Bail Bond Schemes

Locations: Victim's home

Offenders: Usually male

Examples: An offender having some knowledge of the victim's family calls the victim and states that he is a friend of the victim's relative (such as a grandson). This relative is in jail and is in need of bail money. The offender makes arrangements to send someone to meet the victim for the purpose of picking up the bail money.

Fortune Tellers/Psychic Readers

Offenders: Usually criminal transient females

Examples: Victim may have lost a loved one or has personal problems. Offender tells her that her loved one cannot rest easy or that her problems are because of her money. She has to have the money burned or buried.

Faith Healers

Offenders: Usually criminal transient females

Examples: Victim suffering from debilitating diseases and faith healer claims to be able to cure the disease for a large sum of money.

Home Companion/Health Care Theft

- Location: Usually the victim's home
- Offenders: Could be friends or home health care workers
- Examples: Victim generally has valuables and U.S. currency missing from her home.

Power of Attorney Abuses

- Offenders: Family, friends, neighbors
- Examples: Perpetrator gets victim to sign Power of Attorney with the promise of caring for his personal needs and then uses the money for her own purposes.

Take Over

- Location: Victim's home
- Offenders: Family, friends, neighbors
- Example: Takes over the victim's home, keeping the victim from having outside contact. Takes her social security or pension checks. Generally used to buy drugs. Also will sell personal items belonging to the victim for money. Often the victim will be neglected to the point of serious medical illness and/or death.

Forged Financial Instrument Fraud

- Location: Generally the victim's home
- Offenders: Any criminal element
- Example: Identity theft: taking the identity of the victim to obtain credit cards.
Theft of Check: taken to forge and negotiate

Personal Care/Boarding Home/Nursing Home Abuse and Deaths

- Location: Personal care or boarding home
- Offenders: Owner or employees
- Examples: Failing to get proper medical care for the victim leading to severe health problems and death.

Sexual Abuse

- Location: Victim's home, personal care home, boarding home, nursing home
- Offenders: Usually one male
- Examples: Victim is at the mercy of sexual predators. They gain access to the victim anyway they can then commit a variety of sexual offenses against her.

Telemarketing Fraud

- Location: Victim's home via telephone
- Offenders: Various offenders
- Examples: Contact senior citizen via telephone with the promise of winning prizes.
Generally the victim has to send money to win the prize. Usually causes the victim to lose very large sums of money.

Robberies/Follow Home from the Bank on Social Security Day/Pickpocket

- Location: On the highway
- Offenders: Local thugs, young males/North American/South American Crime Groups
- Examples: Victim cashes check at bank on Social Security Day. Offenders are usually inside the bank or outside looking in. They then follow the victim and, at a convenient location with no witnesses, will rob him.

Badge Player

- Location: At or near residence
- Offenders: Usually males
- Examples: The victim is informed that she was just given or has in her possession counterfeit money. Victim is asked to go to the bank and withdraw varying sums of money to check for counterfeit bills. Perpetrators then take the money. There are a few different scenarios of this crime.

HOME IMPROVEMENT LOAN/MORTGAGE SCHEMES

The third major category of home improvement related scams are the ever-increasing home improvement/mortgage loan schemes. These are perhaps the most devastating of the scams, because they threaten not only the immediate financial well being of the victim, but often place the home of the victim at risk, and therefore can translate into loss of any financial security and the home.

In these scams fraudulent contractors may work with a loan company in offering an inviting proposition to the consumer. The contractors search out homes that are in need of

repair and have large amounts of equity. Both homeowners in minority neighborhoods and seniors have been the primary targets of this scheme. The homeowner is then informed that for no money down and a low monthly payment he/she can have his/her home repaired.

A Massachusetts Task Force assigned to review this problem has evidenced that the homeowner in many cases is unaware that the loan is, in fact, secured by a mortgage on his/her home. The low monthly payment is, in fact, an interest only payment, which is fully due in a balloon payment one year later. Thus, when the one year or balloon payment period is up, the homeowner owes as much as \$30,000-\$50,000, which he/she cannot pay. Therefore the lender then moves to foreclose on the property, seeking to take the property from the victim.

As noted, the homeowner often realizes the full extent of the nightmare only when his/her home is about to be taken. The usual scenario involves no lawyer being present at the time of the loan, and a victim who is asked to sign multiple legal documents, including a mortgage, without any clear understanding of what is involved.

In addition to the inflated face value of this loan, the home improvement work completed is often highly inflated in price, and the loan closing involves multiple fees that further eat into the equity of the victim's home. Thus, the seemingly inviting repair offer dissolves into a disaster for the unsuspecting homeowner, and an undeserved bonanza for the contractor and lender.

It is not by accident that most of these scams have a noticeably "civil" tone to them. *This is by design.* The perpetrator has the victim sign a work order, a contract, anything the perpetrator can show to law enforcement officers or prosecutors to make them believe that the problem is a contract dispute. One of the most common defenses these criminals raise is that the dispute is civil, not criminal, or that the alleged fraud is just a misunderstanding by a

confused victim, not an intentional criminal act. What prosecutors and law enforcement officials *must realize* is that just because a victim signs a piece of paper or appears to have entered into a contract, they are not excluded from being the victims of criminal fraud. Since proving criminal intent is difficult, the key is to show a pattern of these transactions.





CHAPTER FOUR: THE INVESTIGATION

INVESTIGATION OF FRAUD

There are several possible steps involved in thoroughly and successfully investigating home improvement fraud. They include the following:

1. Initial Fact Finding
2. Searching for Additional Victims
3. Establishing Actual Work Done by Targets
4. Tracing Payment by Consumers
5. Criminal Record Check
6. Gaining Cooperation from Co-defendants
7. Examining Appropriate Statutes and Other Remedies
8. Innovative Approaches

Each will be discussed in some detail below.

1. INITIAL FACT FINDING

The first step for any successful investigation is the initial fact-finding process. In order to make the critical determination of whether the complaint involves criminal activity, it is very important to gather as much information as possible about the home improvement "job" in question. The investigator assigned first needs to meet with the complainant and interview him/her at length about the nature and details of the home improvement work allegedly performed by the contractor. In doing so, it is critical to flesh out all the specific

information possible, whether written or oral. The exact representations made to the victim are often the difference between a criminal fraud, and a civil action. Whether it is an outright rip-off or a padded bill claim, prosecutors need to lock in exactly what work the offender said he/she performed to contrast the statement to what he/she actually completed.

Proving the False Representations

Criminal fraud needs a false representation to the victim, which induces him to make payment for specific work or materials.

The following example from a padded claims investigation will help illustrate the importance of locking in details: A consumer hires a contractor to do a roof job for \$7,000. If the contractor spelled out in detail what he would provide for the \$7,000, i.e., 1) tear off old roof surface, 2) replace all wood underneath with new wood, 3) resurface roof with new roofing shingles, and gave a price breakdown for each task, then this would provide the information necessary to determine if fraud was committed. Failure to do number 2 (replace the wood underneath with new wood) may constitute fraudulent activity by the contractor which could lead to criminal charges. It is important to understand that most home improvement work fraud will involve the illusion of a performance of the work in question, when in fact some or all of it was never done and never intended to be done. In the more subtle frauds, some work is, in fact, performed to cover up the criminal activity. However, the potential defendant will avoid giving specific details, unless pressed to do so, in order to cover up the fraud in question.

As part of the fact finding, all the available documentation has to be gathered, including estimates, bills, contracts, and receipts that will possibly corroborate the false

representations about the work performed. In addition, any record of payments, including checks, credit card receipts and statements, and cash receipts should be gathered to help in later tracing the flow of the funds. It is important to obtain bank records that show the flow of money out of the scammer's bank account. These records may show that the scammer did not properly use the victim's deposits (e.g., to purchase material).

The chosen victim, however, may create a practical problem in the information gathering in some of these cases. Seniors often are targeted as the victims for home improvement scams. Experienced defendants in the field of home improvement fraud often canvass a neighborhood looking for indications, or actually observing, that the homeowner may be a senior citizen. They look for signs such as the condition of the home and style of decorating. They may also follow seniors out walking, or coming from the grocery store, to see if there are indications that they may live alone.

Defendants seek this type of victim because they are often reluctant to file complaints if they are ripped off. In addition, they are more vulnerable to the sales pitches that are used to frighten or intimidate a victim. They will also rely on the perceived inability of the victim to serve as a good witness as to the facts of the transaction, as well as his/her apparent inability to check out the problem him/herself to ascertain that the work in question was actually performed. Thus, in these cases, victim statements often need to be supplemented by using either a friend or relative, or an investigator posing as one, to talk to the perpetrator to flesh out the details of the alleged home improvement job in question. Where permitted by relevant state law, the conversations should be recorded in case a valuable admission is made.

One of the more frequent complaints which illustrates this problem involves one of the scams used in chimney repair rip-offs. A senior will be solicited by the contractor and told that the chimney is collapsing internally and is causing a blockage. He is told that this blockage may cause a gas build-up or a fire hazard. The senior is told that a new stainless steel liner is needed to "fix" the chimney, at a cost of \$2,500. The defendant is relying on the inability of the victim to personally verify the problem.

In the case of a criminal fraud, however, no liner will have been needed or a new liner is not installed. However, in some cases the homeowner is unaware of exactly what chimney repairs were actually paid for and may be unable to get this information from the offender. By using another party to flesh out the details, the contractor may be enticed to make false statements about what work he/she allegedly performed. His/Her statements, and the subsequent proof from an expert that the repair was never done, will serve as a basis for a criminal prosecution. This technique is also helpful even when the witness can testify to the initial representations, since it will increase the strength of the case regarding the false representation that is at the heart of the larceny prosecution.

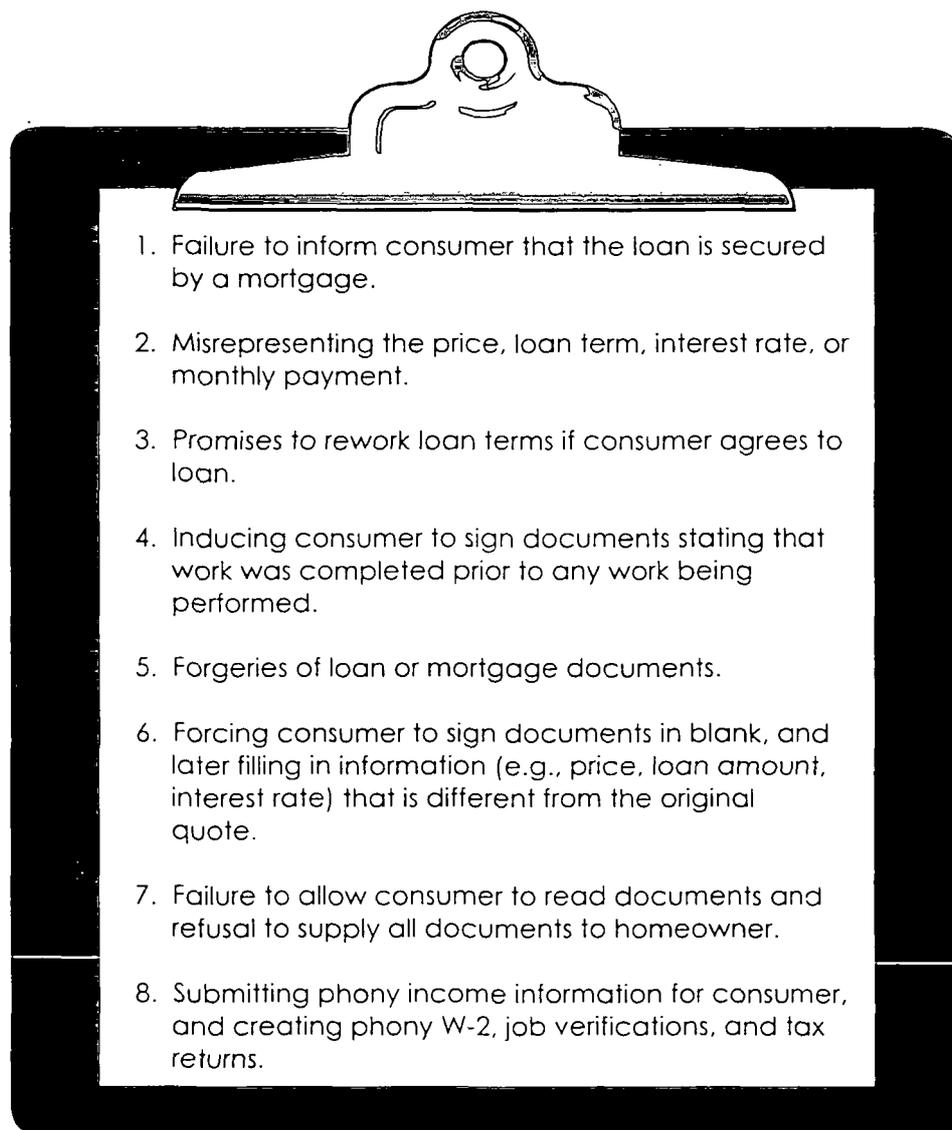
Identification of the Perpetrators

Another part of the fact-finding process is to identify the defendant. In identifying the offenders, a photopack can be used (depending on applicable state law), as well as the later use of a lineup. A photopack should consist of at least 6 photos. Identification is especially important when a transient offender commits the fraud.

In addition to an identification by the homeowner, fact finding should include interviewing neighbors. They may be able to give further relevant information, as well as possibly identify the offender and his/her subcontractors. They also may have been present

during discussions with between the victim and the offender, and heard critical admissions or detailed misrepresentations.

Finally, home mortgage loan repair scams present their own unique misrepresentations. The fact finding stage of the investigation should focus on some of the following most common false statements and misconduct:



In order to build a solid case, the goal is to prove a consistent pattern of criminal activity by showing that the contractor or loan salesman resorted to any or all of these tactics on a regular basis. This negates defenses of mistake or misunderstanding. To build the case, the previously discussed techniques should be considered, such as using an investigator posing as a neighbor or friend to lock the target into his/her misrepresentations. An investigator may even pose as a homeowner interested in such a loan to capture the exact details of the conduct of the parties.

2. SEARCHING FOR ADDITIONAL VICTIMS

After developing the facts of the initial complaint or complaints, and solidifying the details and misrepresentations, the next step is to see if there are additional victims of the potential defendant. This is important, since a successful prosecution of home improvement fraud will need to overcome a defense of mistake and/or lack of intent. By finding other victims who have been defrauded by the contractor, a pattern of ongoing conduct by your defendant can be shown.

Unlike more traditional crimes, the source for discovering other possible victims is not primarily the police or local law enforcement records. Due to the nature of the subject matter, especially senior victims may not realize that their contracting problem may be the result of criminal activity. Thus, as part of the investigation, a prosecutor/investigator needs to check other sources for possible victims in addition to other law enforcement agencies.

The following are some good sources:

-  Local consumer protection agencies
-  Better Business Bureaus
-  Local A.A.R.P. Chapter/area agencies dealing with seniors

-  Court Clerk's Office - check for civil judgments against defendant
-  State or local contractor licensing boards
-  Small Claims Clerks' files
-  Bankruptcy files
-  Local building inspectors
-  Media sources
-  Civic groups/clubs

Moreover, additional victims can be found by interviewing subcontractors, suppliers, and bookkeepers. The homeowners can identify some of these individuals, while others may be found through the judgment or small claims records. Another excellent source of information is the bank records of the defendants. By issuing subpoenas for deposit records investigators will gain access to information about other customers who may also be victims. A review of the checks written may reveal the names of subcontractors or suppliers.

After discovering possible additional victims, it is important to look for underlying common problems to build a strong criminal case. For example, if 6 people all state that a \$39.95 chimney cleaning led to an unsolicited \$2,000 repair job on that chimney, the problem area that has to be corroborated as the next step of your investigation has been identified.

3. ESTABLISHING ACTUAL WORK DONE BY TARGETS

The third step is to determine and develop solid proof of what the contractor actually did as opposed to what he/she claims to have done. Again, the fact that only some work was done may constitute the fraud. The chimney contractor who is looking to defraud the

senior victim with the alleged installation of a \$2,000 steel liner may, in fact, just put on a new chimney cap. The cap is a cheap and visible sign to the consumer of his/her so-called legitimate repair job, while the liner is an inaccessible and invisible job for the average senior homeowner.

Especially when multiple victims are involved, the use of an expert to determine what was done and what is the value, if any, of that work, is essential for a successful criminal prosecution. The expert will be able to determine by examination and testing whether the action was a scam, i.e., water or other useless chemicals instead of a sealing product on a roof or driveway, or whether the contractor performed the roof or chimney job for which he billed the customer, i.e., replace the old wood on the roof or install a new chimney liner.

The expert should be brought in as soon as possible to document and photograph the condition of the house, as well as take samples that would be needed for relevant testing. This clearly has to be done before other contractors come to the house to repair or correct the problem in question. Experts can be obtained from several sources, including professional associations such as the National Association of Homebuilders. Other sources for experts, depending on the alleged repair, are professional engineers, house inspectors, and contractors in the same field (with no complaint history and preferably from a different jurisdiction), and local building inspectors.

Another important source of evidence for what was actually done, as opposed to what the defendant claims to have done, is any subcontractors and/or suppliers. As parties who deal regularly with the suspect, subcontractors and suppliers often have the best knowledge of the day-to-day tactics of the offender. The supplier can corroborate that the 6 foot steel liner listed on a receipt was never purchased, as well as confirm that a contractor gone bad has not paid for past supplies, and thus has not been given new

supplies during the time period in question. Subcontractors who did much of the work can confirm what actually was done, as well as corroborate that the defendant did, in fact, knowingly make false representations to the customer/victim. This helps overcome the often-used defense that the consumer misunderstood what the job entailed and what he/she in fact paid for.

4. TRACING PAYMENT BY CONSUMERS

A further step in the investigation of the more subtle scams is to trace the money, where possible. If payment is made by check, the account it was cashed against can be identified and records to follow the flow of the money can be subpoenaed. This is particularly important where the investigation involves a possible bust out by the defendant, who will later claim a legitimate business failure. As with all economic crimes, if the proceeds designated for a specific home improvement job can be traced to personal use by the defendant, as opposed to payments to suppliers and other subcontractors, this information goes a long way to ultimately convince a jury that this is a criminal act and not a civil/contractual dispute. If payments were made by credit card, the funds can be traced through the defendant's merchant credit card account. A contractor who accepts payments in this form sets up a merchant account through a credit card company at a local bank. Funds are then paid to the designated bank account of the contractor, and records are kept which will show monies out of the account, and ultimately where the monies were disbursed. Even where payments were made in cash, defendants on occasion deposit them into bank accounts and thus leave a possible trail to trace the ultimate use.

5. CRIMINAL RECORD CHECK

A fifth step in investigating home improvement fraud, and a critical one in the case of fraud committed by the Travelers or Gypsies, is the criminal record check on the defendant. It is very important to run a full background check on the defendant, as scam artists of this type often have multiple arrests throughout the country. These arrests are frequently under different names, as aliases are common. It is also important to check with organizations that keep detailed databases and information on the traveling scam artists, such as the National Association of Bunco Investigators.

A complete picture of the defendant's background is important to properly determine the full extent of the defendant's criminal activity. Often the only complaint initially filed is a \$350 driveway "sealing" complaint. The defendant, in all likelihood, will have no criminal record in your jurisdiction. Thus, without the full criminal history, the defendant will be quickly bailed out, and the case will end, since these defendants aim to gain release and move on to the next community. Only by understanding and conveying to the court that this is part of an ongoing, systematic course of conduct, will the defendant be held to answer the charges, and an appropriate punishment ultimately can be imposed. If it is suspected that a transient criminal is using an alias, subject's fingerprints should be sent to the Federal Bureau of Investigation.

6. GAINING COOPERATION FROM CODEFENDANTS

Another valuable tool in investigating home improvement fraud is to evaluate the case and determine if cooperation from a codefendant will result in significant evidentiary gains, and serve the furtherance of justice. The employees, and possibly the subcontractors, may be actively involved in the fraudulent schemes, or may at least have critical information

about the job in question. Their eyewitness testimony to the actual work done, as well as damaging admissions by the contractor/defendant, may solve problems with proving criminal intent, and help overcome many likely defenses. Often these other individuals are familiar with the personal habits/vices of the offender, which will help explain a motive, and help provide evidence about the actual use of funds slated for the home improvement job.

7. EXAMINING APPROPRIATE STATUTES AND REMEDIES

In addition to the traditional investigative approaches previously outlined, which are used in proving a crime of larceny or theft, there are often other statutes that can help in the fight against home improvement fraud. These are particularly helpful when the fact pattern and investigation reveal that the work billed for may, in fact, have been done, but was unnecessary. In these cases a traditional larceny or scheme to defraud prosecution becomes difficult, if not impossible, due to the fact that the condition of the house (e.g., chimney, roof, driveway) cannot conclusively be shown prior to the job. Offenders are relying on this problem to avoid criminal penalties. Yet, the customer who has been taken advantage of is still out \$2,500 whether or not the unnecessary job was performed.

Many jurisdictions have begun to address this problem by passing licensing statutes for home improvement contractors in their area. These statutes often carry a misdemeanor penalty for unlicensed work. These statutes create an incentive for licensed contractors to do the proper job for the consumer. They also can be used against unlicensed contractors in cases involving unnecessary work.

Thus, all prosecutors should familiarize themselves with these statutes where available. As they are often strict liability statutes, the issue of intent is no longer a problem. Therefore,

the unlicensed contractor who takes \$2,500 from a senior for a chimney liner job that he does perform, but was not necessary, can be brought before the court, and restitution can be sought. This provides the prosecutor with another tool on behalf of the victimized senior.

Some jurisdictions have also set up arbitration programs, and funds for victims of licensed contractors. Prosecutors should familiarize themselves with all possible remedies under state and local laws to better assist victims.

8. INNOVATIVE APPROACHES TO INVESTIGATIONS

Sting operations have proven to be successful in capturing contractors and scam artists who are defrauding consumers. One possible sting involves renting a house in a community, and staffing it with senior volunteers and/or law enforcement to check out the business practices of problem contractors.

The approach works in the following way. A house is rented for anywhere from a short period of time to a year. The house is fully examined by licensed house inspectors, who document and photograph the exact conditions of the roof, chimney, interior of the house, driveway, as well as tested for radon, carbon monoxide gas, possible termite or other insect problems. After giving the house a clean bill of health, cameras are installed at various points to record future repair work. An investigator or a cooperative senior poses as the homeowner, and calls in a contractor or professional in the various home improvement or repair fields to come to the house.

The targeted companies are compiled from the complaint files of consumer agencies, local law enforcement, better business bureaus, and agencies that service seniors. A neutral scenario is then used where the "homeowner" contacts the targeted roofing company, exterminator, or chimney repair firm and asks simply for an inspection, without

suggesting any particular problem. If the contractor then claims that an expensive repair is needed, knowledge from the prior examination allows one to conclude that the particular "problem" he/she is describing either does not exist or does not need the repair in question. All conversations can be recorded (subject to applicable state laws), thus locking the contractor into false statements, and supplying valuable proof for a potential prosecution.

CONCLUSION

It is very easy to write off home improvement fraud as a civil matter or a breach of contract. However, as outlined in this section, the conduct is often more than a civil wrong--it's part of an intentional scheme to defraud a homeowner. By understanding the types of fraud, and using the investigative ideas contained in this section, cases can successfully be made that will lead to restitution for the victim and an appropriate punishment for the target/defendant.

Special Tips for Interviewing the Elderly Victim



Introduction

Be honest and simple. It may be helpful to arrange for a concerned relative or other trusted person to introduce the interviewer to the elder. Remind the victim of the crime and why you are there. Reassure the victim that no one needs to be notified about the crime unless he/she so desires.



Build Rapport

During rapport building, the investigator and elder become acquainted, and the interviewer communicates interest in and respect for the elder.



Treat Elder with Respect

Respect can be conveyed in a variety of ways. For example, call the victim by his/her last name (Mr./Mrs. Jones) until he/she suggests the use of first names.



Allow Elder to Control the Interview

Allow the elder to have as much control over the interview as possible. For example, when making a home visit, ask where he/she would like to sit. Control helps the victim to feel empowered and more able to discuss the crime.



Don't Intimidate or Overpower

Refrain from taking notes during early portions of the interview. It is intimidating to victims and interferes with building and maintaining rapport. Allow the victim to talk and tell his/her story without interruption. As the interview continues the victim can be asked to clarify important points and notes can be taken. If the victim is upset by note-writing, do not take notes during the interview, but rather immediately following

the interview while memory is fresh. Do not use slang or police jargon since this frequently makes the elder victim uncomfortable and can be intimidating.



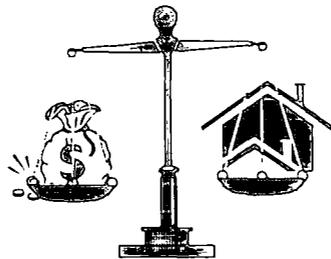
Take Time with Interview

Allow the victim sufficient time to recall the incident and the suspects.



Photo Array

While showing the victim a photo array, remind him/her of facial hair changes, hairstyle changes, etc. An important caution must be noted here. Any comments made to a victim during a photo array must not be suggestive. Victims can be reminded to recall facial characteristics that are easily changed, but you must not suggest specific things that the victim should consider. Make sure victim can see well with available lighting. If the victim normally wears glasses make sure they are handy. Do not rush through the photo array.





CHAPTER FIVE: PRE-TRIAL CONSIDERATIONS

INTRODUCTION

Although one purpose of this manual is to facilitate criminal prosecutions, the prosecutor must make an independent decision as to whether the elements of a crime can be proven. The information in this chapter will help a prosecutor make a more informed decision and lessen the temptation to summarily conclude that a home improvement fraud is "civil."

Initially criminal prosecutions of home contractors may seem resource intensive. However, once a protocol is established and forms and court filings become standardized, the workload is significantly diminished. For example, issues such as joinder, venue and introducing bad acts into evidence arise frequently. The analysis of the case being investigated can usually be easily applied to past cases. Previously used motions, subpoenas and techniques can be adapted to the model documents on the prosecutor's computer system. Sample motions and filings are included in the appendix of this manual.

POTENTIAL CHARGES

Differing laws in differing jurisdictions make it difficult to list all possible criminal theories of prosecution. Prosecutors may want to consider the following types of statutes:

- ▣ Larceny by false pretense based on what the defendants falsely represented to the victim.

- Larceny by embezzlement due to the defendant's conversion of the victim's "deposit" money to his/her own use.
- Statutes that regulate home improvement contractors and provide criminal penalties. For a model (albeit flawed), see Massachusetts General Laws 142A § 1-21 and Code of Massachusetts Regulations 201 CMR 14-01-21. Copies are attached at Appendix A and B.
- Statutes that provide for criminal misdemeanor penalties for violation of state regulations.
- Elder protection statutes.
- Tax violations for failing to report income from victims.
- Unemployment fraud for paying workers under the table and/or collecting benefits while scamming victims.
- Motor vehicle regulations, particularly when transient contractors move from state to state and use their trucks as instrumentalities of their crimes.
- Environmental crime and hazardous waste statutes may be implicated by the phony petroleum based sealing substances applied to roofs and driveways, or the spraying of pesticides by unlicensed exterminators.

PARALLEL PROCEEDINGS (Civil, Criminal and Administrative)

Prosecutors should review their ethical and procedural obligations when involved in parallel proceedings. The prosecutor however, is never wedded solely to the criminal prosecution. Once he/she has a good faith belief that he/she can (and should) criminally prosecute, parallel civil or administrative proceedings may provide opportunities to fashion unique global remedies. Here are two effective options for parallel proceedings:

<p>Civil consumer protection statutes can be used to enjoin the defendant from continuing to act as a home contractor during the pendency of the action. Civil actions can also supply lifetime restitution orders that supplement the criminal probationary periods.</p>	<p>Expedited administrative hearings that affect the contractor's right to operate can also be an expeditious and resource-effective way to keep the defendant from further victimizing consumers as a means of funding his/her legal representation and anticipated restitution payments.</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Guidelines for parallel prosecutions should be consulted early in the process to avoid conflicts of law and inadvertent stays of proceedings.

DETERMINING WHICH AGENCY SHOULD PROSECUTE

Local

In most cases, local or county prosecutors will be the logical prosecuting authority. Local prosecutors know their judges and are always in the courthouse. They may be more familiar with the witnesses and be able to better facilitate a local support network for a vulnerable victim.

State

A state (or federal) prosecutor's involvement may be advantageous in some cases. For example, a state prosecutor may be better suited if:

1. The case requires joining crimes that occurred in more than one jurisdiction.
2. The case requires using the appellate courts to disabuse a local judge of the practice of dismissing these cases without a trial because they are "civil." The local

prosecutor may be aided by this practice in other instances and may not want to challenge the practice.

3. Only a state prosecutor has a jurisdiction to facilitate a criminal, civil and/or administrative settlement.

Federal¹

A federal prosecution may be best if:

1. Conflicts in laws, such as in the area of "one party consent" to record conversations, make federal involvement advantageous.
2. RICO prosecution is possible, and there is no state RICO statute.
3. The scam is intrinsically intertwined in federal crimes such as bankruptcy fraud (e.g., "bust out" schemes) and bank fraud (e.g., home mortgage scams).

BAIL

It is important for prosecutors to quickly identify the type of home improvement scam artist she/he is investigating. Determining whether the defendant is part of an organized transient group or a local contractor with shoddy work habits is paramount in developing pre-trial strategies. Most importantly, if the defendant is transient, the prosecutor must work extra quickly to gather enough information to make an effective argument for high bail.

Although the size of a prosecutor's jurisdiction can vary greatly, systems should be in place to make sure that home improvement scam complaints are quickly forwarded to police and prosecutors who are familiar with these scams. Once alerted, law enforcement

¹ See Chapter Seven, The Federal Option

officials should aggressively contact groups such as the National Association of Bunco Investigators (NABI) to determine if they have an out of state perpetrator. NABI contacts are a good way of hearing about the specific tactics transients use to avoid high bail or to skip out on their bail. Moreover, there are available databases that include photographs, names and fingerprints. Traditional databases such as the Interstate Identification Index ("Triple I") checks should also be checked. In addition, teletypes to other local law enforcement sources are an important means of retrieving information.

When the victim is elderly or likely to have a fading memory, skipping out on bail is usually the first line of defense for the transient contractor. Tactics that are often seen include:

- Use of alibis, although sometimes retaining family surnames.
- Offers to act as informants in return for lower bail and, often times, unreliable information.
- Arguments that the situation is a civil matter, not a criminal matter, and thus unlikely to lead to incarceration.
- Claims that there was misidentification or other mistake by the victim, including blaming a fictional family member.
- Offers to immediately pay back the victim.
- Use of a "fixer" to deliver high cash bail. (Organized transients often post very high cash bails, usually brought to court by a "fixer" who will also be attempting to buy off the victim.)

To avoid losing the case at the bail argument, prosecutors must anticipate that the organized transient will be able to post a high bail. Prosecutors should get the victim's prior

permission to obtain a "no contact" order at the bail hearing that will bar the defendant from personally contacting the victim. This way, efforts to buy off the victim can be monitored by the prosecutor or be cause for revocation of bail. Prosecutors should also assume that a high bail will be posted and request specific additional conditions including, but not limited to, that the defendant not leave the state during the pendency of the case and sign a waiver of rendition to be kept in the court file.

COMMON DEFENSES

Even before the bail argument, the prosecutor should be collecting as much evidence as possible to show that what happened to the victim was a crime and was not a "civil dispute." The different defenses prosecutors can anticipate include:

1. The defendant is merely an incompetent workman;
2. The victim is confused about what was said and it is just a swearing match;
3. The defendant intended to finish the job but ran into family problems, financial problems, or legal problems;
4. The defendant did not know the real bad guys, he/she was just offered a day's work;
5. The defendant will offer to immediately pay back the victim to forget the whole matter;
6. The abandonment of the job was due to the defendant's suppliers' malfeasance;
7. The defendants blame each other. The work crew says that they do not know what the original pitchman agreed to with the victim. The pitchman says he/she did not know what the work crew demanded from the victim when the pitchman was not around;

8. The defendants did not have to escrow the victim's deposits and because of problems beyond their control the deposits were used for operating expenses.

The key for the prosecutor is to collect as much detailed evidence as possible to prove that this was not a misunderstanding, but rather part of a common scheme or plan to defraud.

Meeting Lack of Intent Defenses Using Prior Victims and Bad Act Evidence

Prior Victims

Digging up as many victims as possible is the key to meeting lack of intent issues. State and federal "bad act" law should be consulted to avoid improper use of bad act evidence and to avoid temporal remoteness arguments. Prosecutors may even be able to revive old cases that were considered "civil" when evidence of new offenses sheds light on intent.

As mentioned earlier, other victims can be found by looking into²:

- The defendant's criminal record
- Local consumer protection agencies
- Better Business Bureau reports
- Dun and Bradstreet reports
- Licensing agency complaints
- Civil lawsuit indexes (including small claims)
- Conversations with local building inspectors
- Bankruptcy records
- Local AARP chapter or other agencies that assist seniors

² See also Chapter 4.2, *infra*

- Other claims against the other insurer
- Use of the media to find other victims
- Bank records

Bad Acts Evidence

Bad act evidence can be useful in establishing that the defendant had the criminal intent to steal. By viewing several victims' accounts together, you may be able to establish a pattern of criminal intent to defraud. Patterns can include:

- The defendant's excuses for non-appearance
- The re-occurrence of problems that the defendant claimed were unusual
- The flow of money into the defendant's accounts and the use of that money
- The workers and subcontractors who worked for the defendant on different jobs. These workers are sources of information and possibly other criminal complaints including non-payment of wages.
- Other scams including unemployment fraud, tax fraud and bankruptcy fraud.

Common Scheme/Absence of Mistake

Evidence that a defendant reacted in the same manner under similar circumstances is probative on the issue of lack of accident or inadvertence. Commonwealth v. McClendon, 39 Mass. App. Ct. 122, 131 (1995). See, Farley v. State, 458 S.E. 2d 643, 646 (GA.1995). The transient and local home improvement scammer often claim that when they did not deliver the promised product, it was a mistake. They also claim that the victim was mistaken in what he/she heard. A common example is when paving scammers belatedly claim that the price they quoted to an elderly victim was for a square foot of asphalt not a

square yard of asphalt, as the victim reports. Finding other victims who were similarly "mistaken" helps corroborate the victim's accounts.

Patterns of conduct corroborating victims' accounts might also appear, including:

- **Altering invoices.** Commonwealth v. Abbott Engineering, Inc., 351 Massachusetts 568, 572 (1967) (evidence of other altered invoices relevant to show intent in false pretenses prosecution)
- **Padded Invoices.** Commonwealth v. Louis Construction Co., Inc., 343 Mass. 600, 605 (1962) (the presentation of a bill for goods or services is an implied representation that the charges are correct)
- **Self-pitying lies used as a ruse to obtain victims trust.** See, Commonwealth v. Maimoni, 41 Mass. App. Ct. 321, 327 (1996) (defendant repeatedly told self-pitying lies as a ruse to lure women into his boat)
- **Serial fraud on insurers.** See, Commonwealth v. Wojcik, 43 Mass. App. Ct. 595, 605 (1997) (serial insurance fraud)
- **Repeated sales to a vulnerable victim.** See, Commonwealth v. Reske, 41 Massachusetts Appeals Court 522 (1979) (pattern of repeated sales to vulnerable victim showed interest to commit larceny)
- **"Bust Out" schemes.** Defendants repeatedly declare bankruptcy under different names. If you suspect a bust out scheme contact the United States Trustees, who work for the bankruptcy courts.

Identification

Evidence of prior bad acts may be admissible if there is a special mark or distinctiveness in the way the acts were committed (i.e., in the modus operandi).

Misidentification is often the defense used when dealing with elderly victims. In many parts of the country, paving scams are uncommon, except when transients sweep through the area. The transients' involvement in other instances of these unique crimes, close in time to the charged larceny, is often strong identification evidence. *Commonwealth v. Kines*, J Mass. App. Ct. 632, 635 (1997) (defendant's identity confirmed by a witness to the defendant's other robbery).

In home improvement fraud cases, transients often use distinctive instrumentalities during the commission of the crime, including detachable magnetic signs that can be removed from the trucks. The presence of these detachable signs may be enough to match defendants to seemingly unrelated scams, particularly when the signs claim to be a local business, but the truck has out of state license plates.

Other unique characteristics may include:

- Use of a specific unusual chemical as a roofing, paving, or pest extermination substance (e.g., alcohol-based),
- A unique tell tale sign of a leak or other problem (e.g., rusty water squirted on ceiling to falsely portray a leak),
- The price for a square yard v. price for a square foot scam,
- Use of particular false identities,
- Victim's valuables stolen from the home in addition to a home improvement scam.

Knowledge

Prosecutors must often times rebut the defense that a scammer did not know what his/her associates were up to. A defendant's presence at other scams with co-venturers may be probative of his/her knowledge of the state of mind of other co-venturers. See, Commonwealth v. Stewart, 411 Massachusetts 345, 354 (defendants presence during malicious shooting of a cat probative of his involvement in later shooting); Commonwealth v. Modica, 24 Mass. App. Ct. 334, 341(1987) (possession of other stolen goods).

Joinder and Venue

It is advantageous for the prosecutor to join as many untried crimes as soon as possible in one court. Having one judge view all the crimes eliminates a potential "divide and conquer" strategy wherein the defendant can go from court to court and get "small" cases dismissed on payment of restitution. Moreover, having all the crimes joined presents a higher dollar loss for sentencing guideline purposes. Guilty pleas are also more likely when additional victims corroborate victims' accounts.

Although rules of criminal procedure vary from state to state, prosecutors should consult their jurisdiction's laws regarding acceptable venues for charging crimes and joinder of crimes after the charge or indictment has been entered in a court.

Many states allow the prosecutor great flexibility in establishing venue for larcenies and frauds. Venue statutes can allow that a larceny "may be prosecuted and punished in any county where the defendant had possession of the property alleged to have been stolen." Massachusetts General Laws c. 277 §§ 58-60. See, State v. Hippler, 545 N.W. 2d 568 (Iowa 1996); State v. Martinez, 255 Kansas 464 (1994); State v. Moulton, 481 A. 2d 155 (Maine

1984) 21 Am. Jur. 2d 509 ("venue is proper in either county or district when ----- in a prosecution for theft, goods are stolen in one county and brought into another")

Victim Based Preparations

In general, victims of home improvement contractor fraud make compelling witnesses. Jurors easily identify with persons, particular elderly persons, who have been intimidated by a "contractor." Getting an embarrassed victim to cooperate is half the battle, because defense attorneys are not eager to cross-examine elderly persons for fear that their clients could be penalized at sentencing for re-traumatizing the victim.

Early efforts to insure the victim's willingness to cooperate pay dividends down the line. Victim/Witness advocates should be used and if the victim is willing, he/she should show up for an early court appearance.

When Victims Are Not Competent

Often, scammers target elderly persons who are showing early signs of dementia. The prosecutor must assess whether the victim will be competent to testify. Even if the victim is not competent to testify, the prosecutor may be able to prove larceny by showing that the defendant knew (or reasonably should have known) that the victim was not capable of consenting to an arm's length transaction. See, Commonwealth v. Reske, 43 Mass. App. Ct. 522 (1977); Fla. Stat. 825.103 (1996 Supp.). To prepare this type of prosecution the prosecutor must do three things:

1. Obtain the victim's medical records and to talk with the victim's doctor or gerontologist. It will be important to prove that the victim outwardly manifested his/her dementia or other mental shortcomings.

2. The prosecutor must prove that the price the victim paid was grossly unfair to what he/she received.
3. The prosecutor must be prepared to argue that the law places limitations on the age-old maxim of caveat emptor ("buyer beware").

Preparing the Competent Witness

The following may be helpful for preparing competent elderly victims to testify either at trial or in the grand jury:

- Interviews should be conducted in familiar surroundings such as the senior's own home to lessen tension;
- Victims should be brought to the court room prior to testifying to familiarize them with what is going to happen;
- Victims should understand that it is common to be confused. As long as you can prove the elements of the crime, the victim's confusion can help show how he/she was victimized;
- If you have one confused victim, make sure you put stronger victims up front in your witness order and go to greater pains to corroborate the details of the confused witness.
- In preparation of testimony, and before the witness is at the courthouse, show the victim every piece of paper or exhibit that he/she will see on the stand.
- When preparing the victims and showing them exhibits, note whether they need eyeglasses or hearing aids and make sure they bring them to court. Remind the

witnesses to take (or bring) whatever medication it will take for them to make it through a long day.

- ❑ If your jurisdiction allows for it, consider videotaped deposition testimony if your witness is too elderly to come to court or may be deceased by the time the case goes to trial.
- ❑ Make sure the victim has a ride to court or any other proceedings and easy access to the courthouse.
- ❑ The victim should be warned that an investigator for the defendant might be coming to his/her house in order to inspect any work actually done by the defendant. Arrange to be present at any such intrusion.
- ❑ Obtain a court order so that the defendant's investigator must make prior arrangements with the prosecutor as to a mutually convenient time for the visit.
- ❑ Explain to the witness about being alert to leading questions from the defendant's attorney or investigator.
- ❑ Carefully document the condition of the house right after the crime, including, if possible, having your expert look at the house. Subsequent repairs to the house can destroy evidence.
- ❑ If identification is the issue, consider whether a lineup would allow the victim to make a more accurate identification than using outdated mug shots. Avoid courthouse encounters with the defendant.

Defendant Based Preparations

Much of the evidence you introduce at trial will be gathered by law enforcement during the investigation phase of the case. The following is a list of things prosecutors will want to follow up on and complete themselves in their pre-trial preparation if they aren't done during the investigation.

- Follow up on all references that the defendant gave to victim(s), being alert for "singers" (e.g., persons paid for their reference or related to the defendant).
- Interview subcontractors and, if necessary, subpoena them into the grand jury to "tie them into" whether or not the defendant paid them out of the victim's "deposits."
- Follow the flow of money in order to prove that the defendant converted the victim's money to his/her own use. You will need copies of the defendant's checks out of his/her bank accounts. Remember to request copies of checks early because the bank needs time to make the copies. Input financial information into a computer to be able to manipulate the data and prepare easy to follow charts and graphs.
- Obtain court orders for timely reciprocal discovery from the defendant.
- Consider using search warrants for the defendant's business and home. If the defendant's receipt of money from his/her scams is substantial, documents showing the receipt and flow of money (e.g., bank records, personal tax forms) are often found in the defendant's house and can form the nexus for the search.

- If the defendant uses a corporation, subpoena the business records of the corporation. Be prepared to argue for an alternate record keeper to be appointed if self-incrimination rights are implicated.
- Investigate the advantages and limitations of using evidence obtained from the defendant by other agencies' administrative and civil (e.g., depositions, document requests) actions. Review parallel prosecution guidelines before obtaining evidence obtained through civil process or administrative process.
- Consider obtaining the defendant's tax records from his/her accountant and/or from state and federal taxing authorities. Even if taxing authorities are not interested in pursuing criminal investigations they may be interested in civil enforcement.
- Contractors may also involve family members or other straw men in tax crimes, when the contractor funnels money through them, to keep him-/herself judgment-proof.
- If the defendant uses a corporate shell, research what is required to establish his/her individual criminal liability and subpoena appropriate records.

Witness Based Preparation

To meet the defense that a simple misunderstanding took place, it is important to obtain witnesses to corroborate the victim's account. Witnesses are also helpful in educating both the prosecutor and the court about the field of home improvement contracting. Prosecutors should assess whether a witness will be allowed to offer an expert opinion. It is important that the witness be qualified to offer the opinion and also be able to lay the proper foundation for an opinion. The following can be sources for expert opinions in the areas of construction, home improvement, repairs and inspections:

- Local Building Inspectors - They are often able to expeditiously view the scene of the crime and they are inexpensive. They may, however, be limited in courtroom experience.
- State Building Inspectors or Leaders in Building Inspector's Associations - Often good sources of inexpensive opinions.
- Non-Profit Construction Groups - Often less expensive than other experts and they are independent of law enforcement. An example would be construction supervisors for Habitat for Humanity.
- State Colleges - May be a good source of highly trained engineering experts.
- Consultants used by Private Law Firms - Often expensive but they come with a track record of having been previously qualified as experts.
- Consultants used by Other Government Agencies - Many government agencies use consultants to value property and construction costs. For example, agencies that deal with roads and highways are a good source for witnesses that can testify about paving. Eminent domain departments often have to value property and may have lists of different experts they use.

Other expert testimony that may be needed in home improvement fraud cases include:

- Handwriting Experts - To identify the defendant's handwriting in an identification case. The court may have to order the defendant to provide examples.
- Gerontological Experts - If you intend to prove the victim lacked the capacity to consent.

- Experts on the Practices of Organized Transients Groups - Like a narcotics expert, this expert can be used to explain matters outside the jury's understanding. The National Association of Bunco Artists is one resource to identify appropriate experts in this field.

Inspections and Estimates

It is helpful to have an architect, engineer or other expert inspect the work done as soon as possible. It is important to have a record of both the work done and not done and any resulting conditions as close as possible to the time the work was done and before any significant deterioration of conditions. An expert may be willing to do the inspection on a sliding scale fee basis and may arrange for a lower fee for the inspection itself, with an additional charge if he/she has to make a court appearance. The expert's report should be as specific as possible about problems and conditions. The report should nail down as many facts as possible, especially those which the defendant will have trouble disputing.

If an expert inspects the work, try to get an estimate from that expert as to the value of the work done, the reasonable value of the work as described in the contract specifications and the work needed to correct the problems caused by the work. Consider getting more than one estimate.

Photographs and Videotapes

As soon as possible, obtain photographs and/or videotapes of:

-  Work that was done,
-  Unfinished work,
-  Resulting damage,
-  Remaining debris.

Photos should be as detailed as possible and include close-ups and distance shots of the overall areas. Do not wait to have the photographs developed and make an extra set of proofs. The photographs should be labeled as to date and what they depict. The photographer's name should also be memorialized. Thoroughness is important to avoid claims of recent contrivance, when witnesses testify about conditions that were not photographed.

Physical Evidence

Physical evidence, such as rotting wood and samples of the driveway "paving" composition, should be saved and labeled. Often times, sealants used by transients are petroleum based. If preserved in an airtight container, these substances make a powerful impression on the fact finder that smells them and imagines them being applied to a driveway or roof.

These cases may become paper intensive when several cases are joined or "bad acts" are discovered. It is important that, early on, a system is put in place that allows for organization of evidence relating to each crime.

Use of Informants

It is always advisable to exercise caution when using informants. When dealing with organized transient groups, however, extra caution should be exercised. The National Association of Bunco Investigators has received reports that transient scammers who are arrested may attempt to secure their freedom by providing false information, particularly about law enforcement officials. These claims, of course, must be assessed on a case by

case basis. Law enforcement representatives would be well advised to observe all formalities with potential informants.



COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

DISTRICT COURT DEPARTMENT
DOCKET NO.

_____)
COMMONWEALTH OF MASSACHUSETTS)
)
v.)
)
DEFENDANT)
_____)

COMMONWEALTH'S BILL OF PARTICULARS

And now comes the Commonwealth and produces a Bill of Particulars regarding the criminal complaints at the above-listed numbers as follows:

Count A: Larceny of Property over \$250 (Victim: A)

Dates: Divers dates from on or about [DATE] through [DATE].

Place: City of [], Essex County.

Manner and Means: The defendant, pursuant to the execution of a general plan and scheme, and with the intent to defraud the victim, obtained property of the victim by false pretenses, to wit: the defendant made false statements of fact, which the defendant knew or believed were false when he made them, and these statements were made with the intent that the victim would rely upon them as true as true, and as a result of this reliance the victim parted with more than \$250 of United States currency. Specifically, the defendant made false representations, knowing them to be false, and did not intend to complete the work as promised.

And/or, the defendant, with the intent to embezzle, convert, or secrete with the intent to

convert the property of the victim, greater than \$250.00, did gain possession of more than \$250 of United States currency belonging to the victim for the purpose of completing home improvement tasks, failed to use the money as agreed, and converted the funds to his own use. Specifically, the defendant entered into a contract to be employed as a home improvement contractor by the victim and gained possession of money of the victim pursuant to that relationship, and then committed an intentional and fraudulent conversion of that money.

Count B: Violation of Regulation of Home Improvement Contractors (Victim: A)

Dates: Divers dates from on or about [DATE] through on or about [DATE].

Place: City of [], Essex County.

Manner and Means: In violation of M.G.L. c. 142 §§ 2, 17 and 19, the defendant failed to include necessary information in his contract with the victim. Specifically,

- 1) the defendant's contract with the victim did not include a start date or an end date; and/or,
- 2) the defendant knowingly and willfully failed to perform the contract. Specifically, he received payment to cover the first half of the project, failed to complete the first half, and then demanded more money to complete the project; and/or,
- 3) the defendant conducted a residential contracting business in a name other than the name registered with the chief administrator of the board of building regulations and standards.

Specifically, the defendant conducted business with the victim under the trade name "XXX Contractors" without having registered that name with the administrator. At the time of this project, the defendant was registered only under the trade name "YYY Company."

This is intended solely to act as a bill of particulars and not as a limitation on any evidence the Commonwealth may seek to admit.

Respectfully Submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

By: _____

xxxxxxx BBO#
Assistant Attorney General
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Dated: _____

1
2
3
4 NO. 93-C-03028-9
5 93-C-03029-7
6 93-C-03509-4

7 SECOND SUPPLEMENTAL CERTIFICATION FOR THE
8 DETERMINATION OF PROBABLE CAUSE

9 That Scott A. Peterson is a Senior Deputy Prosecuting
10 Attorney assigned to the Fraud Division of the King County
11 Prosecuting Attorney's office and is familiar with the
12 investigation conducted by Detective Michael Bailey of the King
13 County Police concerning the matters set forth below;

14 That this case contains the following upon which this motion
15 for the determination of probable cause is made:

16 Casey Asphalt Paving operates from a mail drop and answering
17 service in Snohomish County located at 1711 First Street,
18 Snohomish, Washington. Richard William Casey and his sons, Billy
19 Joe Casey and Richard William Casey Jr., dba Casey Asphalt Paving,
20 supervise several employees who operate a fleet of construction
21 vehicles including three dump trucks licensed in Oregon, three
22 heavy equipment trailers licensed in Washington and Arizona, three
23 travel trailers licensed in Oregon, several pick-up and light duty
24 trucks, and various asphalt spreaders and rollers. The dump
25 trucks have a round logo bearing the name "Casey Paving" and
"Snohomish Washington" affixed to their doors. Until recently,
the Caseys and their employees lived at a trailer park and motel
in Issaquah along with several other groups of travelling asphalt
pavers.

COUNT I

On February 25, 1993, Richard Casey Sr. approached eighty-
eight-year-old John Bialek at his home in Issaquah, Washington.
Casey told Bialek that he and his crew were working on an asphalt
paving job on Highway 18 and had asphalt left over from the job.
He offered to pave Bialek's driveway for two dollars per square
foot but did not estimate the total cost of the job. Casey and
his crew paved Bialek's driveway by spreading and rolling hot
asphalt over the existing unpaved driveway. They did not grade or
gravel the driveway before paving. The asphalt was not uniformly
applied and is only one-half inch thick in places. The ends of
the driveway are not sealed. Richard Casey Sr. told Bialek that
he would return in three weeks to put sealer on the driveway.

Casey and his crew finished the job in four

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4 Casey Sr. presented Bialek with a bill for \$5,650 for the work, or
5 approximately two dollars per square foot. Billy Joe Casey went
6 to the bank with Bialek while he withdrew \$5,650 in cash. Bialek
7 gave him the cash. Grass began to grow through the thin places in
8 the asphalt within a few weeks. They did not return to seal the
9 driveway.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
COUNT II

On February 26, 1993, Richard Casey Sr. approached eighty-
one-year-old Anne Kochevar at her home in Maple Valley, WA. Billy
Joe Casey told Kochevar that he and his crew were doing asphalt
paving work on Highway 18 and had asphalt left over from the job.
He offered to pave Kochevar's driveway. He did not estimate the
total cost of the work but told Kochevar only that he would charge
her one dollar per square foot.

The Caseys and their crew paved Kochevar's driveway by
spreading and rolling hot asphalt over the existing unpaved
driveway. They did not grade the driveway or put down gravel or
weed killer and paved directly over grass in some places. The
asphalt was less than an inch thick in many places and was not
uniformly applied. The edges and overlaps were poorly done. They
completed the work in two hours. Richard Casey Sr. presented
Kochevar with a bill \$8,989 for the work, or about two dollars per
square foot. She wrote Casey a check for that amount. He took
Kochevar to the bank and cashed the check in her presence. A
teller at the bank positively identified Richard Casey Sr. from a
photo montage.

Grass and weeds began to grow through the thin areas of
asphalt within a month. A professional asphalt paver who
inspected Kochevar's driveway concluded that the work Casey did
was extremely poor and of little or no value. A relative of
Kochevar called the Casey's answering service and told them the
police had been notified. Casey refunded all of Kochevar's money
by cashier's check. Kochevar positively identified Richard Casey
Sr. and Billy Joe Casey from a photo montage.

COUNT III

On March 2, 1993, Billy Joe Casey approached fifty-one-year-
old Carol Williams at her home in Redmond, Washington. He told
Williams that he and his crew were working on a job and had
a small amount of asphalt left over he would sell for half
price. Williams agreed and directed Casey to apply the asphalt to
two places on her driveway.

Norm Malog
Prosecuting Attorney
HEAD DIVISION
1002 Bank of America Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Casey returned a few minutes later with a crew of five men who began to pave Williams' driveway. They paved over the existing gravel driveway with no preparation. The asphalt was not of uniform thickness, ranging between one-quarter of an inch to three inches thick. Casey and his crew did not grade the driveway or apply gravel or weedkiller before paving. While they were paving, Williams noticed that they were working very fast and had paved beyond the area she had authorized. Casey told her that they had "just a little bit" more asphalt left and asked her if she wanted them to continue. Williams agreed. Casey and his crew paved Williams' entire driveway.

When they were finished, Billy Joe Casey gave Williams a bill for \$3,355. Williams told Casey that the amount was too much and that she couldn't afford it. Casey offered to reduce the bill by \$600 but no less. Feeling helpless, she made out a check payable to Billy Casey for \$2,755. Casey indorsed the check and cashed at Williams' bank the same day. Weeds began to grow through the asphalt within a few weeks. The asphalt shows signs that it was rolled when it was too cold. The area where Williams driveway meets the street has broken up and the underlying soil and rocks are exposed. Williams positively identified Billy Joe Casey and Richard William Casey Jr. from a photo montage.

COUNT IV

On March 5, 1993, Billy Joe Casey approached sixty-two-year-old William Rice at his home near Woodinville, Washington. He told Rice that he and his crew were doing a paving job nearby on state highway 9 and had some asphalt left over. He offered to use the asphalt to pave Rice's driveway for \$1.80 per square foot. Rice agreed.

Within minutes, several trucks arrived at Rice's home. Rice noticed that the trucks had the words "Casey Paving" and "Snohomish" written on the doors. Rice watched as five men began to pave his driveway. Casey and his crew paved Rice's driveway without grading or applying gravel or weedkiller. They paved directly over the existing grass and dirt.

When Casey and his crew had finished, they gave Rice a bill for \$8,200. Rice was surprised by the amount, but wrote a check for the full amount payable to Bill Casey. Casey checked and cashed it at Rice's bank the same day. Weeds and rocks have come through the asphalt in places since the paving was completed. The asphalt ranges from one-half to two inches thick,

Norm Maleg
Prosecuting Attorney
F.R. CASE DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98104
(206) 296-9010

1
2
3
4 with most of the driveway one inch thick or less. Rice called
5 Casey's telephone number to complain when the grass began to grow
6 through the asphalt. Richard Casey Sr. returned to Rice's home
7 and looked at the driveway. He promised Rice that they would
8 return in one week to fix the work. The Caseys never returned to
9 repair the job. Rice identified Richard William Casey Sr., Billy
10 Joe Casey, and Richard William Casey Jr. from a photo montage.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
COUNT V

9 On March 8, 1993, Billy Joe Casey approached eighty-four-
10 year-old Thelma Curtis at her home in Snohomish, Washington. He
11 introduced himself as Bill Casey and gave her a business card for
12 Casey Asphalt Paving. He told Curtis that he and his crew were
13 working on Highway 9 and had asphalt left over from the job. He
14 offered to pave her driveway for a good price. Curtis told her that
15 she could not afford the work. Billy Joe Casey told her that
16 he would make her a "special deal" and offered to pave her
17 driveway for \$180 per square yard. He did not estimate the total
18 cost of the job. She agreed to let him put down the asphalt
19 remaining in his truck.

15 Billy Joe Casey and his crew paved Curtis' driveway by
16 spreading and rolling asphalt over her unpaved driveway. They did
17 not grade the driveway or apply gravel or weed killer before
18 paving. They finished the driveway in two to three hours. Billy
19 Joe Casey presented Curtis with a bill for \$3,800 for the work, or
20 about two dollars per square foot. Curtis was shocked but gave
21 him a check for that amount which he cashed at Curtis' bank the
22 same day. His endorsement appears on the back of the check. The
23 asphalt was only one-half inch thick in places. Grass began to
24 grow through the thin areas of the driveway within a week.

21
22
23
24
25
COUNT VI

22 On March 8, 1993, Billy Joe Casey went to the home of sixty-
23 two-year-old Truman Van Bebber in Snohomish, Washington. Casey
24 told Bebber that he and his crew were working on nearby Highway 9
25 and had extra asphalt left over from the job. He told Van Bebber
he would pave his driveway for a good price. Casey and his crew
paved Van Bebber's driveway by rolling asphalt over the existing
driveway without grading or applying gravel or weed killer. He
rolled the asphalt directly over grass in some places. The
asphalt is less than one-half inch thick in places and the edges
are ragged and unsealed. Van Bebber paid Casey \$5,000 for the
work. Grass and weeds began to grow through the asphalt in a
few weeks, and the asphalt has begun to crumble in places. Van
Bebber paid Casey \$5,000 for the work.

Norm Malong
Prosecuting Attorney
FRAUD DIVISION
1000 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Bebber identified Richard William Casey Jr. from a photo montage.

COUNT VII

On March 9, 1993, Billy Joe Casey approached sixty-seven-year-old Edward LeSourd at his home in La Conner, Washington. Casey told LeSourd that he and his crew were working at a job in Mount Vernon and had some asphalt left over. He told LeSourd that he didn't want to take the asphalt back to Snohomish where he lived. He told LeSourd that he would fix some "low spots" in his driveway for a good price. LeSourd agreed.

Casey and his crew arrived an hour later with dump trucks and other paving equipment. They began paving all of LeSourd's driveway by spreading and rolling asphalt over the existing paved driveway. LeSourd told them that he didn't want them to pave the entire driveway, just the low spots. Casey told LeSourd that the whole driveway needed repaving and that it would be simpler to pave the entire driveway at one time. They continued to repave all of LeSourd's driveway.

When they were finished, Billy Joe Casey told LeSourd that the charge for the paving work was \$1.61 per square foot. LeSourd told him that he would pay only \$1 per square foot because they had paved areas he didn't authorize. Billy Joe Casey agreed and made out a receipt for \$3,786. Richard William Casey Jr. accompanied LeSourd to the bank where Lesourd withdrew that amount from his account and purchased a cashier's check payable to Bill Casey. He gave Richard Casey the check.

The new asphalt began to break up within a few weeks. The asphalt was dry and crumbly and weeds have begun to grow through it. Lesourd bought and applied a container of asphalt sealer to the driveway in an attempt to prevent the asphalt from crumbling more. The asphalt applied by the Caseys was between one-half and one and one-half inches thick.

COUNT VIII

On March 10, 1993, Billy Joe Casey approached Steve Andal at his place of business, Andal's Custom Meats, located at 1827 Hickox Road, Mount Vernon, Washington. Casey told Andal that he and his crew were doing a job in the area and had some asphalt left over he would sell to Andal for half price. ~~Andal agreed.~~

Casey and his crew arrived and began paving near Andal's business. They did little grading and ~~regraded~~

North Malego
Prosecuting Attorney
FRAUD DIVISION
1003 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

weed killer before paving. When they were finished, Billy Joe Casey gave Andal a bill for \$4,318.75. He told Andal that this amount was \$1 per square foot. Andal gave Casey a check for that amount payable to Bill Casey. Casey cashed the check at Andal's bank the same day.

The asphalt began to crumble and flake within a few days. Andal noticed weeds growing through the asphalt in places. The asphalt was two inches thick or less throughout. Richard William Casey Sr. returned to Andal's business sometime later. Andal showed him the problems with the paving job. Casey offered to refund a few hundred dollars of Andal's money, but left without doing so and did not return. Andal identified Richard William Casey Sr. and Richard William Casey Jr. from a photo montage.

COUNT IX

On March 17, 1993, Billy Joe Casey approached Patrick Goddard at his business, Goddard Appliances, located at 6323 Kitsap Way, Bremerton, Washington. He told Goddard and an employee, Dawn Dellinger, that he and his crew were doing a job in the area and that he had leftover asphalt to sell cheap. He offered to pave the driveway of Dellinger's business for a good price. Goddard agreed to pay Casey to pave a small strip in front of his business for \$200 to \$300.

Casey and his crew paved the area by spreading and rolling asphalt over the existing dirt, grass, and gravelled surface. They applied no weed killer or gravel and did no grading before paving. When they were finished, Billy Joe Casey presented Dellinger with a bill for \$3,900. Dellinger told Billy Joe Casey that she didn't have that much money. She finally agreed to give him \$800 for the work and promised to pay the rest later. She gave him a check for that amount payable to Bill Casey. He endorsed the check and cashed it at Goddard's bank the same day.

Billy Joe Casey returned the following day to ask for the rest of the money. Dellinger told him that she still hadn't been to the bank. Richard Casey Sr. returned a few days later, and again asked for the money. Dellinger and Goddard contacted local asphalt pavers who told them the job was inferior. Grass and weeds began to grow through the asphalt within a couple of weeks after it was completed. The asphalt is between one-half inch and two inches thick. Dellinger and Goddard identified Richard William Casey Sr., Billy Joe Casey, and Richard William Casey Jr. from a photo montage.

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNT X

On March 19, 1993, Billy Joe Casey approached sixty-five-year-old William Venn at his business, Norman Brook Farms in North Bend, Washington. He told Venn that he and his crew were working in the area and had asphalt left over from a nearby job. He told Venn that he would pave an area used by farm and commercial vehicles for a good price. He told Venn he would charge him \$1.80 per square foot and that this was one-half the regular price. He also told Venn he would guarantee the paving work for one year and that he lived in Snohomish, Washington. Venn agreed to the work.

Billy Joe Casey and his crew paved a 4355-square-foot area by spreading and rolling asphalt over hay, manure, and existing cracked and broken asphalt. They applied no tack coat before paving over the existing asphalt as is customary in laying asphalt over existing asphalt. The asphalt was one-half to one inch thick in some places and was uneven. They finished the job in around two hours and demanded \$5,000 for the work, or approximately \$1.15 per square foot. Venn eventually wrote Billy Joe Casey a check \$3,500 or approximately 80 cents per square foot. He cashed the check at Venn's bank the same day.

COUNT XI

On March 19, 1993, Richard Casey Sr. and his sons approached eighty-three-year-old Robert Bybee at his home in North Bend, Washington. He told Bybee that he and his crew had just finished a job nearby and had "a little bit" of asphalt left over in one of his trucks. Richard Casey Sr. told Bybee that he would charge him for only the cost of the asphalt, or \$1.50 per square foot. Bybee agreed to allow him to pave 1,800 square feet of his driveway.

Casey and his crew paved Bybee's driveway by spreading and rolling asphalt over Bybee's existing dirt driveway. They did not grade the driveway or put down gravel or weed killer before paving. The asphalt was not evenly applied and was as thin as one-half inch in places. They crew paved directly over grass and weeds and did not seal the edges of the driveway. As they neared the end of Bybee's driveway, Richard Casey Sr. pressured Bybee to pave more, telling Bybee he had "just a little more" in his truck, eventually paving 3,550 square feet of Bybee's driveway. When they finished the job Richard Casey Sr. presented Bybee with a bill for \$5,200, or approximately \$1.47 per square foot. He insisted that Bybee pay in cash. He accompanied Bybee to his bank where Bybee withdrew \$5,200 in cash from his savings account and gave it to Casey. The edges of the asphalt began to crack and

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1003 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4 weeds began to grow through the asphalt within a week. Bybee has
5 positively identified Richard Casey Sr. from a photo montage.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
COUNT XII

On March 24, 1993, Billy Joe Casey and Richard Casey Jr. approached seventy-three-year-old Noah Spahr at his home in Bow, Washington. Billy Joe Casey gave Spahr a business card for Casey Asphalt Paving. He told Spahr that he and his crew had some asphalt left over from a nearby job and that they would "give him a good deal" to pave his driveway. Spahr agreed to the work.

The Caseys and their crew paved Spahr's driveway by spreading and rolling asphalt directly over his existing wet driveway. They did not grade, gravel, or apply weed killer before paving the driveway and paved directly over grass in some places. The asphalt was applied unevenly and is between one-half and one inch thick. They also paved beyond the area authorized by Spahr.

When they were finished, Billy Joe Casey asked Spahr for \$4,000 for the work. Spahr agreed to pay \$3,250. Spahr wrote him a check for that amount which he cashed the same day. Grass began to grow through the asphalt and the edges began to unravel within a week after the work was completed. Spahr has positively identified Billy Joe Casey and Richard Casey Jr. from a photo montage.

COUNT XIII

On March 24, 1993, Richard Casey Jr. approached eighty-three-year-old Edna Heiner at her home in Bow, Washington. Casey told Heiner that he and his crew had just finished a paving job at the Chuckanut Manor Restaurant and had some asphalt left over. He told Heiner that he could "make her a good deal" to pave her driveway. Heiner agreed to the work.

Casey and his crew paved Heiner's driveway by spreading and rolling asphalt over the existing gravel and concrete driveway. Casey did not grade or gravel the driveway before paving. The asphalt was approximately one inch thick. They did not seal the edges of the asphalt. They completed the job in two hours. When they were finished, Richard Casey Sr. presented Heiner with a bill for \$2,800, or approximately \$1.87 per square foot, which she paid in full. The edges of the driveway began to unravel within one week. Heiner's son-in-law spoke to the owners of Chuckanut Manor Restaurant who told him Casey had done no work for them. Heiner positively identified Richard Casey Sr. from a photo

Norm Malong
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of America Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

montage.

COUNT XIV

On March 25, 1993, Billy Joe Casey approached eighty-two-year-old Herb Johnson at his home in Sedro Wooley, Washington. He told Johnson he and his crew were doing a job in the area and had some asphalt left over. He offered to pave Johnson's driveway for a good price. Johnson agreed.

Casey and his crew paved Johnson's dirt and gravel driveway without grading, or applying gravel or weed killer. When they were finished, Billy Joe Casey gave Johnson a bill for \$2,450. Johnson was surprised by the amount. He paid Casey by giving him \$1,700 in cash and a check for \$750 payable to Bill Casey.

The asphalt began to crack and crumble within a few days. Grass and weeds have begun to grow through the asphalt in places. Johnson recalls that four or five employees worked under Casey's supervision. Johnson identified Richard William Casey Sr., Billy Joe Casey, and Richard William Casey Jr. from a photo montage.

COUNT XV

On March 26, 1993, Richard Casey Sr., Richard Casey Jr., and Billy Joe Casey approached fifty-eight-year-old Dutch Klein at his farm in Mount Vernon, Washington. He told Klein they had been working nearby and had asphalt left over from the job. They offered to pave his driveway for a good price. Klein agreed to the work.

The Caseys paved Klein's driveway by rolling asphalt over dirt, gravel, grass, hay, and manure. The asphalt was as thin as one-half inch and the edges of the asphalt were not sealed. When the job was complete, Richard Casey Sr. presented Klein with a bill for \$6,000. Klein was unhappy with the work and refused to pay. Trucks used at the farm have broken up the asphalt in places and it began to unravel within a week after the work was completed. Klein positively identified Richard Casey Sr, Richard Casey Jr., and Billy Joe Casey from a photo montage.

COUNT XVI

On March 29, 1993, Billy Joe Casey approached

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4 old Richard Zender at his home in Deming, Washington. He told he
5 and his crew had finished a paving job at a casino in Deming and
6 had some asphalt left over. He offered to pave a fifteen by
7 twenty square foot section of Zender's carport for a good price.
8 He told Zender that he would roll the asphalt two inches thick and
9 guarantee the work for four years. Zender agreed.

10 Casey and his crew paved Zender's carport by spreading and
11 rolling asphalt directly over the existing surface without
12 applying a tack coat. They continued to pave beyond the area
13 authorized by Zender, paving his dirt and gravel driveway without
14 any preparation. Zender stopped Casey and his crew when he saw
15 they were paving beyond the area he had authorized. Zender
16 allowed him to pave the rest of his driveway when he saw that he
17 had already paved part of it.

18 When they were finished, Billy Joe Casey gave Zender a bill
19 for \$2,220. Zender thought that the work would cost only \$700 to
20 \$800 dollars. He gave Casey a check for that amount payable to
21 Bill Casey. Grass and weeds began to grow through the asphalt
22 within a few days. The asphalt is uneven and is beginning to
23 crumble in places.

24 COUNT XVII

25 On April 3, 1993, Richard Casey Sr. and Billy Joe Casey
approached seventy-one-year-old Clifford Sands at his home and
business, the Sands Home Park, a trailer park, in Marysville,
Washington. Richard Casey Sr. told Sands he had a load of asphalt
for a nearby job that had been canceled and that he would pave the
driveway to the trailer park for one dollar per square foot. When
Sands asked how much asphalt was in his truck, Casey told him that
he had approximately 1,800 square feet. He told Sands that he
would roll the asphalt two inches thick and guarantee the work for
ten years. Sands agreed to pay Casey to pave the circular
driveway around his home in the trailer park.

The Caseys and their crew paved an area beyond the circular
driveway authorized by Sands by rolling asphalt approximately one
inch thick. Sands stopped Casey when he saw that Casey was paving
areas throughout the trailer park. Richard Casey and Billy Joe
Casey presented Sands with a bill for \$7,000. Sands told them
that he could not pay them that much money. Sands eventually paid
them \$3,000. Richard Casey told Sands that he would return in May
to collect the remainder.

Richard Casey returned to Sands trailer park on May 3, 1993

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4 and asked for more money. Sands refused. The asphalt began to
5 crack within a few weeks of the time the job was completed and
6 weeds have begun to grow through it. Sands positively identified
Richard Casey Sr. and Richard Casey Jr. from a photo montage.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
COUNT XVIII

On April 12, 1993, Billy Joe Casey approached Richard and
Signa Borkenhagen at their home in Beaver, Washington. He told
them that he and his crew were working in the area and had asphalt
left over from the job. He offered to patch some areas of the
Borkenhagen's driveway for a good price. They agreed to hire him
to patch some areas of their paved driveway.

When Casey's trucks arrived, he told Signa Borkenhagen that
patching would look terrible. He spread and rolled asphalt over a
thirty-foot section of her 490-foot driveway. He told her that he
had "a little bit more" asphalt left in the truck and offered to
pave more of her driveway in the same manner. Borkenhagen was
impressed by the section Casey had paved, but declined. Casey
eventually persuaded her to allow him to pave her entire driveway.

Casey and his crew paved the Borkenhagens' driveway by
spreading and rolling an ever-thinning layer of asphalt over the
existing dirt and gravel. They did no grading and applied no
gravel or weed killer to the driveway before paving. They
finished the work in two hours. When they were finished, they
gave the Borkenhagens a bill for \$3,000. Signa Borkenhagen gave
Billy Joe Casey a check for that amount payable to Bill Casey.
Casey endorsed and cashed the check at the Borkenhagens' bank the
same day. The asphalt varied from over two inches to less than
one inch thick and is uneven. Grass and weeds have begun to grow
through the asphalt and it is beginning to crumble in places.
Borkenhagen identified Richard William Casey Sr. and Richard
William Casey Jr. from a photo montage.

COUNT XIX

On April 14, 1993, Billy Joe Casey approached Lester and
Joanne Klontz at their home in Forks, Washington. He told them
that he was the owner of Casey Paving and that he and his crew
were doing a job in Forks and had some asphalt left over. He
offered to pave the driveway to the Klontz' home. Joanne Klontz
asked for an estimate, but Casey declined, telling her that it
would depend on the amount of asphalt used. The Klontzs
eventually agreed to pay Casey to asphalt part of their driveway.

Nora Maleng
Prosecuting Attorney
FRAUD DIVISION
1000 Bank of America Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Casey and his crew paved the Klontz' driveway by rolling a thin layer of asphalt over the existing gravel, grass, and dirt surface. They did no grading and applied no weed killer before paving. After they had finished paving the area the Klontz' authorized, Casey told Joanne Klontz that they had more asphalt and offered to pave more of the driveway. She told them that she would pay them to pave another part of her driveway. Casey and his crew paved this area in the same manner, with little or no preparation.

The Klontz' paid Casey approximately \$1,800 for the work. Lester Klontz asked Casey if the work was guaranteed. He told him that the job was guaranteed for a year. The asphalt began to break up within a month. Weeds and grass have grown through the asphalt. Water percolates through the asphalt instead of running off. Lester Klontz measured the thickness of the asphalt and determined that it was only one-half inch thick in places. He identified Richard William Casey Jr. from a photo montage.

COUNT XX

On May 5, 1993, Billy Joe Casey approached seventy-three-year-old Agnes March and her husband, seventy-seven-year-old Robert Marsh, at their home in Yakima, Washington. Casey told Agnes Marsh that he and his crew were doing a paving job nearby and had a load of asphalt left over. He offered to pave the Marshs' driveway. She agreed.

Casey and his crew paved the Marshs' driveway by rolling a thin layer of asphalt over the existing broken asphalt, gravel, and dirt. He applied no weed killer or gravel and did no grading before paving. Casey paved beyond the area authorized by Ms. Marsh, paving an area between the end of his driveway and the county road. They also paved over Ms. Marsh's flower beds on both sides of the driveway. The asphalt is as thin as one-half inch.

When they were finished, Casey gave Ms. Marsh a bill for \$2,150. The bill contained a statement guaranteeing the work for one year. She was surprised by the amount but gave Casey a check for that amount payable to Bill Casey. Casey cashed the check at the Marshs' bank the same day. Grass and weeds are growing through the asphalt and it is beginning to crumble and break up. The Marshs' cannot close their garage door because the asphalt in front of the garage is too high.

COUNT XXI

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On May 12, 1993, Richard Casey Sr. approached John Downey at his ranch in Ellensburg, Washington. Casey told Downey that he and his crew had just finished a paving job at the "Flying J" truck stop nearby and had some asphalt left over. He offered to pave Downey's driveway. Downey agreed.

Casey and his crew paved Downey's driveway and other areas on his ranch by rolling a thin layer of asphalt over the existing dirt and gravel base. Casey did no grading and applied no gravel to the areas before paving. Downey saw one of Casey's employees applying what appeared to be weed killer to the driveway. When he asked Billy Joe Casey what the employee was spraying on the driveway, Casey told Downey it was "round up." When Downey told Casey that the herbicide took fourteen days to be effective, Casey told Downey that they added something to the herbicide to make it work faster.

When Casey and his crew were finished, they gave Downey two bills for the work totaling \$20,245. Downey gave Billy Joe Casey two checks payable to Bill Casey for the work. Billy Joe Casey took the checks to Downey's bank the same day and cashed them. Grass and weeds began to grow through the asphalt within a few weeks. The asphalt is only one-half inch thick in places. Downey identified Richard William Casey Sr., Billy Joe Casey, and Richard William Casey Jr. from a photo montage.

COUNT XXII

On May 17, 1993, Billy Joe Casey approached eighty-four-year-old George Chepoda and his wife, eighty-two-year-old Mary Chepoda at their home in Roslyn, Washington. Mr. Chepoda has had several strokes and is unable to communicate. Billy Joe Casey told Mr. and Ms. Chepoda that he and his crew were paving in the area and had asphalt left over from the job. He offered to pave the Chepoda's driveway for a good price. Mr. Chepoda motioned to them to pave only the cracks in the driveway.

The Caseys and their crew paved the Chepoda's driveway by spreading a thin layer of asphalt over the existing asphalt, gravel, and grass. They applied no weed killer and no tack coat before paving. They paved beyond the area authorized by Mr. Chepoda, paving into her garage. When they were finished, they asked Ms. Chepoda for \$9,600 for the work. She was surprised by the amount and called her son Daryl, who came to the home. He told Billy Joe Casey that the asphalt was too thin and agreed to reduce the price to \$4,000. Ms. Chepoda wrote the check payable to Bill Casey for that amount. Billy Joe Casey cashed the check

Youn Malek
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

at the Chepoda's bank the same day. Grass and weeds have begun to grow through the asphalt in places. Mrs. Chepoda identified Richard William Casey Sr., Billy Joe Casey, and Richard William Casey Jr. from a photo montage.

COUNT XXIII

On May 18, 1993, Billy Joe Casey approached eighty-one-year-old Robbie Stai at his home in Moses Lake, Washington. Stai was a farm hand for Josephine Cordell from 1949 until 1980 when she died. He has diabetes, glaucoma, and heart trouble. His mental acuity and physical condition have deteriorated since 1992 when he was hospitalized for diabetic shock. Stai has a life estate in the property where he lives, with the remainder reverting to Cordell's estate on Stai's death.

Casey told Stai that he and his crew were paving on nearby Hiawatha Road and had asphalt left over from the job. He offered to pave the circular driveway around Stai's home for \$1.50 per square foot. Stai agreed. Casey and his crew paved the driveway around Stai's home by rolling a thin layer of asphalt over the existing dirt and gravel surface. They applied no weed killer or gravel and did no grading before paving. They completed the job in just a few hours.

When they were finished, Richard Casey gave Stai a ride to the bank to withdraw money to pay for the work. When they arrived at the bank, Casey told Stai that he owed \$24,900 for the work. Stai was surprised at the amount but felt helpless as he had authorized the work. Casey made out a check for that amount and had Stai sign it. He used the check to purchase a cashier's check payable to himself. The withdrawal depleted almost all of Stai's retirement savings.

Weeds and grass began to grow through the asphalt within weeks. Grant County Sheriff's deputies measured the asphalt and determined that it was between two inches and one-quarter of an inch thick. They also determined that the Casey's paved approximately 9,000 square feet of Stai's driveway. At \$1.50 per square foot, the amount due would have been approximately \$13,500, not \$24,900. Stai identified Billy Joe Casey from a photo montage.

COUNT XXIV and XXV

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1001 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98104
(206) 296-9010

On May 19, 1993, Richard Casey Sr. approached Douglas Earl at their home in Moses Lake, Washington.

1
2
3
4 share a communal driveway with Charles P. Waller. Casey offered
5 to pave the driveway for a good price. The Earls discussed the
job with Mr. Waller and agreed to have the work done.

6 Casey told the Earls and Mr. Waller that the asphalt would be
7 two inches thick and that he would guarantee the job for one year.
8 Casey and his crew paved the driveway by spreading a thin layer
9 of asphalt over the existing gravel. They did no grading and
10 applied no weed killer before paving. When they were finished,
11 Richard Casey gave Mr. Earl a bill for \$4,248.75. Mr. Earl paid
12 him that amount by check. Mr. Waller paid Mr. Earl \$1,548.95 for
13 his share of the work. Mr. Waller examined the job and discovered
14 that it was only one-quarter inch thick in places. He called Mr.
Earl who called the Caseys and complained. They returned the next
day and placed a small patch over an area of the driveway. The
asphalt in other places is one-quarter inch thick and has begun to
break up and deteriorate. Earl identified Richard William Casey
Sr. from a photo montage.

14 COUNT XXVI

15 On May 21, 1993, Richard Casey Sr. approached seventy-eight-
16 year-old James DeVere at his place of business in Cle Elum,
17 Washington. Mr. DeVere operates a small aviation business and
18 owns an airstrip. Casey told DeVere that he and his crew had
asphalt left over from a job in Roslyn and offered to pave Mr.
DeVere's airstrip for a good price. Mr. DeVere wanted to repair a
low spot on his airstrip that filled with water when it rained.
He agreed to allow Casey to do that work.

19 Casey and his crew paved a 3,000 square foot area of DeVere's
20 asphalt airstrip and gravel driveway by spreading a thin layer of
21 asphalt over the existing surface. They applied no tack coat or
22 weed killer before paving. When they finished the job, Casey gave
23 DeVere a bill for \$3,141. Mr. DeVere was surprised by the amount,
24 but gave him a check for that sum. Casey cashed the check the
same day. The asphalt is one-half inch thick in many places. It
has begun to break up and deteriorate. Water continues to pool in
the area paved. Devere identified Richard William Casey Sr. from
a photo montage.

25 According to employees at Lakeside Industries, a local
asphalt supplier, the standard price for asphalt paving in King
County is one dollar per square foot for an adequate job that
includes proper grading and graveling. Asphalt should be rolled
at least two inches thick for a driveway.

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4 A civil engineer and expert in asphalt paving examined the
5 work done by the Caseys. Local asphalt industry standards for
6 paving residential driveways call for at least two inches of
7 asphalt over a properly graded and graveled base or at least three
8 inches of asphalt over a properly graded base. The standards also
9 require removal of debris and vegetation and compacting the soil
10 to ensure a firm flat surface before paving. An herbicide is also
11 generally required. The engineer noted that the Caseys failed to
adequately prepare the surface before paving. He also noted that
in several of the jobs the asphalt had poor surface texture. This
was likely caused by excessive hand raking, rolling the asphalt
when cold, improper rolling, or careless handling by inexperienced
workers. He concluded that the asphalt applied in each of the
Casey's jobs was of inadequate thickness and the work was of
inferior quality.

12 Department of Transportation records show that the Caseys
13 have never done any work for the State of Washington on Highways 9
14 or 18 or any other state highway as a contractor or subcontractor.
Project engineers working for DOT have never heard of Casey
Paving.

15 The Caseys purchased asphalt from Lakeside Industries and
16 Associated Asphalt. Records at Lakeside Industries show that the
17 Caseys bought eighty-two loads of asphalt from the Issaquah,
18 Redmond, and Port Angeles plants between February 24 and April 22,
19 1993, for a total cost of \$28,735.14. Records at Associated
20 Asphalt in Burlington show that the Caseys purchased thirty-six
loads of asphalt from that plant between March 9 and March 30,
1993 for a total cost of \$9,795.31. Each time, Richard Casey Sr.,
Richard Casey Jr., Billy Joe Casey, or one of their employees paid
cash for the asphalt for a total of \$38,530.45 in cash payments
for asphalt in less than two months.

21 Records received from Ford Motor Credit Corporation show that
22 Richard Casey Sr. made a \$2,000 cash down payment on a 1993 Ford
23 Bronco on February 21, 1993. Bank records for a checking account
24 opened by Richard Casey Sr. at the Issaquah branch of Seattle
25 First National Bank show a \$400 cash deposit on March 4, 1993, a
\$1,500 cash deposit on March 8, 1993, and a \$1,900 cash deposit on
April 6, 1993. Credit records show that the Caseys own the three
1993 travel trailers, the three Low Boy trailers, the red 1991 GMC
dump truck, and all the other vehicles and equipment used in their
business free and clear.

COUNTS XXVII through XXXI

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Licensing records for the trucks and other vehicles used by Casey's Paving show that a 1993 Ford Bronco, a 1991 Ford pick-up truck, a 1990 GMC pick-up truck, and two 1991 GMC dump trucks are currently financed through Ford Motor Credit Corporation (FMCC) or General Motors Acceptance Corporation (GMAC). Total monthly payments on those vehicles is \$3,958.97. Payment records from GMAC and FMC show that Richard William Casey and Billy Joe Casey made eleven payments on these vehicles during February, March, and April of 1993 by cash and money orders totaling \$10,567.31. Eight of those payments were made after February 25, 1993, the date the Caseys began operating in Washington. The records show that the eight payments were made toward the purchase price of the following vehicles:

1. Ford Motor Credit Corporation:

VIN/ LICENSE	VEHICLE DESCR.	PAYMENT MADE BY	FORM OF PAYMENT
1FMEU15H7PLA11970 WA 605ETR	93 Ford Bronco	Richard W. Casey	4/1/93 \$626.72 check
1FTHF25H2MNA10551 CA 4L77180	91 Ford pick-up	Richard W. Casey	3/13/93 \$621.07 M.O. 4/16/93 \$621.07 M.O.

2. General Motors Acceptance Corporation:

VIN/ LICENSE	DESCR.	PAYMENT MADE BY	FORM OF PAYMENT
2GTHC39N1L1508254 WA 76612V	90 GMC pick-up	Billy Joe Casey	3/24/93 \$700.00 M.O.
1GDL7H1J6MJ506247 OR T499909	91 GMC dump	Billy Joe Casey	3/17/93 \$1165.94 M.O. 4/19/93 \$1165.94 cash
1GDL7H1J3MJ506044 OR T499908	91 GMC dump	Richard W. Casey	3/17/93 \$1165.13 M.O. 4/19/93 \$1165.13 cash

As discussed in the sections of this certification describing counts I through X, the Caseys either took cash from their victims or cashed checks received in payment the same day. The cash payments listed above were made during the same time period. None of the Caseys list any significant source of income other than from asphalt paving on credit applications with FMC or GMAC.

Norm Maleng
Prosecuting Attorney
FMC & GMAC
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNT XXXII

In addition, witnesses have reported and King County Police have observed that Richard William Casey Sr., Richard William Casey Jr., and Billy Joe Casey each directed and supervised at least three employees during at least three of the incidents described in counts I through XXVI above. Richard William Casey Sr. claimed in a recent credit application to GMAC that he is the owner of Casey Asphalt Paving.

Under penalty of perjury under the laws of the state of Washington, I certify that the foregoing is true and correct. Signed and dated by me the ___ day of October, 1993, at Seattle, Washington.

SCOTT A. PETERSON, WSBA NO. 17275
Senior Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
FRAUD DIVISION
1002 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9010

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT DEPT.
CRIM. NOS. 98-0343-1, 5, 6, 7 to 14 (Hill)
98-0342-1 to 28 (Lepper)

COMMONWEALTH OF MASSACHUSETTS,)
)
)
 v.)
)
 CHARLES HILL and)
 FREDERIC LEPPER)

COMMONWEALTH MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF VENUE

In the above captioned indictments the Commonwealth has filed an Allegation of Doubt pursuant to G.L. c. 277 § 57A. The Commonwealth also opposes the Defendants' Motions to Dismiss For Lack of Venue. The defendant Charles Hill ("Hill") argues that his larceny indictments should be dismissed because no evidence was presented to the grand jury that Hill possessed stolen property in Worcester County. The defendant Frederic Lepper ("Lepper") argues the same and also argues that venue for indictments charging him with home improvement fraud is improperly set in Worcester County. The defendants' argument must fail because:

- 1) The defendants were involved in a joint venture, possessed the stolen property in a Worcester County bank and G.L. c. 277, § 58, allows larcenies to be prosecuted "in any county where the defendant had possession of the property alleged to have been stolen."
- 2) The defendants were involved in a continuous scheme or plan that had its central location in Worcester County, establishing Worcester County as a proper venue for larceny and home improvement fraud indictments and ;
- 3) Establishing venue in Worcester County is judicially efficient and fundamentally fair.

II. PROCEDURAL HISTORY

The Office of the Massachusetts Attorney General (“Attorney General”) became involved in an investigation into Laredo Business Systems (“L.B.S.”) after receiving several complaints from consumers. The Attorney General’s Western Massachusetts Office assigned a state trooper to begin an investigation in November of 1997. The complaints came to the Attorney General from consumers located in Massachusetts, Vermont, Maine, New Hampshire, New York and Connecticut. The complaints all related to allegations that L.B.S., through one of two people, Frederic Lepper (“Lepper”) or Charles “Buddy” Hill (“Hill”), entered into a contract to build a large utility shed and then failed to perform. The contracts listed the business address as “Laredo Business Systems, P.O. Box 1267, Webster, MA 01570, and the phone number as 800-943-6240.”

All of the victims’ checks were deposited into a bank located in Worcester County.

At the time that Worcester County grand jury proceedings began, Connecticut and New York had either taken out criminal complaints or planned to, as they had more than one victim.¹ The Attorney General received complaints from victims in Maine, Vermont and New Hampshire. An assistant attorney general from Vermont called Assistant Attorney General Wise and requested that the Vermont victims be included in a Massachusetts prosecution, if possible.

The Attorney General also received complaints from victims residing in several counties in Massachusetts including Worcester, Middlesex, Plymouth, Northwestern District, and Hamden Counties.

¹ Connecticut has charged Lepper and Hill with larcenies. New York has outstanding warrants for Lepper.

The Attorney General presented the live testimony of fourteen victims to the Worcester County Grand Jury including victims from Vermont, Maine and New Hampshire.² The Attorney General received the permission of all victims named in the above-captioned indictments to proceed in Massachusetts, prior to presenting testimony relevant to larcenies perpetrated on them.

On June 12, 1998 the defendants were indicted by a Worcester County grand jury. Hill was only indicted for those crimes which he directly participated in as a salesperson or when he knowingly gave excuses which aided Lepper. Lepper was indicted for all of the alleged larcenies. The larceny indictments specifically alleged that the defendants participated “in a continuing scheme or plan.”

Where Lepper and Hill on behalf of L.B.S., contracted to build a pole building that was to be adjacent to the victim’s home and the victim lived in Massachusetts, they were indicted for violating the Home Improvement Contractor Statute, G.L. c. 142A, §§ 17 and 19. For the actions of the defendants to fall under G.L. c. 142 the buildings had to be adjacent to the owners home.

A search warrant was executed on June 12, 1998 in Webster, Massachusetts at Lepper’s home, which doubled as the business location for L.B.S. The search warrant led to the seizure of

² The grand jury testimony is attached as Exhibit A in the Commonwealth’s Appendix and is incorporated by reference. The grand jury exhibits 1 through 38 are attached in Exhibit F in the Commonwealth’s Appendix.

L.B.S.'s business records.³

³ Because the search warrant was executed after the indictment, the seized records were not presented to the grand jury. Those records may be considered for purposes of the G.L. c. 277 § 58A petition.

III FACTS⁴

Laredo Business Systems (L.B.S.) was an unincorporated business that advertised in rural newspapers and trade magazines. L.B.S. advertised that they would construct “pole buildings”, for use as utility sheds or barns.

Lepper and/or Hill⁵, in their capacity as representatives of Laredo Building Systems would meet with victims at the victim’s home or place of business. Lepper or Hill then requested and accepted deposits in accordance with written contracts signed by the victims and either Lepper or Hill. These one-third deposits were intended to be used to order material with the understanding that once all of the material was delivered to the building site, the consumer was to provide Lepper and/or Hill with an additional one-third payment. The final one-third of the contract amount was to be paid upon completion of the building in accordance with the terms of the contract. Typically, L.B.S. collected the one-third deposit but did little or none of the contracted work. All of the victim’s checks were deposited into the L.B.S. account at the Webster 5¢ Savings Bank in Webster Massachusetts. Every victim’s contract listed the address for L.B.S. to be “Laredo Building

⁴For purposes of clarity the facts are being summarized. The grand jury minutes, (Exhibit A) and the search warrant affidavit of Massachusetts State Trooper Michael Konderwicz (Exhibit B) describe in greater detail the allegations and anticipated trial evidence and are incorporated by reference.

⁵Whether Lepper and/or Hill was involved with a particular victim is discussed later on in this section.

Systems, P.O. Box 1267, Webster, MA 01570, 800-943-6240.” The telephone number rang into Lepper’s home in Webster. See Exhibit D, in Commonwealth’s Appendix.

In essence, L.B.S. employed the following scheme. After the contract was signed and, following payment of the initial one-third deposit, a standard set of blueprints specific to the size of the building listed in the individual contracts was sometimes sent to the consumer. Many times, the consumer had to ask Lepper and/or Hill repeatedly for the blueprints despite the assurances of Lepper and/or Hill that the consumer would receive the blueprints shortly after the contract was signed and the initial deposit received. In addition, Lepper told some of the consumers that he would obtain the building permit and would not do so, telling the consumer that the building inspector was giving him a difficult time. In other instances, Lepper would ask the consumer to obtain the permit. Because Lepper, Hill and L.B.S. were not registered as home improvement contractors with the Bureau of Building Regulations and Standards (“BBRS”) they could not “pull” a building permit in Massachusetts. Moreover, because Lepper was not a registered home contractor the victim will not receive compensation from the State Guarantee Fund.

The following is a brief discussion of the facts relating to individual victims in chronological order:

- A. Jay O'Connor and Maura O'Connor (nee Leveille) Ind. Nos. 98-342-1 and 25)
(Lepper only)
Date of first contract - 2/19/97 (approximately \$14,000 lost)

The O'Connors who are now married, are the animal control officers for Millbury, MA, and other neighboring towns. They also board horses and keep impounded dogs as well as their own pets. In response to a newspaper ad, on February 19, 1997 they met with Fred and Susan Lepper (Lepper's wife). Lepper stated he was the owner of Laredo Building Systems (“Laredo”) and

showed them brochures of utility sheds put out by Fabral, a steel supplier. Lepper is not employed by Fabral, although he falsely claimed to a subcontractor, Gary Butterfield, that he got favored rebates from Fabral that allowed him to charge his low prices. Lepper also falsely told O'Connor he received savings from Fabral due to the large volume of business Lepper did with Fabral.

The O'Connor's contracted with Lepper to have Laredo build a 24' x 40' barn and a 50' x 72' animal shelter/kennel. Lepper initially gave a written anticipated start date of March 17, 1997, which he later amended to May 5, 1997. Lepper was to get the building permits. Jay O'Connor gave Lepper a credit card check for \$5,000 on or about February 19, 1997.

Lepper delayed on obtaining a building permit. On April 4, 1997 Lepper arrived, falsely claiming to have delivered all materials. Maura O'Connor correctly believed only partial materials had been delivered. Lepper who is 6' tall and 280 pounds arrived with another man and the partial load of materials. The two men intimidated Maura and demanded \$12,000 for the materials that were already off the truck. Maura reluctantly gave Lepper the \$12,000 check, when she could not reach her husband.

Jay O'Connor confronted Lepper who said he would deliver the rest of the materials, including the framing and vinyl siding. Lepper never delivered the materials.

Lepper continued to delay and would not return calls. Lepper did not pull the building permit, but rather paid a subcontractor to do it⁶. The O'Connors asked for their money back but Lepper refused. On May 15, 1997, a crew arrived, worked for two hours and left. On May 29, a subcontracted crew arrived and partially built the smaller building. The subcontractor could not do

⁶ Lepper could not pull the permit because he was not a registered contractor or a licensed construction supervisor.

any more work without Lepper providing more materials. Lepper did not provide any more materials.

Lepper claimed to have hired two additional subcontractors, Ray Latour and Al Payne to finish the O'Connor job. Both subcontractors deny this, and both said Lepper never talked to them about the O'Connor job.

Lepper would not answer calls. Eventually he took a call and said he had spent \$25,000 on O'Connor's job and he was going to sue O'Connor. Lepper told O'Connor to call an Attorney Kring (a/k/a William Kring), laughed and hung up.

Lepper did not finish the small barn or start the large shelter.

B. George Murray Sr. and George Murray, Jr.(Ind. No. 98-342 -23)(Lepper only)

Contract date - April 2, 1997 (\$4083 lost)

George Murray, Jr. is 67 years old and owns a machine shop with his son in Barre, MA. On April 2, 1997 the Murray's met with Fred Lepper and signed a contract to have L.B.S. build a pole building for \$12,250. The Murray's gave Lepper a check for \$4,083. The written start date on the contract was May 18, 1997. The check was deposited in the Webster bank account.

As of June 12, 1997 Lepper had not obtained a building permit nor had he started work. The father called Lepper's home in Webster, Massachusetts and spoke with a woman who identified herself as Lepper's wife. The father left a message that if Lepper went to obtain the permits that day he could get the permits by Saturday. Lepper's wife said she was sure Fred would go and get the permit. Lepper did not get the permits.

The father called Lepper who said the best he would do would be to return their money. Murray agreed and asked where to meet him. Lepper said he did not have the money now and he

was going to deduct \$313 for blueprint preparation. The father said that did not sound fair but agreed. Lepper then said he thought about it, and was not going to give the Murray's their money back. Lepper then insulted Murray and said he was going to see his attorney to make Murray pay for the materials.

Lepper never pulled the permit or returned the deposit.

C. James Bowen(Ind. No. 98-342-2)(Lepper only)

Contract date - April 17, 1997 (\$3,666 lost)

Bowen is a tree chipper who lives in Friendship, Maine. He met Lepper through another victim, Melvin Williams. On April 17, 1997 Bowen met with Fred Lepper and signed a contract to have L.B.S. build a pole building on his property for \$11,000. The contract had a start date of June 2, 1997. On April 12, 1997 Bowen gave Lepper a check.

On June 2, 1997 Lepper did not show up. Bowen continuously tried to call Lepper, who lived in Webster. On or about July 4, 1997 Bowen finally reached Lepper and asked for his money back. Lepper said that would not be a problem. Lepper never sent the check. At one point Lepper said he sent a check and blamed his accountant. Bowen continued to try to call but could not get a hold of Lepper. Bowen never received a refund.

D. Melvin Williams (Ind. No. 98-342-3)(Lepper only)

Date of contract - April 17, 1997 (\$1500 lost)

Melvin Williams is a dairy farmer living in Waldoboro, Maine. On April 17, 1997 he signed a contact with Fred Lepper and Laredo to have a pole building built on the farm for \$3500. Williams gave Lepper a check for \$1500. Shortly thereafter, Williams called Lepper because he wanted a small change in design. Lepper agreed to the change at an agreed upon additional charge.

Williams would try to reach Lepper three to four times a day but would only get the answering machine. When he infrequently reached Lepper, he would receive different excuses. In one instance, Lepper said he was having trouble with the "code" in Maine. Williams informed me that Maine does not have a "code" for farm buildings.

Williams spent \$2,000 to level his property and obtained his own permit. Williams last spoke to Lepper in October 1997 and has not received his money back. E. Richard Allis (Ind. No. 98-342-4)(Lepper only)

Contract date - May 30, 1997 (\$3,000 lost)

Richard Allis is in the construction business and lives in Leyden, Massachusetts. On May 31, 1997 Allis met with Fred Lepper and contracted with Laredo to build a 30' x 40' x 16' building for \$9,800. Allis gave Lepper a \$3,000 deposit check. The written start date was June 30, 1997.

Allis did site work and prepared the paper work for the building permit. Lepper was supposed to get the permit but the permit required a contractor's registration number. Lepper said a member of his crew had a registration number but never provided it. Lepper said he had insurance.

Allis had a lot of difficulty reaching Lepper. When he did reach him, Lepper falsely said that his crew would be there soon. The crews did not show up.

At one point, Lepper said he was having problems and his associate Buddy Hill would talk with Allis. The number Lepper gave Allis was incorrect. Allis called Lepper repeatedly and requested his money back.

Allis eventually reached Lepper, and in an attempt to salvage something for his money and believing Lepper was in financial trouble, volunteered to buy the materials if Lepper would complete the work. Lepper never sent materials and never returned the deposit.

F. Thomas Hatch (Ind. No. 98-342-6)(Lepper only)

Contract Date - June 4, 1997 (\$4,000 lost)

Thomas Hatch lives in Kingston, Massachusetts. Mr. Hatch saw the ad in "County Folks" in May, 1997, and called the "800" number. Fred Lepper returned his call falsely telling Hatch that he was a sales representative for Laredo Building Systems out of Pennsylvania. Hatch and Lepper agreed to meet on June 4, 1997.

Lepper met Hatch on June 4 and examined the proposed location for the building which was to be used as a storage building for Hatch's vegetable farm. They reached agreement on a building and Hatch gave Lepper a deposit check in the amount of \$4000. The written start date on the contract was July 21, 1997. The contract listed Laredo's Webster address.

Lepper promised blueprints within ten days which Hatch never received. Lepper gave Hatch numerous excuses and offered a larger building for the same price explaining that it was a factory overstock. Lepper promised blueprints for the larger building which Hatch never received.

Hatch made many efforts to contact Lepper, but Lepper never responded, even though Hatch's check was deposited. No work or materials were ever provided.

G. Dorothy Sinapius, Hill Ind. No.98-343-1) and (Lepper Ind. No. 98-342-7)

Contract date - June 19, 1997 (\$3,600 lost)

Dorothy and Gerald Sinapius live in West Newfield, Maine. They are home care providers for six mentally retarded adults. They also raise buffalo and breed horses.

The Sinapius's responded to an ad in a farmer's magazine and met with Lepper, Susan Lepper and Lepper's mother-in-law, Mrs. Dorothy McKeon. On June 19, 1997 the Sinapius's signed a contract with Laredo to have a barn built for \$10,970. The written start date of July 21, 1997 was

important because the barn was for expensive pregnant mares and had to be finished before winter, at the latest. Lepper was given a deposit check for \$3600.

No work was started on July 21, 1997.

The Sinapius's were having a hard time reaching Lepper. At one point Lepper told them Buddy Hill owned Laredo and Hill told them that Lepper owned Laredo. The Sinapius's finally reached Mr. Hill. Hill said he started Lepper in business and that Hill only dealt with the big buildings like marinas.

Laredo never delivered material to the Sinapius's, instead Lepper gave a myriad of excuses. On two occasions, subcontractors arrived but Laredo had not delivered materials for them to use. Lepper said the truck could not make it up to the property. Hill then told Sinapius the materials would be there soon. Materials never arrived. Lepper said he would give them their money back, but never did it.

Mr. Sinapius eventually built the building himself. (See G.J. Minutes dated April 13, 1998, pages 45 to 57)

H. Raymond Bronner (Ind. No. 98-342-8) (Lepper only)
Contract Date - July 15, 1997 (\$1826 lost)

Raymond Bronner, who lives in Belchertown, MA, responded to an ad in "County Folks" newspaper and was called by Fred Lepper. A meeting was scheduled for July 15, 1997, to discuss the project at which time an agreement was reached on a building. Bronner gave Lepper a deposit check in the amount of \$1826.00. Lepper never arrived with materials or a work crew. Lepper made excuses for several weeks and then never responded at all to Bronner. No work was ever performed even though Bronner's check was deposited into the Webster bank.

- I. Kevin and Elizabeth Ducharme d/b/a Creative Marine and Canvas (Ind. No. 98-342-9)
(Lepper only)
Contract Date - July 24, 1997 (\$8,533 lost)

The Ducharme's, who live in North Oxford, MA, responded to an ad in "Yankee Shopper" newspaper and called the telephone number listed. Fred Lepper returned the call and agreed to meet on July 24, 1997. When they met, Lepper said that he was the owner of Laredo Building Systems.

Based upon their discussions, a contract was signed on July 24, 1997 for the construction of one building to be used for boat storage. The Ducharme's gave Lepper a check for \$8,533 as a down payment. The written start date on the contract was September 12, 1997.

Lepper had told the Ducharmes that the steel would be delivered August 19, 1997 and the lumber on August 25, 1997 with a completion date of the second week in September.

The Ducharmes did not receive blueprints until they made numerous telephone calls. Lepper had promised that the plans along with a copy of Laredo's license and certificate of insurance would be received by August 1. The plans arrived August 26, 1997 without any other paperwork.

Lepper promised to obtain a permit but never did so. New dates for the delivering of material were made but never honored.

As a result, the Ducharmes never received any work or material even though their check was deposited by Lepper into the Webster bank.

- J. Steven Winner (Lepper Ind. No. 98-342-10)
Contract date - August 7, 1997 (\$1390 lost)

Steven Winner, who lives in Barre, Vermont, heard about L.B.S. from a friend who had seen an ad in a newspaper. Winner called Laredo and made an appointment with Lepper for August 7,

1997. On August 7, 1997, both Lepper and Charles Hill arrived to meet with Winner.

An agreement was reached for the construction of one building and a contract signed. Winner gave Lepper a personal check in the amount of \$1390 as a deposit. The written contract said the start date would be September 9, 1997. Lepper represented that materials would arrive in approximately one month and a crew one week after the materials arrived.

No materials arrived and Winner repeatedly called Lepper. Lepper stated that they were running late on jobs and that they would reach him soon. Winner called several more times receiving numerous excuses. Finally, Lepper stopped responding and Winner's last contact with Lepper was in October, 1997.

Winner received no work and no material. (See G.J. Minutes dated May 15, 1998, pages 30 to 34)

K. Trudy Niles (Hill Ind. No. (98-343-2) and (Lepper Ind. No. 98-342-11)

Contract Date - August 10, 1997 (\$5800 lost)

Trudy Niles lives in Webster, MA and was interested in a building to store personal property. The Niles had seen an ad in "Yankee Shopper Newspaper" and they left a message after calling the "800" number. The Niles received a call back from Fred Lepper.

Lepper directed the two to other buildings claimed to be built by Laredo and decided to have Laredo build one for them. They made an appointment with Lepper who came to their home with Charles Hill on August 10, 1997.

Charles Hill completed and signed a contract on behalf of L.B.S. and accepted a deposit check in the amount of \$5800. The written start date on the contract was September 29, 1997.

The Niles received blueprints but have never heard from Lepper or Hill again. Niles has made

numerous efforts to contact Laredo but has been completely unsuccessful. (See G.J. Minutes dated May 15, 1998, pages 24 to 27)

L. Daniel Lamprey (Hill Ind. Nos. (98-343- 3 and 17) and (Lepper Ind. Nos. 98-342-12 and 26)

Contract date - August 15, 1997 (\$2625 lost)

Lamprey met with Fred Lepper on August 15, 1997 and contracted to have Laredo build a storage shed at his Cherry Valley, MA house for \$7,875. On August 16, 1997 Lamprey gave Lepper and Hill a deposit check for \$2,625. Lepper falsely wrote on the contract that the deposit was "fully refundable if not able to pull permit." The written start date was the third week in September, 1997. Hill represented to Lamprey that he was a co-owner of Laredo Building Systems.

Lepper later told Lamprey that Lepper had gone to the building inspector and smoothed things over and that it was pretty much a pre-approved deal. Lamprey then found out the building inspector had never heard of Lepper. Lepper would not return Lamprey's calls. When he did return the calls, Lepper gave different excuses. Lamprey soon realized he couldn't get a permit without a contractor registration number. Lepper did not provide him a registration number.

Lamprey got his retired mother and his wife to help him make calls to Lepper and Buddy Hill. Neither returned calls. Lamprey even went to Lepper's house in Webster, and left a note on the door.

Lamprey had to take out a loan to pay for the project and incurred \$5,000 costs for a bulldozer to clear the property. Lamprey did not get a shed or his money back. (See G.J. Minutes dated April

13, 1998, pages 86 to 99)

M. Charlene Bostock (Hill Ind. No.98-343-4) and (Lepper Ind. No. 98-342-13)

Contract date - August 26, 1997 (\$1207 lost)

Charlene Bostock, who lives in Spencer, MA, signed a contract with Charles Hill on behalf of L.B.S. on August 23, 1997, for the construction of a single building. Ms. Bostock gave Hill a deposit check in the amount of \$1207.50. The written start date on the contract was October 1, 1997.

Efforts were made to contact L.B.S. including a certified letter sent to the Webster address, return receipt requested requesting a refund. No refund was made.

Ms. Bostock has received no work, materials or refund. (See G.J. Minutes dated April 13, 1998, pages 129 to 140)

N. Donald Roussey (Ind. Nos. #98-343-5 and 15) and (Lepper Nos. 98-342-14 and 27)

Contract date - August 26, 1997 (\$3,846 lost)

Donald Roussey lives in Whales, MA and is employed as a diesel mechanic. Roussey contracted with Fred Lepper and Buddy Hill to have Laredo build a 32' x 32' x 10' garage (adjacent to his residence) and a 24' x 40' barn for his cattle. Roussey first talked to and met Lepper in June, 1997. Roussey then applied for and received a mortgage. On August 26, 1997 Roussey met with Hill and signed a contract to construct one building for \$4,189 and a second for \$7,350. Roussey gave Hill checks for \$1,396.50 and \$2,450. The written start date was October 5, 1997.

Roussey spent \$2,500 clearing the site. Roussey pulled the permit himself.⁷ Roussey had no

⁷ This alone disqualifies him from receiving compensation from the Consumer Affairs Guarantee fund. However, because Lepper, Hill and Laredo were not registered as a

way of reaching Hill because Hill's phone forwarded to a non-working electronic mailbox. Calls to Lepper's office were not returned. When Lepper would call back, he would give an array of excuses. Soon Roussey found out that a subcontractor had walked off another L.B.S. job in Roussey's area, and the subcontractor had Roussey's blueprints. Roussey never received his building or his deposit back. (See G. J. Minutes dated April 13, 1998, pages 114 to 123)

- O. Brian Cardinal (Hill Ind. No. #98-343-6) and (Lepper Ind. No. 98-342-15)
Contract Date-September 22, 1997 (\$1770 lost)

Brian Cardinal lives in Montague, MA and is a self-employed farmer. Cardinal contacted Laredo Building Systems after seeing an ad in the Greenfield Recorder, a local newspaper. Cardinal called an "800" number and received a call back approximately two days later from Charles Hill. An initial appointment was set up at which Hill and Cardinal discussed the type of building that Cardinal wanted and the related cost. Cardinal explained that he needed some time to think about it and then called Hill approximately one week later. Hill returned and wrote up the contract. Cardinal signed the contract and provided a deposit check on October 1 in the amount of \$1770. The contract stated that one building was to be started on November 24, 1997. Two additional payments of \$1770 were to be made, one upon delivery of material and the other upon completion of the building.

Laredo never provided material and never built the building for Cardinal. Cardinal tried to reach Hill on many occasions. Hill falsely represented that Cardinal would receive blueprints which Cardinal explained he needed before he could apply for a building permit. Cardinal never received

home improvement contractors, no victims may collect from the fund.

any prints. At one point, he wrote a certified letter, return receipt requested regarding the matter and never received a reply. (See G. J. Minutes dated April 13, 1998, pages 123 to 129)

P. Richard O'Keefe (Hill Ind. No. (#98-343-7) and (Lepper Ind. No. 98-342-16)

Contract Date - September 23, 1997 (\$1330 lost)

Richard O'Keefe owns property in Jamaica, VT, where Laredo was to provide services. O'Keefe signed a contract with Charles Hill on September 23, 1997 for the construction of a single building. O'Keefe provided Hill with a deposit check in the amount of \$1330.00. The written start date on the contract was September 23, 1997. O'Keefe received no work or materials in return, despite the depositing of the check at the Webster Five Cent Savings Bank. O'Keefe made repeated calls to Laredo without success. (See G.J. Minutes dated May 15, 1998, pages 34 to 38)

Q. Henry Howard (Hill Ind. No. (98-343-8) and (Lepper Ind. No. 98-342-17)

Contract Date - September 24, 1997 (\$1520 lost)

Henry Howard lives in Stratford, CT., but is a part-time dairy farmer in Maine. Howard called Laredo's telephone number.

Howard met Hill on September 24, 1997. An agreement was reached for the construction of a single building, a contract was signed between Lepper and Hill with a start date of November 20, 1997, and Howard provided a deposit check in the amount of \$1520.

Mr. Howard received no work, material or refund in exchange for the contract and the deposit check, which was deposited in the Webster Bank. (See G.J. Minutes dated May 15, 1998, pages 13 to 15)

R. Kyle Black (Ind. Nos. 98-343-9 and 16) and (Lepper Nos. 98-342-18 and 28)

Contract Date - September 30, 1997 (\$2272 lost)

Kyle Black lives in North Adams, MA, and responded to an ad in "Penny Saver." On

September 5, 1997, Black met with Charles Hill to discuss cost and location of a building. An agreement was reached on September 28 for a single building, and a contract was completed and signed by Charles Hill. Black gave Hill a deposit check in the amount of \$2272. The written start date was November 15, 1997.

No one showed up at Black's on November 15, 1997 and on November 18, Black called the "800" number. He received no return call and called again later. The "800" number had been replaced with a "508" area code number. The message on the new number said that due to an illness they were not accepting any orders and that the caller should contact Attorney William Kring if there were any questions. Black and the North Adams Police attempted to call Kring. Kring's office told Black that they weren't handling any business for Laredo Building Systems. (See G. J. Minutes dated April 13, 1998, pages 70 to 75)

S. George Chase (Hill Ind. No. 98-343-10) and (Lepper No. 98-342-19)

Contract date - September 30, 1997 (\$1617 lost)

George Chase lives in Vermont and signed a contract with Laredo and Charles Hill on September 30, 1997, for the construction of a single building. At the time that Chase signed a contract, he gave Hill a deposit check in the amount of \$1,617.

Mr. Chase has received no work and no materials. (See G.J. Minutes dated May 15, 1998, pages 42 to 45)

T. William Snide (Hill Ind. No. 98-343-14) and (Lepper Ind. No. 98-342-24)

Contract Date - October 6, 1997 (\$2054 lost)

William Snide, who lives in Vermont, responded to an ad on September 16, 1997 in the

"Buyers Digest" for building construction. Snide called the "800" number and received a return call from Charles Hill approximately one week later. An agreement was reached to meet on October 6, 1997.

On October 6, 1997, Hill met Snide and they drove to the site where the building was to be constructed.

An agreement was reached and a contract was signed by Hill and Snide.

Snide gave Hill a deposit check in the amount of \$2,054 and the construction was to begin in the second half of November, 1997.

Snide called L.B.S. two weeks later to ask about a larger building than the one that he had contracted for and was told that Laredo would take care of it when the crew arrived to begin construction.

As the deadline for construction approached and passed, Snide tried to contact Laredo. Snide was not successful. Finally Snide reached a representative who said that due to an illness in the family, no work would start until after January, 1998.

Three to five days later Snide called again and the phone was disconnected. A week later Snide called again and a message referred him to a number which turned out to be an attorney. Snide called the attorney but never received a return call.

L.B.S. never performed any work and never delivered any supplies. Snide was sixty-six years old when he signed the contract with L.B.S.. (See G. J. Minutes dated May 15, 1998, pages 38 to 42)

U. Gerald Upton (Hill Ind. No.98-343-11) and (Lepper Ind. No. 98-342-20)

Contract date - October 20, 1997 (\$2460 lost)

Gerald Upton lives in Hardwick, Vermont and responded in September, 1997, to an ad in a trade newspaper. Upton called and spoke with Charles Hill who arranged to go to Upton's house on September 12.

Upton did not sign a contract, however, until later based upon his need for a property set back variance, and his uncertainty about the height of the building to be erected.

When Upton obtained the variance and made the decision on the height, he signed a contract and sent Laredo a deposit check in the amount of \$2,460, which was deposited into the Webster bank.

In Late November, Upton called L.B.S. and a recording stated that Hill was no longer an employee. A number was provided which when called stated that due to an illness no new contracts would be accepted until after January 1, 1998, and that for current information the caller should contact Attorney William Crane or Kring at (508) 949-1493. Calls to the attorney's office were not successful.

Upton did not receive any work or materials. (See G. J. Minutes dated April 13, 1998, pages 76 to 86)

V. Nancy Mayo (Hill Ind. No.98-343-12) and (Lepper Ind. No. 98-342-21)

Contract date - October 31, 1997 (\$2,044 lost)

Nancy Mayo lives in Sherborn, MA and signed a contract on October 31, 1997 for the construction of a single building on their property. Mayo gave Charles Hill a deposit check in the amount of \$2,044 on October 31, 1997 and construction was scheduled to start in mid-December.

Ms. Mayo tried to reach L.B.S. in late November and was unsuccessful.

Ms. Mayo received no work and no materials. (See G. J. Minutes dated April 13, 1998, pages 100 to 105)

W. Andre Laliberte (Hill Ind. No.98-343-13) and (Lepper Ind. No. 98-342-22)

Contract date - November 5, 1997 (\$2,778 lost)

Andre Laliberte lives in Wrentham, MA and signed a contract with Laredo and Charles Hill on November 5, 1997 for the construction of a single building. The scheduled start date for construction was December 26, 1997. Laliberte signed a contract with Hill and gave Hill a deposit check which was deposited in the Webster Five Cent Savings Bank. After signing the contract and giving Hill the deposit check, Laliberte never heard from Hill or Lepper again despite many efforts to contact them. Laliberte left many messages none of which were returned. Laliberte finally called Chase Building Supply and learned of the problems related to Laredo. As a result, Laliberte called the Office of the Attorney General. (See G. J. Minutes dated April 13, 1998, pages 105 to 113)

IV LEGAL ANALYSIS

1. In The Course Of The Defendants' Joint Venture They Possessed The Stolen Property In Worcester County

A. Venue Due To Possession In Worcester County

“Larceny may be prosecuted and punished in any county where the defendant had possession of the property alleged to be stolen.” G.L. c. 277 § 58. “The rule is the same if the goods are stolen outside the United States and brought into the Commonwealth or if the defendant had stolen goods in another state and brought the goods into the Commonwealth.” Smith, K., Massachusetts Practice, Vol. 30A § 2350 (1998 ed.); Commonwealth v. White, 358 Mass. 488, 488-492 (1970) (extensive discussion approving of interstate venue in larceny cases and upholding

Massachusetts venue when the theft was partially committed in another country); Commonwealth v. Kiernan, 348 Mass. 29, 51-53 and fn.20 (1964) (upholding prosecutions not only where property was possessed but expanding venue to anywhere the false pretenses were made).

Massachusetts courts recognize that crimes often have several steps to them and the courts have expanded venue even when there is not the explicit statutory approval that exists for larceny. See, Commonwealth v. Welch, 345 Mass. 366, 370-371 (1963) (venue proper in Massachusetts even though cash bribe occurred in Rhode Island); Commonwealth v. Kiernan, 348 Mass. 29, 51-53 (1964) (upholding Suffolk County venue for prosecution of Middlesex County bail commissioners when parts of the embezzlement scheme occurred in Suffolk County); Commonwealth v. Iacovelli, 9 Mass. App. Ct. 694, 698-699 (1980) (upholding Suffolk County venue even though the bribe involved the defendant's acceptance of a vacation on Cape Cod). In the case at bar, the defendants clearly possessed the stolen money in Worcester County, when the checks were deposited into the Webster Five Cent Savings Bank, (Webster Bank). Bank records showed the address of the Webster Bank to be 136 Thompson Road, P.O. Box 400, Webster, MA 01570. The victims checks were deposited into an account under the names of: Laredo Business Systems DBA, Frederic D. Lepper and Susan Lepper. See, grand jury exhibit 62 which is attached in part at Addendum C. Webster is a town located in Worcester County.

Significantly, the full value of the loss suffered by the victims occurred when the checks were drawn on their account, after the checks were deposited in the Webster Bank, not when they handed the checks to Hill or Lepper in other jurisdictions. When the victim gave Hill or Lepper their checks in other jurisdictions, the victims gave Hill and Lepper the means to commit the crime, but



The venue for larceny by embezzlement⁹ is even more firmly set in Worcester County. It was after the checks were deposited into the Webster Bank that the defendants converted the victim's money for their own use. See, G.L. c. 277 § 58B.

The victims' checks were not just going into the L.B.S. bank account. Checks were being written out of the L.B.S. account to "Charles Hill" and/or "Buddy Hill." At least seven checks were written to and cashed by Hill. These checks totaled over \$18,000. The checks also bore the names of several of the victims¹⁰ in the lower right corner. See grand jury exhibit 63, attached in part, as Addendum D. Fred and Susan Lepper were also consistently withdrawing money from the Webster Bank.

B. Joint Venture

Larceny may be prosecuted as a joint venture. The joint venturers do not need to have the same degree of culpability. Rather, "the prosecution is required to demonstrate that the [co-venturer] intentionally assisted the principal in the commission of the crime and that he did this

⁹The elements of embezzlement are: 1) that the defendant while in a position of trust or confidence; 2) was entrusted with possession of personal property; 3) belonging to another person; and, 4) that the defendant took that property or hid it or converted it to his own use; 5) without the consent of the owner; 6) with the intent to permanently deprive the owner of the property. GO. c. 266 §30.

¹⁰The names are often hard to read and also include victims from other states and other customers.

sharing with the principal the mental state required for that crime.” Commonwealth v. Donovan, 395 Mass. 20,26-27 (1985) quoting Commonwealth v. Richards, 363 Mass. 299, 307-308 (1973). The fact finder may infer the requisite mental state from the co-venturer’s knowledge of the circumstances and subsequent participation in the offense. Commonwealth v. Donovan at 26-27 (evidence that co-venturer assisted in the design of a phony night deposit box and shared in proceeds sufficient to establish joint venture); Commonwealth v. Burrell, 389 Mass. 804, 807 (1983).

There is no requirement that a co-venturer be present at each stage of an ongoing crime. Our courts have been expansive in their treatment of the presence requirement with respect to activities of a joint venturer which reasonably might be viewed as aiding the principal felon. See, Commonwealth v. Lafayette, 40 Mass. App. Ct. 534, 537-538 (1996) (co-venturer not present in breaking and entering but helped plan and collected proceeds); Commonwealth v. Sim, 39 Mass. App. Ct. 212, 217 (1995) (co-venturer sufficiently “present” where he planned robbery, led robbers to victim and expected cut of proceeds).

In the case at bar, Hill was only indicted for those larcenies in which he actively participated in, usually at the salesperson or by making excuses for L.B.S.’s non-performance. Hill made the (false) representations on behalf of L.B.S., requested the victims money on behalf of L.B.S., presented the victims with contracts bearing the Webster, Massachusetts address of L.B.S.. The checks out of the L.B.S.. Webster Bank account show that he shared the proceeds from the victims.

It is clear that Hill also shared the larcenous intent of Lepper. Lepper had taken money from several victims and failed to perform when Hill first lied to customers to aid Lepper. In June of 1997 Lepper took money from Dorothy Sinapius and was supposed to begin work on July 21, 1997.

The work was not started and Lepper would not return the victim's calls. The Sinapius's recalled that Lepper had (falsely) told them Buddy Hill owned L.B.S. The Sinapius's finally reached Hill. Hill (falsely) told them he started in the business but that Hill only dealt with big buildings like marinas. L.B.S. never delivered material. Lepper and Hill both gave a myriad of excuses. Hill told the Sinapius's that the materials would be there soon. Materials never arrived. Lepper said he would give them their money back but never did give it back.¹¹

As detailed in the facts section of this memorandum, a pattern developed thereafter where victims would meet with Hill. They would sign contracts with Hill on behalf of L.B.S. They would give their checks to Hill. The checks would be deposited in the L.B.S. account at the Webster Bank. Hill would be paid out of the L.B.S. account. Hill would not return victims calls and pages. When he did return victim's calls or pages, Hill would made excuses for L.B.S. Ultimately the victim's would receive little or nothing from L.B.S..

This pattern continued through November of 1997 when Hill, on behalf on L.B.S., signed a contract with Andre Laliberte with a start date of December 26, 1997. Laliberte gave Hill a deposit check for \$2,778. Beginning in mid-November Laliberte tried to reach Hill and Lepper but his messages were not returned. Laliberte received no work.

2. **Laredo Business Systems Was Located In Worcester County, Hill Was An Agent Of Laredo Business Systems, And Venue Is Proper for home Improvement Statute Violations.**

The Defendants' reliance on Article 13 of the Massachusetts Declaration of Rights is

¹¹ More details about this transaction are available in the grand jury minutes in Addendum A. pps 45-57.

misplaced. “[A]rt 13 does not bar a ‘trial of an offense in any other county than that in which it happened; nor is it an affirmative of a right in the citizen to be tried in any particular county’.” Commonwealth v. Brogan, 415 Mass. 169, 172 (1983) quoting Commonwealth v. Parker, 2 Pick. 550, 553 (1824). “It is well established that ‘although Art. 13 imposes some limitation on the places where a criminal defendant may be tried, it allows the Legislature discretion, consistent with the public interest and the interests of justice, to establish venue requirements for criminal trials’.” Id quoting Opinion of the Justices, 372 Mass. 883, 897 (1977).

The crime of larceny may be prosecuted in a county where the checks, which were the subject of the larceny, were brought by the defendants. See, Commonwealth v. Abbot Engineering, Inc., 351 Mass. 568, 579 (1967) (venue established by G.L. c. 277 § 59 in the county where the corporate defendant received the victim’s checks)

Not only did the defendants possess the stolen property by depositing it into Webster Bank in Worcester County but Laredo Business Systems itself was headquartered in Webster, Massachusetts. Although victims physically gave their checks to Hill and Lepper in other counties it is reasonable to infer that the defendants would bring the checks to a bank located in close proximity to the business headquarters. Moreover, Hill signed contracts as the “Authorized Dealer/ Representative” of Laredo Business Systems and as an agent of Laredo Business Systems should be held to the same venue standards as if Laredo Business Systems itself were indicted.¹²

Laredo Building Systems business documents used either Frederic Lepper’s home address of 1503 Treasure Island, Webster, Massachusetts as the business address or a Webster, Massachusetts

¹² Laredo Business Systems is not a corporation.

post office box. During the execution of the search warrant, the L.B.S. business records were seized from 1503 Treasure Island, Webster. Lepper also listed 1503 Treasure Island, Webster, Massachusetts as Laredo's business address on the credit application to Chace Building Supply of Connecticut, Inc, Putnam, Connecticut, and on the business certificate required under G.L. c.110, § 5, and completed under oath, for Frederic D. Lepper and Susan R. Lepper doing business as Laredo Building Systems.

The business records of Amherst Farmers Supply, Amherst, Massachusetts, which provided materials to Laredo Building Systems, lists the business address for Laredo Building Systems as 1503 Treasure Island Road, PO Box 1267, Webster, Massachusetts 01570. The "800" telephone number also rang at Lepper's home.

When there is no statute prescribing any particular venue, as is the case with the Home Improvement Contractor Statute, G.L. c. 142, the venue question is a matter of common law. Brogan at 173 and fn.2.¹³ One concept to be considered is that a defendant not be transported far away for trial, but rather be tried where there is access to witnesses and evidence for the defense. The establishment of venue should be based on logic and fairness and not be mischievous. Id at 174 (upholding the venue in Middlesex County for trial of criminal contempt of a Middlesex court order where the contumacious acts occurred in several other counties).

¹³ There are no reported decision directly addressing the proper venue for G.L. c. 142A violations.

The defendants have been indicted for violating G. L. c. 142A.¹⁴ That acts all flow from the common scheme described in the larceny section and relate to the operation of L.B.S. out of Webster, Massachusetts. This is most obviously true in the case of being an unregistered contractor. Lepper was running an unregistered contracting business out of Webster. Hill was a joint venturer. Contracting is not merely the actual renovation of buildings but rather, the act of contracting as defined in G.L. c. 142A § 1 is expansive, including the act of purporting to be able to undertake contracting work and submitting bids for residential contracting work.

3. It Is Judicially Efficient As Well As Fundamentally Fair To Establish Venue In Worcester County

M.R. Crim. P. 9 permits joint trial of offenses committed in furtherance of a common scheme or plan, but are factually independent. If a defendant is charged with two or more related offenses the trial judge shall join the charges for trial unless the judge determines that joinder is not in the best interests of justice. See, M.R. Crim P. 9 and reporters notes. The defendants in this case were indicted for committing larceny pursuant to a continuing scheme or plan. (emphasis added)

The defendants suggest that, contrary to clear statutory provisions establishing venue in

¹⁴The specific language of the indictments is that the defendant did knowingly and willfully violate provisions of Massachusetts General Laws c. 142A to wit did; being a home contractor knowingly, willfully or negligently operate as a contractor or subcontractor without obtaining a certificate of registration as is required by Massachusetts General Laws c. 142A § 19 and was not otherwise exempt from registration and did abandon or fail to perform, without justification, a project engaged in or undertaken by a registered contractor or did deviate from or disregard plans or specifications in a material respect without the consent of the owner of the property, [victim's name] and/or did; fail to credit to the owner a payment they made to the contractor in connection with a residential contracting transaction and/did; make a material misrepresentation in the procurement of a contract or make a false promise likely to influence, persuade or induce the procurement of a contract and/or; did knowingly contract beyond the scope of his registration as a contractor.

Worcester County, the interests of justice would be served by having Hill charged in several different counties and states. This could lead to the defendants being charged in more than ten district courts, and four (4) different states. Litigation would be repetitive and inefficient. Due to the differences in the laws and practices of the differing jurisdictions rulings could be inconsistent.

None of the venue statutes the Commonwealth cites have been found repugnant to the Massachusetts Declaration of Rights. The defendants rely only on the vague wording of the State Constitution but ignores the specific statutory and common law progeny it has spawned. The defendants' arguments are merely a thinly veiled attempt to employ a "divide and conquer" strategy that might allow the defendant to incorrectly portray his actions as fifteen separate unrelated events, in fifteen separate district courts. The defendants have not shown how being tried in separate venues will, in and of itself, lessen any prejudice to them.

The defendant is simply using this Motion to Dismiss to act as a de facto Motion to Sever. Moreover, the defendant is hopeful the Commonwealth will not have the wherewithal to re-charge him in several courts if his motion is allowed. Ultimately, the only effect of the defendants' motions would be to burden several district courts with separately repeating the work already completed by the Worcester Superior Court.

Contrary to the defendant Hill's contentions, venue statutes dealing with crimes that are committed partly in one county and partly in another county "are considered remedial and are to be liberally construed." 21 Am. Jur. 2d § 509. See, Hill's Memorandum In Support of Motion To Dismiss, p.3. The defendant Hill's reliance on Commonwealth v. Black, 403 Mass. 675 (1989) is also misplaced. The court in Black was repeating the well known maxim that a penal statute must be strictly construed. However, the court was applying the maxim to a penal statute prohibiting a

person from using steel jaw hunting traps and providing for incarceration for those who violate the statute. See, G.L. c. 131 § 80A. The Black decision, in fact, is inapposite to the defendant's position because it holds that the language of a statute, should not be considered superfluous and should be accorded its ordinary meaning. Black at 679. The ordinary meaning of G.L. c. 277 § 58 is clear -- venue for larceny is proper in any county where the defendants possessed the property.

CONCLUSION

For all the foregoing reasons, the defendant Hill's Motion To Dismiss For Lack Of Venue and defendant Lepper's Motion To Dismiss For Lack Of Venue should be denied. The Commonwealths Petition To Establish Venue Pursuant to G.L. c. 277 § 57A should be allowed.

Respectfully submitted,
Thomas Reilly,
Attorney General

Date

Howard A. Wise, BB #553649
Thomas H. Ulfelder, BB#
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200 Ext. 2516

Certificate of Service

The attached memorandum (Appendix to be provided separately) were served upon the defendants Frederic Lepper and Charles Hill by facsimile copy transmitted to their attorney of record, on April 2, 1999.

Signed under pains and penalties of perjury,

Howard A. Wise

87 (1997); Commonwealth v. Imbruglia, 377 Mass. 682, 694 (1979); Commonwealth v. Wilson, 355 Mass. 441, 446 (1969). Moreover, certain types of crimes, especially that of larceny by false pretenses, often rely on this type of evidence.

[S]ome offenses are not so plain and distinct and so connected with visible facts that the accompanying intent can be inferred without further aid. Obtaining money or property by fraudulent pretenses under some conditions belongs to this class. Conduct of one, on another occasion reasonably near in time under similar circumstances, if appearing to be parts of a comprehensive scheme by which different persons are to be defrauded, may have an important bearing upon his purpose in doing a particular act.

Commonwealth v. Edgerly, 6 Mass. App. Ct. 241, 252 (1978) (admitting evidence of defendant's similar larceny upon a different victim)(**Copy attached**).

Handling this matter in limine is necessary to facilitate witness coordination for elderly witnesses who would have to travel a great distance to testify.

II. BRIEF FACTUAL BACKGROUND

In summary, the Commonwealth alleges that the following events gave rise to the case at bar:

On July 1, 1995, a stranger, subsequently identified as Defendant of [PAVING COMPANY], approached Richard xxxx (65 years old) outside Richard xxxx' s home in Quincy, Massachusetts. Defendant claimed to have leftover asphalt from a paving job he had performed up the street. He offered to repair some potholes as well as a dirt area at the end of the street and quoted a confusing price of \$5 per yard. Instead, Defendant and a two-man crew placed asphalt over Richard xxxx' s dirt driveway, running out of asphalt approximately 2 feet short of the road. No potholes were repaired. After the crew "ran out of asphalt," Defendant told Richard xxxx the

total cost would be \$1,000. The two ultimately agreed upon \$750 in cash. Defendant took the \$750 in cash from Richard xxxx, promising to return the next day to finish the job. He never returned.

Two days after the Richard xxxx incident, on July 3, 1995, Defendant came to the front door of Mary xxxx's house in Quincy. The Mary xxxx's, who are in their 60s, had previously observed Defendant when he paved the driveway of their neighbor, Richard xxxx, down the street. Defendant claimed to be doing a paving job in the area and said he expected to have leftover asphalt. Defendant quoted the Mary xxxxs a confusing price of \$3 per yard. Defendant and a three-man crew began the work, but ran out of asphalt approximately 4 feet short of the road. Defendant presented Mary xxxx with a bill for \$2,350, claiming that the quoted price was \$3 a foot, not \$3 a yard. He insisted on being paid that day and promised to return the next day to complete the work. Mary xxxx paid the amount by bank check. Defendant never returned despite several promises to do so. As a result of these events, the defendant is charged with larceny by false pretenses in the Quincy District Court, Docket # xxxx. The Commonwealth has moved to join the Mary xxxx and Richard xxxx incidents for purposes of trial.

III. SIMILAR ACTS OF DEFENDANT

The Commonwealth seeks authorization to admit the following alleged evidence of acts which are strikingly similar to those described above and are, or were, the subject of criminal complaints pending in other courts:

A. Similar Acts Pertaining to Esther xxxxx

Five days after the Mary xxxx incident, on the morning of July 8, 1995, Esther xxxxx, a

64-year-old woman, was alone outside her house in Barnstable. A young man, who subsequently identified himself as Defendant's brother, walked up to Esther xxxxx and offered to pave her driveway with some left over material from a nearby job. He quoted her a confusing "\$5 per yard" price for the work and deflected her concern about the total cost by stating "Don't worry about the price. You know my father. He's from this area." Esther xxxxx agreed to have the work performed despite being doubtful that she knew Defendant's father. Shortly thereafter, Defendant and a small crew appeared in a truck with the logo [PAVING COMPANY] on the side. They laid down the asphalt and told her they would return the next day to complete the work and to give her the final price.

That next morning, July 9, 1995, Defendant and his "brother" met with Esther xxxxx inside her house. She was alone. They claimed the price was \$5 per foot and told Esther xxxxx she owed them \$5,500. They intimidated her into paying \$4,000 and promised to return the next day to complete the work. They insisted on cash and when Esther xxxxx said she needed to pay by check, they had her make a check out to Defendant. Defendant cashed the check the following day. Defendant again promised to return the next day to complete the job. Neither he nor any of his crew ever returned to complete the work on Esther xxxxx's driveway. As a result of this event, the defendant is charged with larceny by false pretenses in the Barnstable District Court.

B. Similar Acts Pertaining to Daisy xxxx

Approximately three months after the Esther xxxxx incident, in October 1995, Defendant approached Daisy xxxx, an eighty-year-old woman, while she was at the end of her driveway in Waltham. Defendant told Daisy xxxx he had extra blacktop and that his father had told him to

come to Daisy xxxx and do her a favor. Daisy xxxx was uncertain who Defendant's father was. Defendant offered to pave Daisy xxxx's driveway at a price of \$3 a yard, for a total cost of no more than \$300. Defendant and his small crew paved the driveway. After Defendant finished the job, he entered Daisy xxxx's house and demanded \$3,000 in payment. He denied quoting a price of \$300. Daisy xxxx was intimidated and wrote Defendant a check for the amount he requested. As a result of these events, Defendant pled guilty to larceny by false pretenses in Waltham District Court.

C. Similar Acts Pertaining to Preston xxx

Almost a full year after the Mary xxxx and Richard xxxx incidents, on July 1, 1996, Defendant first met Preston xxxx, an 82-year-old man, outside Preston xxxx' home in Dedham. Defendant claimed to have some blacktop left over from a job he had been doing down the street. Defendant indicated to Preston xxxx that he would take care of Preston xxxx. Defendant and a crew blacktopped Preston xxxx' driveway. After the job was finished, Defendant charged Preston xxxx \$6,500 for the work. When questioned by the Dedham police later that day, Defendant claimed to have charged Preston xxxx \$5,500.

IV. BAD ACTS EVIDENCE IS ADMISSIBLE IF NOT USED
TO SHOW PROPENSITY TO COMMIT A CRIME

Evidence of prior and subsequent crimes committed by the defendant may be admissible if it is offered for a purpose other than impugning the defendant's character, and if its probative value is not substantially outweighed by the danger of unfair prejudice. Commonwealth v. Otsuki, 411 Mass. 218, 238 (1991); Commonwealth v. Robertson, 408 Mass. 747, 750 (1990).

The level of proof required for the admission of a similar act is at a lower degree than the level of proof required for a criminal conviction. Dowling v. United States, 493 U.S. 342, 348-49 (1992).

At issue in this motion are a series of felonious deeds, or “bad acts,” committed by the Defendant both prior and subsequent to the present action. Defendant participated in a common scheme or plan to steal from the elderly by employing a false pretense to get their paving business. The common scheme is marked by striking similarities: Defendant consistently knew his victims were elderly before he began his unsolicited pitch -- in fact, he approached every victim but one (the Mary xxxxs) while the victim was outside his or her home. His “modus operandi” was to state he had leftover blacktop from a local job and that the victim knew Defendant’s father. He quoted prices by the yard and typically failed to name a total price.

When he did, he later told the elderly victims that they were mistaken and that the price was for a square foot not a square yard.² He entered the houses of the two female victims (Esther xxxxx and Daisy xxxx) and intimidated them. Finally, on more than one occasion, Defendant collected the money before a job was completed, and never returned to complete the job. The strikingly similar modus operandi in this case is relevant to prove: (1) Defendant’s intent to commit a larceny by false pretenses -- that is, deceptively pricing a paving job, demanding full payment through intimidation and once full payment had been received, never returning to finish the work, and; (2) Defendant’s continuing scheme or pattern of conduct, by fraudulently selecting,

² Even when agreed to without intimidation, contracts for vastly inflated prices made with particularly vulnerable victims can constitute larceny by false pretenses. See Commonwealth v. Reske, 41 Mass. App. Ct. 522 (1997)(victim with low IQ).

deceiving and intimidating elderly citizens by means of a driveway scam.

A. Evidence of Bad Acts is Admissible to Show Defendant's Intent

It is well established that bad acts, both prior and subsequent, may be used to demonstrate Defendant's intent. Commonwealth v. Shraiar, 397 Mass. 16, 26 (1986) (subsequent thefts from the same account demonstrated defendant's larcenous intent); Commonwealth v. LePore, 40 Mass. App. Ct. 543, 550 (1996) (prior incident of voyeurism probative of defendant's intent in approaching a second woman's window); Commonwealth v. Kelley, 21 Mass. App. Ct. 912, 913 (1985) (defendant's participation in a remarkably similar robbery the day before probative of his intent and knowledge). See also, Commonwealth v. Reske, 41 Mass. App. Ct. 522 (1997)(Pattern of repeated sales to a vulnerable victim showed intent to commit larceny).

More specifically, Massachusetts Courts have consistently admitted evidence of bad acts in larceny cases to prove intent. See Commonwealth v. Imbruglia, 377 Mass. 682, 694 (1979) (evidence of defendant's other fencing activities admitted in prosecution for possession of counterfeit currency for a limited purpose of showing defendant's knowledge and intent); Commonwealth v. Abbott Engineering, Inc., 351 Mass. 568, 572 (1967) (evidence of other altered invoices relevant to show intent in false pretenses prosecution).

Bad acts of this type are particularly probative to rebut defenses of honest intent or mistake. See Shraiar, 397 Mass. at 26 (evidence of uncharged larcenies admitted to rebut larceny defendant's defense that he intended to repay monies taken); Commonwealth v. Baldassini, 357 Mass. 670, 678 (1970)(prior acts relevant to show payment of winnings on January 7 was intentional, not accidental); Commonwealth v. Campbell, 371 Mass. 40, 42 (1976)(testimony of previous conversations between rogue police concerning burglaries they had committed properly

admitted to rebut defense contention that police entered building to investigate suspected breaking and entering by others).

Admitting the prior and subsequent bad acts of Defendant clearly identifies his modus operandi -- deceiving elderly people into believing that he will complete quality work on their driveways for a fair price and getting the victim to pay, based on assurances that he needed the money before he could finish. In each bad act, Defendant demonstrated that he intended to cheat his "customers"; it is necessary to allow this evidence before the jury to illustrate Defendant's similarly larcenous intent here, with regard to the Mary xxxx and the Richard xxxxs.

B. Evidence of Bad Acts is Admissible to Prove a Common Scheme or Pattern of Conduct by Defendant

The Commonwealth has also repeatedly been permitted to introduce evidence which establishes a defendant's common scheme/pattern of conduct. Baldassini, 357 Mass. at 677-79 (evidence of prior illegal betting acts of defendant charged with gambling offenses probative of general scheme to violate the laws); Campbell, 371 Mass. at 42-43 (evidence of other burglaries probative of common scheme to use defendant's specialized knowledge as a police officer to engage in burglarious enterprises and probative of defendant's criminal intent when he entered the building); Commonwealth v. Wilson, 355 Mass. 441, 446 (1969) (at trial of larceny by a single scheme from a medical insurer, evidence of claims made by the defendant upon which no payments were made were admitted to show scheme).

C. Evidence of Bad Acts is Admissible to Prove Defendant Was the Person Who Committed the Crimes Charged

Evidence of bad acts is also admissible when used to prove the identity of a defendant. Commonwealth v. Ferraro, 424 Mass. 87, 90 (1997); Commonwealth v. Kines, 5 Mass. App. Ct. 632, 635 (1977). In Ferraro, defendant was indicted for sexually assaulting seven boys. The seven incidents were strikingly similar: each incident occurred near the victims home in an area

defendant was known to frequent. The assailant wore a hooded sweatshirt and all but one of the victims received telephone calls around the first anniversary of the attack. 424 Mass. at 88. The Supreme Judicial Court found that the above facts represented a “consistent modus operandi” and allowed the evidence of the other incidents as tending to prove that the defendant was the person who committed the crime charged. 424 Mass. at 89-90.

At issue in this case is whether the Defendant (or another) quoted the initial “price” to the victim. Richard xxxx and Mary xxxx positively identified Defendant from a photo array, as have several of Defendant’s other victims. Nevertheless, Defendant’s counsel has informed the Commonwealth that Defendant may claim he was misidentified and it is anticipated that he will attack the perceptiveness of these elderly victims. This Court should admit evidence of other bad acts to show that Defendant was the person who committed the crimes charged.

Here, the pattern of evidence strongly suggests a common scheme or pattern of conduct on the part of Defendant. Defendant consistently targeted elderly victims, and maintained that he came from a family that his “customers” knew. He quoted confusing “per yard” prices and later stated the cost was “per foot.” In each case, Defendant performed insufficient work, for which he subsequently greatly overcharged. He collected money even before completing work, promising to return the next day to complete the work. In no instance did he provide more work after he was paid. The Richard xxxxs and the Mary xxxx were not the only victims of Defendant’s scheme.

Exclusion of this evidence would prevent the jury from adequately assessing Defendant’s clear criminal intent and from understanding that Defendant’s actions were not the result of an honest mistake or misunderstanding over price and work, but were rather part of a continuing

scheme to defraud elderly victims. This evidence should also be admissible if the defendant's identity is placed at issue.

WHEREFORE, the Commonwealth respectfully requests that the Court grant this motion in limine to admit evidence of bad acts, prior to trial to facilitate witness coordination.

Respectfully submitted,
For the Commonwealth

THOMAS F. REILLY
ATTORNEY GENERAL

By: _____

xxxxx, BBO#
Assistant Attorney General

Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617)727-2200

Date:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
CRIM. NO. 98-342

COMMONWEALTH

V.

FREDERICK R. LEPPER

COMMONWEALTH'S REQUEST FOR INSTRUCTIONS TO THE JURY

VIOLATIONS OF GL 142A

Commonwealth's Requested Jury Instruction No. _____.

Frederic Lepper is charged with four counts of violating Massachusetts General Law Chapter 142A, which regulates home improvement contractors. The first count, indictment number 98-0342-25, involves the O'Connor project. The second count, indictment number 98-0342-26, involves the Lamprey project. The third count, indictment number 98-0342-27, involves the Roussey project. The fourth count, indictment number 98-0342-28, involves the Black project. You must consider each count separately. You must reach a separate verdict on each count.

Section 19 of General Law 142A deals with the criminal violations of the home improvement contractors act. It states in pertinent part that "any person who knowingly and willfully violates any provisions of this chapter . . . may be punished." The elements of this crime, each of which the Commonwealth must prove beyond a reasonable doubt, are:

- 1) The defendant is a person;
- 2) Who knowingly and willfully

3) Violated any provision of this chapter.

I'll now explain each element. First, you must find that the defendant is a person under the meaning of the statute. General Law 142A defines "person" to include an individual, a partnership, or a corporation.

Second, you must find that the defendant acted "knowingly and willfully." The term "knowingly" offense means that the defendant's act must have been done voluntarily and intentionally, and not because of mistake, accident, negligence or other innocent reason. But it is not necessary that the defendant knew that there is a law that makes it a crime to operate as a home improvement contractor without being registered, since generally ignorance of the law is not an excuse for violating the law. Model Jury Instructions for Use in the District Court, Instruction 3.051 (1988 ed.) The term "willful" refers to "an act that is done intentionally and by design, in contrast to an act which is done thoughtlessly or accidentally. To find that the defendant acted willfully, you must be satisfied beyond a reasonable doubt that the defendant intended both the conduct and its harmful consequences." Model Jury Instructions for Use in the District Court, Instruction 5.301 (1995 ed.)(arson instruction); see also Blacks Law Dictionary at 1599 (6th ed. 1990).

The third element that the Commonwealth must prove is that the Defendant violated any provision of this chapter. The Commonwealth has charged the defendant with violating five provisions of section 17 which deals with acts that are prohibited by contractors or subcontractors: So, to find the defendant guilty of any of these violations, you must first find that he is a contractor. A "Contractor" is defined in the statute to mean "any person who owns or operates a contracting business who, through himself or others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for, residential contracting work."

The term “residential contracting work” includes the “construction of . . . structures which are adjacent to a residence”. GL c. 142A §1. And a dictionary definition of “adjacent” is “lying near or close to; sometimes, contiguous; neighboring.” Black’s Law Dictionary (6th ed. 1990).

Now the five provisions the Commonwealth claims the defendant violated are as follows:

Section 17(1) - Operating without a certificate of registration issued by the director;

Section 17(2) - Abandoning or failing to perform, without justification, any contract or project engaged in or undertaken by a registered contractor or subcontractor, or deviating from or disregarding plans or specifications in any material respect without the consent of the owner;

Section 17(3) - Failing to credit to the owner any payment they have made to the contractor or his salesperson in connection with a residential contracting transaction;

Section 17(4) - Making any material misrepresentation in the procurement of a contract or making any false promise of a character likely to influence, persuade or induce the procurement of a contract; and

Section 17(5) - Knowingly contracting beyond the scope of the registration as a contractor or subcontractor.

If you find beyond a reasonable doubt that the defendant contractor violated any one of these provisions, this element is met. I’m now going to go through each of the five provisions:

- 1) c. 142A, Section 17(1) - Defendant operated as a contractor without a certificate of registration issued by the director;

To find a violation of this provision, you must find that

- a) The defendant operated as a contractor
- b) Without having a certificate of registration

I’ve already defined “contractor” for you. A “certificate of registration” refers to a certificate of registration issued to an individual, corporation or partnership by the Massachusetts bureau of building regulations and standards. G.L. c. 142A §9.

if there is evidence that the defendant was exempt from the registration requirement add d)
and furthermore, that the defendant did *not* qualify for one of the exemptions in the law
that are a substitute for having a home improvement contractor's registration.¹

- 2) c. 142A, Section 17(2) - Abandoning or failing to perform, without justification, any contract or project engaged in or undertaken by a registered contractor or subcontractor, or deviating from or disregarding plans or specifications in any material respect without the consent of the owner;

To find a violation of this provision, you must find that

- a) The defendant operated as a contractor and, that either
- b) 1) He abandoned or failed to perform a contract or project he undertook
Without justification to do so; or
- 2) He deviated from or disregarded plans or specifications
In a material respect
Without the consent of the owner.

The elements here are self-evident. The term "material" means important. Black's Law Dictionary 978 (6th ed. 1990).

- 3) Section 17(3) - Failing to credit to the owner any payment they have made to the contractor or his salesperson in connection with a residential contracting transaction;

To find a violation of this provision, you must find that

- a) The defendant operated as a contractor
- b) there was a residential contracting transaction
- c) The owner of the residence paid the defendant

¹General Laws c. 278 §7 places on the defendant the burden of producing evidence of an exemption. Until there is such evidence, the exemptions are not in issue. See Commonwealth v. Tuitt, 393 Mass. 801, 810 (1985); Model Jury Instructions for Use in the District Court, Instruction 5.60 (firearms).

- d) The defendant owed the owner of the residence money; and
- e) The defendant failed to repay the owner.

I've defined "contractor" and "residential contracting" previously. The other elements are self explanatory.

- 4) Section 17(4) - Making any material misrepresentation in the procurement of a contract or making any false promise of a character likely to influence, persuade or induce the procurement of a contract; or

To find a violation of this provision, you must find that

- a) The defendant operated as a contractor and that he either
 - b) 1) Made a material misrepresentation in the procurement of a contract,
 - or 2) Made a false promise of a character likely to influence, persuade or induct the procurement of a contract.

These terms have been explained or are self explanatory.

- 5) Section 17(5) - Knowingly contracting beyond the scope of the registration as a contractor or subcontractor.

To find a violation of this provision, you must find that

- a) The defendant operated as a contractor
- b) That he contracted beyond the scope of his registration
- c) And that he did so knowingly.

Again, these terms are self explanatory.

To explain again, if you find beyond a reasonable doubt that the defendant engaged in any of the five prohibited acts I just described to you, that means the Commonwealth has met its burden of proving the element of the statute dealing with whether the defendant violated any provision of chapter 142A. You must also find that he is a person and that he committed the acts

“knowingly and willfully” to find the defendant guilty of the offense. If the Commonwealth has proved all those elements beyond a reasonable doubt, your verdict would be guilty. If they have failed in the proof of any of those elements as I explained them to you, your verdict must be not guilty.

Respectfully submitted

THOMAS F. REILLY
ATTORNEY GENERAL

Howard A. Wise, BBO #553649
Assistant Attorney General
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200 x2516

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT DEPT.
CRIMINAL NOS. 98-0343 (Hill)
98-0342(Lepper)

COMMONWEALTH OF MASSACHUSETTS,)
)
)
 v.)
)
 CHARLES HILL and)
 FREDERIC LEPPER)
)
 Defendant.)

**COMMONWEALTH'S PETITION FOR ESTABLISHMENT OF VENUE, PURSUANT
TO M.G. L. c. 277 § 57A AND OPPOSITION TO DEFENDANTS' MOTIONS TO
DISMISS**

Now comes the Commonwealth and files this allegation of doubt pursuant to the requirements of M.G.L. c. 277 § 57A. The Commonwealth states that it is in doubt from the state of the evidence in its possession as to whether or not the crimes alleged in the above captioned indictments were committed within the territorial jurisdiction of the court. The Commonwealth respectfully petitions this Honorable Court to order that any trial on the aforementioned indictments shall proceed in Worcester County Superior Court. As reasons therefore, the Commonwealth relies on the attached memorandum and affidavit of Assistant Attorney General Howard A. Wise and the Commonwealth's Memorandum in Opposition to Defendant's Motion to Dismiss For Lack of Venue.

Respectfully submitted,

Thomas Reilly,
Attorney General

Dated:

Howard A. Wise, BBO #553649
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200 Ext. 2516

Certificate of Service

The attached petition, affidavit and memorandum (with appendix to follow) were served upon the defendants Frederic Lepper and Charles Hill by facsimile copy transmitted to their attorney of record, on April 2, 1999.

Signed under pains and penalties of perjury,

Howard A. Wise

COMMONWEALTH OF MASSACHUSETTS

QUINCY, SS

DISTRICT COURT DEPARTMENT
DOCKET NO.

COMMONWEALTH OF MASSACHUSETTS,)
)
)
)
v.)
)
[DEFENDANT])
)
)
)

COMMONWEALTH'S MOTION FOR JOINDER
OF SUBSTANTIVE OFFENSES FOR TRIAL

The Commonwealth moves, pursuant to Mass. R. Crim. P. 9(a), to join for trial the two substantive charges contained in criminal docket numbers 00001 and 00002. As reason therefore, Mass. R. Crim. P. 9(a) makes joinder presumptive when, as here, the offenses arise out of a course of criminal conduct or series of criminal episodes constituting parts of a single scheme or plan.¹

¹ The Commonwealth has also filed a Motion in Limine to Admit Evidence of Intent, Common Scheme, Absence of Mistake and Identification related to the offense. The motion in limine seeks to introduce evidence of similar offenses pending in other district courts.

Specifically, the Commonwealth intends to prove that [DEFENDANT] engaged in a scheme to defraud elderly victims by means of a driveway paving scam. The two incidents presently before the Quincy District Court evidence the same course of conduct and are closely related in time, manner and means. In summary, on July 1, 1995 [DEFENDANT] approached Richard XXX of Quincy, offering to pave his driveway with material left over from a local job. Docket #00001. The offer he made and the story he gave are virtually identical to his approach, two days later, to Richard XXX's neighbor, Mary XXX. Docket #00002. Joinder of these related offenses against the defendant is proper pursuant to the Massachusetts Rules of Criminal Procedure and is just since the evidence of each crime would be admissible in both trials as probative of the defendant's common scheme or plan, intent and the absence of mistake. Commonwealth v. Ferraro, 424 Mass. 87 (1997)(trial judge erred in denying motion to join indictments where evidence showed common scheme and pattern of operation tending to prove all indictments.) See also Commonwealth's Motion in Limine to Admit Evidence of Intent, Common Scheme, Absence of Mistake and Identification, dated xxxxxx.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court grant the Motion for Joinder of the Substantive Offenses for Trial.

Respectfully submitted,
For the Commonwealth

THOMAS F. REILLY
ATTORNEY GENERAL

By: _____
xxxxxxxxxxxxxxxx, BBO#
Assistant Attorney General
Public Protection Bureau
One Ashburton Place
Boston, MA 02108

Date:

CHAPTER SIX: THE TRIAL

INTRODUCTION

Few challenges in a prosecutor's professional career will equal those routinely presented in the trial of a fraud case. Such cases require exhaustive research, investigation and planning in order to prepare a convincing presentation for the court and jury. The prosecutor can complete many of the preparatory steps during the pre-trial stages, and the prosecutor should always strive to complete a comprehensive trial plan at the earliest possible point in time. The following sections provide an overview of the key issues to consider in preparation for trial and during trial.

VOIR DIRE

Economic crime cases are basically theft cases with very complicated facts. The more complicated the case is, the more important it is for the prosecutor to simplify it for the jury. A prosecutor should always beware that the main strategy of the defense will be to confuse the jury, put the blame on someone other than the defendant, or make the case appear to be a civil dispute rather than a criminal offense. The goal of voir dire is not only to identify bias in prospective jurors, but also to educate the panel as a whole about the issues they will be asked to consider. Therefore, at every opportunity, the prosecutor must reassure the jury of the following three key issues:

- 1. There has been a logical and simple pattern of criminal conduct on the part of the defendant.**

2. No one other than the defendant is on trial.

3. It is the sole job of the jury to determine whether or not the defendant's conduct violates the criminal law.

With the wrong kind of jury however, such reassurances may be of little avail. The importance of picking a good jury in economic crime cases cannot be overemphasized. The following are some important practice tips for jury selection.

- Never pass up an opportunity to voir dire a juror personally. The prosecutor should try to make a connection with each potential juror, and determine if the person is empathetic. It is the only time during the trial when the prosecutor can interact directly with jurors and receive feedback from them.
- If the defense is excusing elderly people, the prosecutor should aggressively make a motion that a class of people has been discriminated against and attempt to stop this practice, or request a new jury panel. Even if age does not appear to be a protected class in the case law, the prosecutor should thoroughly review the law in his/her jurisdiction to determine if such a motion would be successful.
- In a Gypsie or Traveler case, determine if the juror is familiar with those terms.

Juror Profile

While often misunderstood and overly complicated, juror profiling can be a useful tool for prosecutors in jury selection. The following excerpt from Steven Lubet's book *Modern Trial Advocacy 2d Edition* simplifies the concept.

Jury selection often calls for snap decision making, requiring counsel to exercise (or waive) peremptory challenges on short notice with far less than

perfect information. In jurisdictions where the judge conducts all or most of the voir dire, counsel may be left with dozens of unanswered questions, yet still have to decide whether or not to strike a particular juror. Even in courts that allow wide-scale lawyer questioning, the exercise of peremptory challenges will still call for large amounts of intuition, guesswork, and seat-of-the-pants reckoning.

Faced with a daunting task under even the best of circumstances, many lawyers develop "juror profiles" to aid their decision making. This process involves creating a list of attributes that you would want in your "perfect juror." To do this, one must consider both the facts and circumstances of the case and the characteristics of your client and principal witnesses.¹

The following general concepts should be kept in mind when developing strategies for jury selection in economic crime cases with senior citizens as victims.

- The juror who has a close relationship with an elderly person (e.g., close friend, relative, neighbor) can comprehend how criminals gain advantage over the elderly.
- The juror who owns his/her own business and regularly deals with customer complaints may identify more with the defendant than the victim.
- A juror with education is good, and a clear thinker is a must. The juror who cannot follow the evidence will get bored and confused.
- A juror connected to a field that serves the elderly is good.

¹ Lubet, Steven, *Modern Trial Advocacy: Analysis and Practice*, 2nd Edition, National Institute for Trial Advocacy, 1997 p. 514

- A juror with a similar socio-economic background as the victim is good.
- Homeowners are usually good jurors in these cases since they have probably had dealings with home repairs contractors and servicemen.

**Sample Voir Dire Questions for Home Improvement Fraud Cases
with Senior Citizens as Victims**

1. Do you have any family members or close friends who are over 65 years of age?
2. Do you spend much time with him/her? Describe.
3. Is there anyone in his/her life who looks out for him/her to make sure that he/she isn't taken advantage of? Are you familiar with instances in which someone has tried to take advantage of him/her?
4. What do you do for a living? Does that involve dealing with customer complaints? Describe.
5. Could you describe your education for us?
6. Have you ever been the victim of misrepresentations in a business transaction?
7. Do you understand that if selected as a juror, you would have to look at the actions and words of the defendant that are presented as evidence to determine whether he/she intended to defraud someone?
8. Do you understand that if there is a conflict in the testimony in a criminal case, it is up to the juror to decide whom to believe? Are you comfortable making that decision? Do you understand that the People of the State, that's the side I represent, have the burden of proving guilt beyond a reasonable doubt? Do you understand that just because two

witnesses give different accounts of what happened, that does not mean there is reasonable doubt?

9. Are you comfortable deciding whether or not the defendant is guilty of a crime?
10. Some people expect to see evidence of violence or at least dangerous activity, like driving while intoxicated in a criminal case. This case is about fraud and involves no violence or dangerous conduct. Can you agree to vote guilty if the People prove beyond a reasonable doubt that the defendant committed the crime charged?
11. Have you ever had any work done at your home involving (describe the type of work done in the fraudulent conduct)? Do you rent your home? (Determine if juror owns home.)

These sample questions are not an exhaustive list of appropriate voir dire questions in an economic crime case. They are offered as suggestions for prosecutors to consider as they prepare for jury selection. Each question must be evaluated in light of jurisdictional limitations and judicial practices.

STATE'S CASE-IN-CHIEF

Opening Statement

"Once more speak clearly if you speak at all; carve every word before you let it fall."

Oliver Wendall Holmes

Opening statements should not be argumentative. However, with thoughtful preparation and candid presentation, prosecutors can make them engaging and

persuasive. In about eighty percent of cases, juries reach a conclusion after opening statement that is the same as their final decision (Kalven & Zeisel, *The American Jury*, 1966). A juror's attention will never be as keen as it is during opening statement. A prosecutor should never waste that attention with throwaway statements. The following is a list of practices that all prosecutors should avoid.

- ⊙ Don't waste time with introductions. In jurisdictions that allow voir dire, the prosecutor has just spent several hours talking to prospective jurors. Starting the opening statement with an introduction of him/herself looks staged and insincere. It leaves the impression that the prosecutor has memorized the opening statement and has not really internalized the facts, i.e., is not prepared to try the case. Even in jurisdictions without voir dire, the judge has already introduced the parties and further introductions are redundant and appear disingenuous.
- ⊙ Don't compare the case to a jigsaw puzzle. The evidence should not be seen as disjointed pieces with rough edges that only fit together when positioned in precisely the right way. The case should be a simple story that clearly demonstrates criminal conduct on the part of the defendant.
- ⊙ Don't tell jurors that the opening statement is not evidence. Don't refer to it merely as "a road map" for the case. The judge has already instructed the jurors on this issue and will do so again at the end of the day. Nothing is gained by further discounting the opening remarks.
- ⊙ Don't start every statement with the words "The evidence will show..." While this suggestion must be tailored to fit the requirements of each jurisdiction, avoiding this phrase will allow the prosecutor to tell the story in human terms. However, don't characterize it as telling a story.

- ⊗ Do not give a run-down of what each witness will say. Instead, be conclusory and describe people's motives and emotions.
- ⊗ Don't avoid the problems or weaknesses in the state's case. Introduce the problems in the case with a positive spin. For example, if the major witness is a crook, point out that crooks hang with crooks or birds of a feather flock together.
- ⊗ Don't suggest the evidence is complicated. That is the defense attorney's job. The defense muddies the water. The prosecutor's job is to bring clarity. In clear and simple terms, explain the defendant's objective and what he/she did to achieve it. In clear and simple terms, explain the victim's actions and understanding of what the defendant said and did. Keep the discussion of the elements of the crime short and clear. The prosecutor should explain in simple terms the method(s) of deceit used by the defendant so the jury can understand the significance of each piece of evidence as it is introduced.

The prosecutor should develop a theme for the opening statement that will resonate with jurors throughout the day as key pieces of evidence are introduced. Make it clear that there is a victim of whom the defendant took advantage and about whom the jurors should care. Jurors should identify with the victim by the end of opening statement. They should be ready to convict if the evidence is introduced as the prosecutor has outlined.

The prosecutor should *always* use visual aids during the opening statement. They don't have to be complicated, but they should orient the jurors to the location in their community where the crime occurred, and should amplify the elements of the offense. Use charts and a time line, if applicable, to identify major pieces of evidence and how they fit together to constitute fraud.

Order of Witnesses

When presenting the case in chief, begin with good victims who can explain the scheme and will not appear as greedy people who were swindled when they tried to get something for nothing. Strong lead-off witnesses make lasting impressions on the jury. Present the victims in chronological order where possible to demonstrate a pattern of fraud. Victims who had direct contact with the defendant should get priority, especially a victim whose money is traceable to the defendant. Witnesses/Victims who can corroborate other victims are especially important to prevent the case from dissolving into a swearing match between the victim and the defendant.

After the victims have testified, following-up with an insider witness can be an effective strategy. Insider witnesses can corroborate the victim's testimony and lay the foundation for documents or physical evidence. Insider witnesses are usually former employees, suppliers or even co-defendants who have struck a plea bargain and are testifying for the state. Insider witnesses may have some credibility problems to overcome. Nevertheless, they usually establish credibility with the jury if they corroborate the victim's testimony and are further supported by documentary evidence.

Hide the ineffective, or bad, but necessary witnesses or victims in the middle of your witness list. Most cases have some witnesses or victims that have no jury appeal. They either have significant credibility problems or are simply unable to express themselves in a clear and meaningful way. If they are, however, necessary to establish elements of the crime, try to surround them with good witnesses and supporting documentation. If the jurors first heard strong witnesses, on the heels of an engaging opening statement that explained the case, they may well be favoring the state's position already, and can overlook a weak witness.

A prosecutor should end the case-in-chief with strong witnesses who can tie together loose ends or summarize events. Often, the only strong and interesting lay witnesses testified first, so a prosecutor might choose to end with an expert or a police officer. An expert is a good choice because he/she usually corroborates some portion of the victim's testimony and highlights the misconduct of the defendant. Also, jurors generally view experts as neutral witnesses. This adds to the validity of the state's case and helps eliminate the defendant's assertions that the state is unjustly persecuting him/her. A police officer can also be a strong final witness. Any statements the defendant made to police officers during the investigation can be evaluated by the jurors in light of the victim's testimony and other evidence. Testimony about the defendant's statements against interest makes a dramatic impact at the close of the case.

Anticipating Defenses

Prosecutors must anticipate defenses as they prepare the case-in-chief so they can tailor the evidence to meet them. This often requires action to be taken prior to trial, as with pre-trial motions to exclude evidence the prosecutor anticipates will be offered in defense. Common defenses are discussed below.

Good Faith Defense

The act was committed with no criminal intent. Proponents of this defense demonstrate that no benefit came to the defendant, or that the customer received the service for which he/she contracted. The defendant may contend he/she fell victim to economic collapse or incompetence within his/her business. This defense may be countered by multiple victim-witnesses presented during the state's case-in-chief. If the defense

presents a substantial number of satisfied customers, the case could turn into a numbers game for the jury. The state has two strategic options when the defense presents satisfied customers as witnesses. First, the state can try to keep out evidence of satisfied customers by arguing that such evidence is irrelevant. The state does not contend the defendant defrauded everyone he/she dealt with, only the alleged victims. This evidence should be eliminated through a pre-trial motion.

If a pre-trial motion is unsuccessful, the prosecutor should thoroughly investigate the relationship between the defendant and the satisfied customers, in an attempt to uncover any motives or bias on the part of the witness. Sometimes investigation reveals that the witness has testified on prior occasions for the defendant (small claims, other jurisdictions, etc.). Perhaps the witness is testifying in exchange for free or discounted home repair work. To the extent possible, the state should investigate the work the defendant completed for the satisfied customer. Many times, the investigation reveals that the "satisfied customer" is actually a victim too. This is an effective revelation when brought out on cross-examination.

General Denial Defense

The defendant claims the victim is mistaken and the defendant made no misrepresentations. Presentation of multiple victims is the best way to short-circuit this defense.

Confession and Avoidance Defense

The defendant admits that fraud may have occurred, but the defendant denies any responsibility. The prosecutor must then directly trace active participation to the defendant.

Fall Guy Defense

The defendant will imply that superiors in the business perpetrated the fraud and that he/she is a scapegoat. The state must demonstrate direct activity on the part of the defendant to show his/her fraudulent intent. Evidence from an insider witness and/or documents demonstrating the defendant's role as an executive or supervisor with capacity to control operations will nullify this defense.

Direct Examination

Victims

During direct examination of the victims, the prosecutor should emphasize the victim's reliance on representations made by defendant. Victims must be counseled to testify as to their state of mind at the time of the transaction. By the time a case comes to trial, the victims will naturally tend to testify tentatively and be full of self-recrimination for foolishly relying on the defendant's assurances. They must be encouraged to remember how they felt at the time of the transaction, or when they discovered the fraud, and testify to that.

Prosecutors should emphasize the victim's loss and allow the victim to elaborate on consequences of his/her trust in the defendant. Emphasize the defendant's words and actions. Highlight the defendant's deceit and fraudulent intent. Be clear and chronological when eliciting facts. Always ask: "If you had known that the promise was not true, would you have entered into this agreement?"

If the victim has filed an insurance claim to fund the job, bring this information out if it bolsters the victim's credibility. If this fact will hurt the case tactically (for example, the victim

already looks a bit greedy), make a motion to exclude it as irrelevant. In transactions where the elderly sign the second mortgage, have the victim make clear he/she did not know what he/she was signing.

Insiders

Prosecutors must be prepared to introduce documents in accordance with the rules of evidence. Insider witnesses are critical to the authentication and introduction of business records. These witnesses can be used to trace how the defendant prepared sales material, forms, sales training devices, scripted telephone conversations, or other documents in furtherance of the swindle. They can also link the defendant to receipt of the victim's money.

Insider witnesses are a good source of admissions, statements against interest and conspiratorial conversations made that are damaging to the defendant. These witnesses can also reconstruct what, if anything, the defendant did to obstruct the investigation or destroy records.

If possible, demonstrate that the insider did not benefit from the swindle and was innocently swept into the scheme much like the victims. Divulge any benefits given to the insider (e.g., immunity). If the insider is a bad guy who has flipped, ask "You've spent all your life defrauding old people, is that true?" or "You have been working ___ years with the defendant, is that true?" or "The defendant taught you how to _____, is that true?" Don't be afraid to let an insider look bad. Reveal convictions as allowed by state law. The jury will be reminded later that birds of a feather flock together.

CROSS EXAMINATION OF DEFENSE WITNESSES

Defense witnesses in these cases usually fall into five categories:

Satisfied customers * Co-workers * Expert witnesses Character witnesses * The Defendant

Satisfied customers

When dealing with witnesses who are satisfied customers, the prosecutor must establish early on whether such customers were actually satisfied by the defendant's work or were dissatisfied customers that have received restitution. It is unlikely the defense would put on a witness who was unknowingly defrauded, but if intuition suggests this, vigorously examine the transaction to expose the fraud. The satisfied customer witness may have biases other than those based on business dealings. For example, the witness and defendant may be life long friends, or have mutual friends with whom they socialize. They may be family members, related by blood or marriage. They may be members of the same church or civic organizations.

Be careful about plunging in with questions like "Did you climb on the roof and check defendant's work?" The old adage about never asking a question you don't know the answer to holds true. Unless investigation has revealed that the witness is actually another victim, open-ended questions give the witness an opportunity to talk about the quality of the defendant's work. If the witness truly is a satisfied customer, the prosecutor must use this information to establish that the defendant knows how to do the job properly, if inclined. Not every con man cons everyone. Point out distinctions between the victim and the satisfied customer. Satisfied customers may not be nearly as vulnerable, old, or meek.

Co-Workers

When co-workers serve as defense witnesses, prosecutors should expose the professional relationship and the length of the relationship with the defendant. Highlight the amount of money the witness has received in business dealings with the defendant and future possibilities for more business deals. Check the witness's criminal record. Always point out if the witness's livelihood depends on the defendant.

Expert Defense Witnesses

The state's expert witness should sit in the courtroom during the defense expert's testimony. The prosecutor must become an expert in this area also. Expose money paid for expert testimony and preparation. Ask what documents were inspected and what information was relied upon in forming an opinion. Determine whether the expert has ever testified before and if always for the defense. Examine the relationship of the expert to the defendant.

Present the claims of the victim to the expert and ask, "If true, would this be fraud?" Technically, this is asking for a legal opinion, but carefully phrased hypothetical questions usually survive defense objections. If the expert refused a pre-trial interview with the state, confirm this on the witness stand.

Character Witnesses

Ask the witness if he/she has heard of prior acts of misconduct by the defendant. "If you had known _____, would your opinion of defendant be different?" Have the witness admit that he/she doesn't actually know if defendant committed the alleged crime. Always check the criminal records of witnesses.

The Defendant

Cross-examination of the defendant is usually done either very well or very poorly. Those prosecutors who view cross-examination as an isolated event in the trial, a theatrical showcase where the defendant collapses into a tearful confession in the face of relentless questioning, usually do a very poor job of cross-examination. While "Perry Mason" moments may come along occasionally, the vast majority of cross-examinations do not result in a confession on the witness stand.

A successful cross-examination of the defendant, one that devastates the defense case, is the product of much thought and preparation. Cross-examination should be used to further the state's theory of the case just like every other aspect of the trial. It is an opportunity to elicit from the defendant facts that support the state's theory of the case and corroborate the state's witnesses. It can also highlight the defendant's lies, greed and criminal intent. The following are some practical suggestions for cross-examining defendants in home improvement fraud cases:

- Confront the defendant with his/her prior statement and get him/her to corroborate the state's witnesses as much as possible. This will provide the prosecutor with an opportunity to point out in final argument that the defendant actually corroborated the state's witnesses except as to incriminating conduct.
- Keep the defendant responding only to the questions posed rather than letting him/her expound on his/her story.
- Use sarcasm where appropriate to emphasize the conduct. For example, "Do you find any problem with people who take \$80,000 to put a roof on a house?"

- Get the defendant to talk about his/her qualifications. This will show he/she could have done the job properly without misunderstandings, or that he/she never intended to do the job at all.
- Find the standard of proper repair procedures from the appropriate licensing agency and ask the defendant if he/she followed these guidelines.

Cross-examination of witnesses who are lying has its own dramatic effect. Jurors are usually very perceptive and quick to notice when a witness is hedging or being evasive about certain facts.

With solid preparation, internalization of the facts, and clear objectives for cross-examination in mind, a prosecutor can focus on the defendant and pick up on the same signals the defendant is sending the jury. Preparation will allow the prosecutor to respond to these signals, adding spontaneity to the cross-examination, while remaining focused on the original objectives. Above all, the prosecutor must remain in control of the examination. If the defendant succeeds in derailing the prosecutor's line of questioning, being non-responsive to questions, or actually questioning the prosecutor (and getting answers), then the defendant has prevailed.

REBUTTAL

Rebuttal evidence will usually consist of witnesses who specifically contradict assertions in the defense case. Sometimes, they can testify about the defendant's bad character, if the defense has opened that door. Commonly, in the defense case, the defendant will have distanced him-/herself from the decision-making process. He/She will have removed himself from the decisions or the statements that resulted in the fraud. The state should be prepared to counter that with former employees, other victims, or any

documentary evidence that demonstrates the defendant's control of the business. The state cannot ordinarily present new evidence during rebuttal that should have been presented during its case-in-chief. It must only respond to or answer the defense case with evidence that was inadmissible, irrelevant or unnecessary during the case-in-chief. This amplifies the importance of anticipating defenses and conducting a thorough investigation of defense witnesses and other victims prior to trial.

FINAL ARGUMENT

During closing argument, the prosecutor should emphasize the victim's (or victims') vulnerability. This is where the physical differences between the victim and the defendant should be highlighted. Point out the physical, mental, emotional and economic frailties of the victim and how the defendant was able to exploit those to his/her financial gain. Visual aids such as charts with the elements of the offense and the main facts that prove each element will make the jury's job easy.

Personalize the victim's experience by telling the jury to imagine the act, and walk the jury through the events in a clear manner. Emphasize how the defendant controlled the situation and was able to intimidate the victim. Importantly, emphasize how the defendant profited from his/her conduct. Remind the jury that a crime against the vulnerable in our community is a crime against the entire community.

Point out that criminals cloaked with the respectability of a tradesman or business person are worse than street thugs because they are harder to spot and their offenses often do not get reported due to embarrassment or ignorance of the victim.

Finally, point out to the jury that the victim continues to suffer from the crime long after the initial perpetration. The victim lives in fear and embarrassment, and often drastically reduced economic circumstances.



CHAPTER SEVEN: THE FEDERAL OPTION

Table of Contents

- I. Why Federal?
- II. Potential Federal Charges
 - A. Mail and Wire Fraud
 - 1. Elements of Mail Fraud
 - 2. Elements of Wire Fraud
 - 3. Scheme and Artifice to Defraud
 - 4. Violation where No Loss or Gullible Victim
 - 5. Proof of Scheme and Artifice to Defraud
 - 6. Intent to Defraud
 - 7. Proof of Fraudulent Intent
 - 8. Use of Mailings and Wires in Furtherance of the Execution of the Scheme
 - 9. Proof of Mailings and Transmissions
 - 10. Use of Private or Commercial Interstate Carriers
 - 11. Use of a Wire Communication in Interstate or Foreign Commerce
 - 12. Lulling Letters, Telegrams and Telephone Calls
 - 13. Conspiracy to Violate the Mail Fraud or Wire Fraud Statutes
 - 14. Venue in Mail Fraud
 - 15. Venue

- 16. Possible Defenses
 - a. Statute of Limitations
 - b. Good Faith
 - B. Interstate transportation of stolen property
 - 1. 18 USC 2314
 - 2. 18 USC 2315
 - 3. Goods, Wares and Merchandise
 - 4. Money and Wire Transfers
 - 5. Value defined
 - 6. Stolen, converted or taken by fraud
 - 7. Venue
 - C. Forfeiture and Money Laundering
 - D. Conspiracy
- III. Sentencing in the Federal System
- IV. Restitution

CHAPTER SEVEN: THE FEDERAL OPTION

WHY FEDERAL?

Home improvement fraud schemes are often seen as purely "local" crimes to be handled exclusively by the local investigators and prosecutors. This perception overlooks certain problems which these schemes present to local authorities and some advantages available in federal investigations and prosecutions. In deciding how to proceed, the federal option should always be considered.

Often the schemes developed to target the elderly are perpetrated by groups operating in several states. The interstate aspects raise many difficulties for local and state prosecutors. Obtaining documents and records on other states, compelling the presence of witnesses from other states and similar administrative barriers hinder the investigation and prosecution of these cases.

Even if not operating out of another state, groups operating in several counties also present problems from the prosecutor's perspective. In some states, only the instances of fraud occurring in a particular county can be prosecuted in that county. This limits the impact of the case, and also the sentencing judge is not presented with the full scope of the defendant's conduct. The sentences handed down are often limited as a result.

As important, not every state allows the full use of prosecutions for conspiracy. In some jurisdictions, each defendant must be tried separately. This can have serious effects on the prosecution, primarily regarding certain evidentiary issues.

Finally, prosecutors around the country often complain that sentencing judges do not deal with these defendants seriously when sentencing. Often probation with some minimal restitution award is ordered.

The federal venue may provide a useful tool for dealing with these situations. While, as set out below, not all schemes can be prosecuted federally for lack of a federal nexus, where the nexus exists certain advantages are present.

In investigations, the federal agencies such as the FBI and the Postal Inspection Service provide excellent investigative resources. In addition, these agencies and the availability of federal grand jury subpoenas insure that obtaining documents and witnesses located in other states will not be a problem.

In the prosecutions, all defendants in a ring can be tried together under a conspiracy charge. In the case, the defendant's full range of conduct and the total amount of fraud perpetrated are considered in arriving at a sentence. The federal sentencing guidelines set strict, mandatory sentencing ranges.

Finally, even if the case is not ultimately prosecuted federally, conducting an investigation with federal authorities can provide some of the advantages listed above. A full team approach can allow use of the best tools available to successfully investigate and prosecute the fraud schemes.

POTENTIAL FEDERAL CHARGES¹

There are many possible charges in the federal criminal code which may be used in these cases. The only limitation is the presence of a particular federal jurisdictional nexus.

Mail and Wire Fraud

In any scheme to defraud, the perpetrators will often use either wire communications or mailings to carry out, cover up, or delay investigation of the scheme. In general, these wires or mailings can form the basis of prosecutions. The primary hurdle will be to show that the wire or mailings crossed a state line. The mail and wire fraud statutes are structured similarly and will be dealt with together. Cases construing or applying either statute can be referred to for either statute.

Elements of Mail Fraud, 18 U.S.C. 1341

There are two elements in mail fraud:

- (1) having devised or intending to devise a scheme to defraud (or to perform specified fraudulent acts), and
- (2) use of the mail for the purpose of executing or attempting to execute the scheme (or specified fraudulent acts).

Schmuck v. United States, 489 U.S. 705, 721 n. 10 (1989); see also Pereira v. United States, 347 U.S. 1, 8 (1954); Laura A. Eilers & Harvey B. Silikovitz, Mail and Wire Fraud, 31 Am. Crim. L. Rev. 703, 704 (1994) (cases cited).

¹ This section is taken directly from the relevant portions of the U.S. Attorney's Manual to provide case law applicable across the country. As with any statute, prosecutors should review particular court decisions within their districts.

Elements of Wire Fraud, 18 U.S.C. 1343

The elements of the crime of wire fraud are:

- (1) that the defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money;
- (2) that the defendant did so with the intent to defraud;
- (3) that it was reasonably foreseeable that interstate wire communications would be used; and
- (4) that interstate wire communications were in fact used

The wire fraud statute was patterned after the mail fraud statutes. United States v. Lemon, 941 F.2d 309, 316 (5th Cir. 1991); United States v. Castillo, 829 F.2d 1194, 1198 (1st Cir. 1987). Thus, the same principles apply in defining "scheme to defraud" for mail and wire fraud prosecutions. See Carpenter v. United States, 484 U.S. 19, 25 n. 6 (1987); United States v. Lemire, 720 F.2d 1327, 1334-35 n. 6 (D.C. Cir. 1983), cert. denied, 467 U.S. 1226 (1984). The elements of wire fraud under Section 1343 directly parallel those of the mail fraud statute, but require the use of an interstate telephone call or electronic communication made in furtherance of the scheme. United States v. Briscoe, 65 F.3d 576, 583 (7th Cir. 1995) (citing United States v. Ames Sintering Co., 927 F.2d 232, 234 (6th Cir. 1990) (per curiam)); United States v. Frey, 42 F.3d 795, 797 (3d Cir. 1994); see also, e.g., United States v. Profit, 49 F.3d 404, 406 n. 1 (8th Cir.), cert. denied, 115 S.Ct. 2289 (1995); United States v. Hanson, 41 F.3d 580, 583 (10th Cir. 1994); United States v. Faulkner, 17 F.3d 745, 771 (5th Cir. 1994), cert. denied, 115 S.Ct. 193 (1995); United States v. Cassiere, 4 F.3d 1006 (1st Cir. 1993); United States v. Maxwell, 920 F.2d 1028, 1035 (D.C. Cir. 1990).

The Scheme and Artifice to Defraud

The mail fraud and wire fraud statutes do not define the terms "scheme" or "artifice" and the courts have traditionally been reluctant to offer definitions of either term except in the broadest and most general terms. Lemire, 720 F.2d at 1335 ("Congress did not define 'scheme or artifice to defraud' when it first coined that phrase, nor has it since. Instead that expression has taken on its present meaning from 111 years of case law.").

The fraudulent aspect of the scheme to defraud is to be measured by non-technical standards and is not restricted by any common-law definition of false pretenses. "[T]he words 'to defraud' in the mail fraud statute have the 'common understanding' of "'wrongdoing one in his property rights by dishonest methods or schemes," and "usually signify the deprivation of something of value by trick, chicane, or overreaching.""

Carpenter, 484 U.S. at 27 (quoting McNally v. United States, 483 U.S. 350, 358 (1987) (quoting Hammerschmidt v. United States, 265 U.S. 182, 188 (1924))). "The concept of 'fraud' includes the act of embezzlement, which is "'the fraudulent appropriation to one's own use of the money or goods entrusted to one's own care by another.'" Id. (quoting Grin v. Shine, 187 U.S. 181, 189 (1902)).

Violation where No Loss or Gullible Victims

"It is the scheme to defraud and not actual fraud that is required." United States v. Reid, 533 F.2d 1255, 1264 (D.C. Cir. 1976). "No particular type of victim is required . . . nor need the scheme have succeeded." United States v. Coachman, 727 F.2d 1293, 1302-03 n. 43 (D.C. Cir. 1984). No actual loss to the victims is required. See United States v. Pollack, 534 F.2d 964, 971 (D.C. Cir.) ("The fraud statutes speak alternatively of devising or intending to

devise a scheme to defraud and do not require that the deception bear fruit for the wrongdoer or cause injury to the intended victim as a prerequisite to successful prosecution. [S]uccess of the scheme and loss by a defrauded person are not essential elements of the crime under 18 U.S.C. §§ 1341, 1343"), cert. denied, 429 U.S. 924 (1976); see also United States v. Jordan, 626 F.2d 928, 931 (D.C. Cir. 1980) ("The amount of money realized as a result of the scheme is not an essential element of mail fraud. It was not even necessary to prove that the scheme succeeded.").

"[I]t makes no difference whether the persons the scheme is intended to defraud are gullible or skeptical, dull or bright" United States v. Maxwell, 920 F.2d 1028, 1036 (D.C. Cir. 1990) (quoting United States v. Brien, 617 F.2d 299, 311 (1st Cir.), cert. denied, 446 U.S. 919 (1980)). "[T]he monumental credulity of the victim is no shield for the accused . . ." Id. (quoting Deaver v. United States, 155 F.2d 740, 744-45 (D.C. Cir.), cert. denied, 329 U.S. 766 (1946)); cf. Pollack, 534 F.2d at 971 (To hold that actual loss to victim is required "would lead to the illogical result that the legality of a defendant's conduct would depend on his fortuitous choice of a gullible victim.") (quoted in Maxwell, 920 F.2d at 1036).

Proof of Scheme and Artifice to Defraud

To sustain a conviction the government must prove the existence of a scheme; it is not required, however, to prove all details or all instances of allegedly illicit conduct. See, e.g., United States v. Stull, 743 F.2d 439, 442 n. 2 (6th Cir. 1984), cert. denied, 470 U.S. 1062 (1985); United States v. Halbert, 640 F.2d 1000, 1008 (9th Cir. 1981); United States v. Jordan, 626 F.2d 928, 930 (D.C. Cir. 1980); United States v. Amrep Corp., 560 F.2d 539, 546 (2d Cir. 1977), cert. denied, 434 U.S. 1015 (1978); Anderson v. United States, 369 F.2d 11, 15 (8th Cir. 1966), cert. denied, 386 U.S. 976 (1967).

"All that is required is that [the defendant has] knowingly and willingly participated in the scheme; she need not have performed every key act herself." United States v. Maxwell, 920 F.2d 1028, 1036 (D.C. Cir. 1990). The "evidence need only show that defendant was a 'knowing and active participant' in scheme to defraud and that scheme involved interstate wire communications." Id. (quoting United States v. Wiehoff, 748 F.2d 1158, 1161 (7th Cir. 1984)).

Intent to Defraud

The government must prove that the defendant had the specific intent to defraud. See United States v. Diggs, 613 F.2d 988, 997 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980); see also United States v. Costanzo, 4 F.3d 658, 664 (8th Cir. 1993); United States v. Porcelli, 865 F.2d 1352, 1358 (2d Cir.), cert. denied, 493 U.S. 810 (1989); cf. United States v. Reid, 533 F.2d 1255, 1264 n. 34 (D.C. Cir. 1976) ("Proof that someone was actually defrauded is unnecessary simply because the critical element in a 'scheme to defraud' is 'fraudulent intent,' Durland v. United States, 161 U.S. 306 . . . (1896), and therefore the accused need not have succeeded in his scheme to be guilty of the crime."); United States v. Bailey, 859 F.2d 1265, 1273 (7th Cir. 1988) (court held that there must be sufficient evidence that the defendant acted with intent to defraud, that is, "willful participation in [the] scheme with knowledge of its fraudulent nature and with intent that these illicit objectives be achieved." (quoting United States v. Price, 623 F.2d 587, 591 (9th Cir. 1980), cert. denied, 449 U.S. 1016 (1980), overruled on other grounds by, United States v. DeBriant, 730 F.2d 1255 (9th Cir. 1984)), cert. denied, 488 U.S. 1010 (1989)).

Proof of Fraudulent Intent

"The requisite intent under the federal mail and wire fraud statutes may be inferred from the totality of the circumstances and need not be proven by direct evidence." United States v. Alston, 609 F.2d 531, 538 (D.C. Cir. 1979), cert. denied, 445 U.S. 918 (1980). Thus, intent can be inferred from statements and conduct. United States v. Cusino, 694 F.2d 185, 187 (9th Cir. 1982) (citing United States v. Beecroft, 608 F.2d 753, 757 (9th Cir. 1979)), cert. denied, 461 U.S. 932 (1983). Impression testimony, that is, testimony of victims as to how they had been misled by defendants, is admissible to show intent to defraud. See Phillips v. United States, 356 F.2d 297, 307 (9th Cir. 1965), cert. denied, 384 U.S. 952 (1966).

Fraudulent intent is shown if a representation is made with reckless indifference to its truth or falsity. Cusino, 694 F.2d at 187. In addition, "[f]raudulent intent may be inferred from the modus operandi of the scheme." United States v. Reid, 533 F.2d 1255, 1264 n. 34 (D.C. Cir. 1976) ("[T]he purpose of the scheme 'must be to injure, which doubtless may be inferred when the scheme has such effect as a necessary result of carrying it out.'" (quoting United States v. Regent Office Supply Co., 421 F.2d 1174, 1180-81 (2d Cir. 1970) (quoting Horman v. United States, 116 F. 350, 352 (6th Cir.), cert. denied, 187 U.S. 641 (1902))). Of course proof that someone was actually victimized by the fraud is good evidence of the schemer's intent. In United States v. D'Amato, the court explained the government's burden of proving fraudulent intent as follows:

The scheme to defraud need not have been successful or complete.

Therefore, the victims of the scheme need not have been injured. However,

the government must show "that some actual harm or injury was

contemplated by the schemer." Because the defendant must intend to harm

the fraud's victims, "[m]isrepresentations amounting only to a deceit are

insufficient to maintain a mail or wire fraud prosecution." "Instead, the deceit must be coupled with a contemplated harm to the victim." In many cases, this requirement poses no additional obstacle for the government. When the "necessary result" of the actor's scheme is to injure others, fraudulent intent may be inferred from the scheme itself. Where the scheme does not cause injury to the alleged victim as its necessary result, the government must produce evidence independent of the alleged scheme to show the defendant's fraudulent intent.

39 F.3d 1249, 1257 (2d Cir. 1994) (citations and footnote omitted)

Use of Mailings and Wires in Furtherance of the Execution of the Scheme

"The federal mail fraud statute does not purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud, leaving all other cases to be dealt with by appropriate state law." United States v. Schmuck, 489 U.S. 705, 710 (1989) (quoting Kann v. United States, 323 U.S. 88, 95 (1944)); accord United States v. Coachman, 727 F.2d 1293, 1302 n. 43 (D.C. Cir. 1984).

"It is not necessary that the scheme contemplate the use of the mails as an essential element." Pereira v. United States, 347 U.S. 1, 8 (1954); Durland v. United States, 161 U.S. 306, 313 (1896). "It is sufficient for the mailing to be 'incident to an essential part of the scheme,' . . . or 'a step in [the] plot' . . ." Schmuck, 489 U.S. at 710-11 (citations omitted); cf. United States v. Diggs, 613 F.2d 988, 998 (D.C. Cir.), cert. denied, 446 U.S. 982 (1980). Although the schemer need not 'contemplate the use of the mails as an essential element,' the mailings must be sufficiently closely related to the scheme to bring his/her conduct within the statute.

For conviction under the mail fraud statute, the mails must be used 'for the purpose of executing' the fraudulent scheme, and not merely 'as a result of' such scheme. United States v. Alston, 609 F.2d 531, 538 (D.C. Cir. 1979) (quoting Kann, 323 U.S. 88), cert. denied, 445 U.S. 918 (1980).

As in the case of mail fraud, a wire transmission may be considered to be for the purpose of furthering a scheme to defraud if the transmission is incident to the accomplishment of an essential part of the scheme. United States v. Mann, 884 F.2d 532, 536 (10th Cir. 1984). Moreover, it is not necessary to show that the defendant directly participated in the transmission, where it is established that the defendant caused the transmission, and that such use was the foreseeable result of his/her acts. United States v. Gill, 909 F.2d 274, 277-78 (7th Cir. 1990); United States v. Jones, 554 F.2d 251, 253 (5th Cir.), cert. denied, 434 U.S. 866 (1977) (cases cited); United States v. Wise, 553 F.2d 1173 (8th Cir. 1977). Thus, if a pager signal is used to arrange for a meeting of the conspirators, that signaling will be sufficient. Similarly, if one of the conspirators calls the intended victim to determine the victim is home, and then uses that to gather the perpetrators to meet there, a wire transmission has been used in furtherance of the crime.

The gist of the offenses is not the scheme to defraud, but the use of the mails or interstate wire communication. See United States v. Garland, 337 F. Supp. 1, 3 (N.D. Ill. 1971); see also United States v. Gardner, 65 F.3d 82, 85 (8th Cir. 1995) ("The use of the post office establishment in the execution of the alleged scheme to obtain money by false pretenses is the gist of the offense which the statute denounces, and not the scheme to defraud.") (quoting Cochran v. United States, 41 F.2d 193, 197 (8th Cir. 1930)), cert. denied, 116 S.Ct. 748 and 116 S.Ct. 1044 (1996); United States v. Lebovitz, 669 F.2d 894, 898 (3d Cir.) ("The gist of the

offense of mail fraud is the use of mails by someone to carry out some essential element of the fraudulent scheme or artifice."), cert. denied, 456 U.S. 929 (1982).

Accordingly, each use of the mails (in the case of mail fraud) and each separate wire communication (in the case of wire fraud) constitutes a separate offense, i.e., each mailing and/or wire transmission can constitute a separate count in the indictment. See, e.g., United States v. Pazos, 24 F.3d 660, 665 (5th Cir. 1994) (mail fraud); United States v. Rogers, 960 F.2d 1501, 1514 (10th Cir.) (each use of mails is separate offense), cert. denied, 506 U.S. 1035 (1992); United States v. Castillo, 829 F.2d 1194, 1199 (1st Cir. 1987) (wire fraud).

Proof of Mailings and Transmissions

The mailing or wire communication may be proven by circumstantial evidence. See, e.g., United States v. Griffith, 17 F.3d 865, 874 (6th Cir.), cert. denied, 115 S.Ct. 149 (1994); United States v. Bowman, 783 F.2d 1192, 1197 (5th Cir. 1986) (mailings performed in the course of the bank's customary practices) (citing United States v. Ledesma, 632 F.2d 670, 675 (7th Cir.), cert. denied, 449 U.S. 998 (1980)); United States v. Brooks, 748 F.2d 1199, 1202-03 (7th Cir. 1984) (introduction of envelope). But see United States v. Hannigan, 27 F.3d 890, 895 (3d Cir. 1994) (defendant's statement that he received check was insufficient to prove check was sent through the mails).

"To constitute a violation of [§ 1341] . . . , it is not necessary to show that [defendants] actually mailed . . . anything themselves; it is sufficient if they caused it to be done." Pereira v. United States, 347 U.S. 1, 8 (1954); United States v. Kenofsky, 243 U.S. 440, 443 (1917) ("Cause" is used "in its well-known sense of bringing about . . ."); accord United States v. Diggs, 613 F.2d 988, 998 (D.C. Cir.) ("One must 'cause' the mails to be used" to satisfy the

element of "use of the United States mails 'for the purpose of executing the scheme.'" (quoting United States v. Maze, 414 U.S. 395, 400 (1974) (quoting Kann v. United States, 323 U.S. 88, 94 (1944), cert. denied, 446 U.S. 982 (1980)). The government need only show that the defendant "caused" the mailing by acting "with knowledge that the use of the mails follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended." Pereira, 347 U.S. at 8-9.

"' [I]nnocent' mailings - ones that contain no false information - may supply the mailing element." United States v. Schmuck, 489 U.S. 705, 715 (1989) (citing Parr v. United States, 363 U.S. 370, 390 (1960)). Moreover, the elements of mail fraud may be satisfied where the mailings have been routine. Mailings that may lead to the uncovering of the fraudulent scheme may also supply the mailing element of the mail fraud offense. Id. ("The relevant question at all times is whether the mailing is part of the execution of the scheme as conceived by the perpetrator at the time, regardless of whether the mailing later, through hindsight, may prove to have been counterproductive and return to haunt the perpetrator of the fraud.").

Use of Private or Commercial Interstate Carriers

To combat telemarketing fraud, Congress amended the mail fraud statute to broaden its application to include private or commercial interstate carriers in addition to the United States Postal Service. See Senior Citizens Against Marketing Scams Act of 1994, Pub.L. No. 103-322, Title XXV, § 25006, and Title XXXIII, § 330016(1)(H), 108 Stat. 2087, 2147 (enacted as part of the Violent Crime Control and Law Enforcement Act of 1994); see also Cong. Rec. S2654-61 (March 10, 1993) (statement of Sen. Hatch) and S10017-19 (July 30, 1993) (statement

of Sen. Hatch). The large delivery service companies, such as Federal Express and United Parcel Service, are clearly interstate carriers.

Use of a Wire Communication in Interstate or Foreign Commerce

The statute requires a transmission in interstate or foreign commerce. See United States v. Mann, 884 F.2d 532, 536 (10th Cir. 1989); see also United States v. Van Cawenberghe, 827 F.2d 424, 430 (9th Cir. 1987) (telex transmission was in interstate commerce because its path included the interstate transmission from New York to Los Angeles), cert. denied, 484 U.S. 1024 (1988). Accordingly, an intrastate transmission does not constitute an offense. See Boruff v. United States, 310 F.2d 918 (5th Cir. 1962).

Lulling Letters, Telegrams and Telephone Calls

In these schemes, the defendants will typically engage in "lulling" efforts, promising to actually do the work contracted for or promising to make a refund if the police are not called. These efforts are fairly effective, as the victim desperately wants a return of the defrauded sums. These lulling efforts, often done by telephone, can be the basis for the prosecution even if the initial fraud involved no mailings or wires. In United States v. Maze, 414 U.S. 395 (1974), mailings which occurred after the scheme ended fell outside the prohibitions of the statute. See also United States v. West, 549 F.2d 545, 556 (8th Cir. 1977), cert. denied, 430 U.S. 956 (1977) and Battaglia v. United States, 349 F.2d 556, 561 (9th Cir.), cert. denied, 382 U.S. 955 (1965) (wire used after the scheme has come to an end is not within the statute); cf. United States v. Pollack, 534 F.2d 964, 971 (D.C. Cir.) (Maze has no adverse impact on fraud prosecutions where the scheme has not reached fruition.), cert. denied, 429 U.S. 924 (1976).

It is a well-established principle of mail fraud law, however, that use of the mails after money is obtained may nevertheless be "for the purpose of executing" the fraud. This proposition was considered by the Supreme Court in United States v. Sampson, 371 U.S. 75 (1962), where salesmen fraudulently obtained applications and advance payments from businessmen and then mailed acceptances to the defrauded victims to lull them into believing the services would be performed. The Court held that such a "lulling" use of the mails was for the purpose of executing the fraudulent scheme. Thus, post-purchase mailings or wire transmissions that are designed to lull the victim into a false sense of security, postpone inquiries or complaints, or make the transaction less suspect can be in furtherance of the scheme. United States v. Rogers, 9 F.3d 1025 (2d Cir. 1993), cert. denied, 115 S.Ct. 95 (1994).

Conspiracy to Violate the Mail Fraud or Wire Fraud Statutes

Where two or more persons share a scheme and artifice to defraud, it becomes a conspiracy to defraud. The essential elements of conspiracy to commit mail fraud or wire fraud in violation of 18 U.S.C. § 371, are

- (1) an agreement between two or more persons;
- (2) to commit mail fraud or wire fraud; and
- (3) an overt act committed by one of the conspirators in furtherance of the conspiracy.

See United States v. Brumley, 79 F.3d 1430, 1442 (5th Cir. 1996) (citing United States v. Hatch, 926 F.2d 387, 393 (5th Cir.), cert. denied, 500 U.S. 943 (1991)); United States v. Massey, 827 F.2d 995, 1001 (5th Cir. 1987); United States v. Gordon, 780 F.2d 1165, 1170 (5th Cir. 1986)).

As in any conspiracy, it is sufficient that the defendant knowingly joined the conspiracy in which wire fraud or mail fraud was a foreseeable act in furtherance of the conspiracy. United States v. Leahy, 82 F.3d 624 (5th Cir. 1996) (citing United States v. Basey, 816 F.2d 980, 997 (5th Cir. 1987) (holding that once a defendant's knowing participation in a conspiracy has been established, "the defendant is deemed guilty of substantive acts committed in furtherance of the conspiracy by any of his criminal partners"))).

Venue in Mail Fraud

Generally, 18 U.S.C. § 3237(a) provides that in cases where the offense was begun in one district and completed in another, venue may be laid in any district through which the offense was continued. However, the mail fraud statute, Section 1341, has its own "built-in" venue provisions. The locus of the offense under section 1341 has been carefully specified; and only the acts of "placing," "taking" and "causing to be delivered" at a specified place have been penalized. Venue should therefore be placed according to the specific prohibitions of section 1341, irrespective of section 3237(a). See Travis v. United States, 364 U.S. 631, 636-37 (1961). The locus for mail fraud prosecutions is specifically set forth in section 1341; since Congress has "otherwise expressly provided," section 3237 is inapplicable to mail fraud.

Accordingly, venue must be charged in either (1) the district in which the letter was placed in the mail by the defendant; (2) the district in which the defendant took or received the letter from the mails; or (3) the district in which the defendant knowingly caused a letter to be delivered according to the direction thereon. Hagner v. United States, 285 U.S. 427

(1932)); see also United States v. Turley, 891 F.2d 57, 60 (3d Cir. 1989) (government conceded that section 3237 is not applicable to mail fraud).

Venue

The mail fraud statute specifies that venue exists where the mailing was deposited, or the mailing was taken or received from the mails. Unlike the mail fraud statute, the fraud by wire statute makes no reference to the venue of the offense. Accordingly, the provisions of § 3237(a) apply, and prosecutions may be instituted in any district in which an interstate or foreign transmission was issued or terminated. See United States v. Goldberg, 830 F.2d 459, 465 (3d Cir. 1987) (Section 1343 is a continuing offense under 18 U.S.C. § 3237 "so that venue is proper in any district in which the offenses were begun, continued, or completed.").

Possible Defenses

Statute of Limitations

The statute of limitations for mail fraud and wire fraud prosecutions is five years (18 U.S.C. § 3282). Even though the scheme extends back beyond the limitations period, because the offense is the use of the mails, if the prohibited use of the mails was within the period, the prosecution is timely. See O. Obermaier and R. Morvillo, White Collar Crime: Business and Regulatory Offenses, § 9.04[5], at 9-67 (Rel. 2, 1991) (citing cases); cf. United States v. Garfinkel, 29 F.3d 1253, 1259 (8th Cir. 1994) (mail fraud scheme may continue after mailing). That a scheme may extend back beyond the limitation period does not preclude prosecution of an offense committed in furtherance of the scheme within the period.

Good Faith

Good faith is recognized as a defense to a charge of mail or wire fraud. See, e.g., United States v. Casperson, 773 F.2d 216, 223 (8th Cir. 1985); Green v. United States, 474 U.S. 925 (1985).

Interstate transportation of stolen property

Where a fraud ring is operating interstate, the federal stolen property crimes may be applicable. See, 18 U.S.C. 2311, *et seq.* These charges focus on the proceeds of the crime and where the proceeds go rather than on the mailing or wire methods used in carrying out the fraud. The statutes by their terms also focus on fraud rings operating interstate, which are particularly good candidates for federal attention.

18 U.S.C. 2314

The "transportation" offense is found in Section 2314 of Title 18. Several types of transportation can form the basis for criminal charges. Interstate transportation of the proceeds of a theft or a fraud where the proceeds have a value of \$5,000 or more is a separate violation. Causing the interstate transportation of a victim to defraud the victim of \$5,000 or more of money or property is also a violation. The remaining provisions do not have direct applicability to these types of schemes.

The elements of a violation of the offense described in the first paragraph of 18 U.S.C. § 2314 are that the defendant:

- (1) unlawfully transported or caused to be transported in interstate or foreign commerce;
- (2) goods, wares, merchandise, securities, or money having a value of \$5,000 or more which are stolen, converted or taken by fraud; and

- (3) knowing the same to be stolen, converted or taken by fraud.

The essence of this offense is transportation. The term "unlawfully" means contrary to law, i.e., the absence of lawful justification. See Godwin v. United States, 687 F.2d 585 (2d Cir. 1985).

The elements of the offense contained in the second paragraph of 18 U.S.C. § 2314 are that defendant:

- (1) devised or intended to devise a scheme or artifice to defraud or obtain money or property by false or fraudulent pretenses, representations, or promises;
- (2) transported or caused to be transported or induced any person to travel in or be transported in interstate or foreign commerce;
- (3) in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more.

The essence of this offense is the interstate transportation of the victim. It does not require an actual loss of property by the victim. See United States v. Benson, 548 F.2d 42 (2d Cir. 1977). The provision does not require a specific intent to defraud a specific individual, as it requires only proof of a general intent to defraud. See United States v. Kelly, 569 F.2d 928 (5th Cir. 1978). The government does not have to prove that the victim relied on the false representations and was deceived by them. See United States v. Reina, 446 F.2d 16 (9th Cir. 1971).

18 U.S.C. 2315

Receipt of stolen property is covered by Section 2315 of Title 18. This may have particular use where the ringleader is in one state, the victim is in another state, and the perpetrators return a portion of the stolen proceeds to the ringleader even though he/she

did not participate in the actual fraud operation. The elements of the offense are the possession, receipt and/or disposition of the proceeds of a theft or fraud having a value of \$5,000 or more.

The elements of the offense contained in the first paragraph of 18 U.S.C. § 2315 are that the defendant:

- (1) received, possessed, concealed, stored, bartered, sold, or disposed of;
- (2) goods, wares, merchandise, securities or money having the value of \$5,000 or more;
- (3) which have crossed a state or United States boundary after being stolen, unlawfully converted, or taken;
- (4) knowing same to have been stolen, unlawfully converted, or taken.

Goods, Wares, Merchandise

As applicable in these statutes, the term "property" can be interpreted as including all forms of property, both personal and real. However, in the first paragraphs of 18 U.S.C. § § 2314 and 2315 the statutory language utilized is "goods, wares, merchandise, securities or money." The term "goods, wares, merchandise" is not defined. It has been interpreted to be a "general and comprehensive designation of such personal property or chattels as are ordinarily a subject of commerce." See United States v. Seagraves, 265 F.2d 876 (3d Cir. 1959). Therefore the term applies broadly and includes those tangible products sold in commerce (e.g., books, clothes, gasoline, oil, trailers, computers, televisions, food, vehicle parts, etc.) and has been extended to cover technical information. See United States v. Bottone, 365 F.2d 389 (2d Cir. 1966); Seagraves, 265 F.2d 876; United States v. Greenwald, 479 F.2d 320 (6th Cir. 1973).

Although the vast majority of personal property covered by the term "goods, wares, merchandise" will be tangible and subject to transportation, any stolen intangible property which in some fashion can be and is reduced to some tangible form prior to, during, or before the completion of the interstate or foreign transportation should be reachable under the first paragraphs of 18 U.S.C. §§ 2314 and 2315. Nevertheless, the broad definition of interstate commerce enunciated by the Supreme Court in United States v. McElroy, 455 U.S. 642 (1982), the tracing doctrine, and the broad legislative purposes of the statute may, under certain egregious facts surrounding the acquisition of the information, convince a court of its applicability to stolen information not necessarily embodied in a tangible object at the time the stolen information crossed a state boundary as long as such stolen information was placed into a tangible object prior to the termination of the interstate transportation. See, e.g., United States v. Wright, 791 F.2d 133 (10th Cir. 1986) holding the wire transfer of the proceeds of a fraud was covered under 18 U.S.C. § 2314, and United States v. Riggs, 739 F. Supp. 414 (N.D.Ill. 1990) proprietary information contained in telephone company's "911" computer text file were "goods, wares, and merchandise."

Money and Wire Transfers

"Money" is defined in 18 U.S.C. § 2311 to mean "the legal tender of the United States or of any foreign country, or any counterfeit thereof." In holding that 18 U.S.C. § 2314 was applicable to the wire transfer of funds, the Tenth Circuit in United States v. Wright, 791 F.2d 133, 136 (10th Cir. 1986) stated: "[w]hat is significant is that when the transaction is completed, money exists at the final destination." Accord, United States v. Gilboe, 684 F.2d 235 (2d Cir. 1982).

"Value" Defined

As noted above, the property stolen must have a specific value to be covered by the statute. For purposes of 18 U.S.C. §§ 2314 and 2315 the value of the stolen property which must be proven is at least \$5,000. "Value" is defined in 18 U.S.C. § 2311 to mean "face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof." The value of the stolen property is a jury question, see United States v. Williams, 657 F.2d 199 (8th Cir. 1981), and must be proven in terms of United States dollars. See United States v. Dior, 671 F.2d 351 (9th Cir. 1982).

In these types of schemes, the defendants do not always take money. Sometimes they persuade the victim to transfer a specific type of other property. The value of the different types of property may be proven in different ways. Market value is the means by which the value of most goods, wares, and merchandise will be established. This can be demonstrated by many methods. The value that the thief asks for the stolen goods and the value he/she actually sells them for can prove the value. See United States v. Wigerman, 549 F.2d 1192 (8th Cir. 1977). Of course, the basic rule of what a willing seller and a willing buyer will pay can also be used. Often times the thieves' market value can be used to show the value. See United States v. Jackson, 576 F.2d 749 (8th Cir. 1978); United States v. Moore, 571 F.2d 154 (3d Cir. 1978). Basically, the courts agree that any reasonable method of determining value is permissible. See United States v. Tauro, 362 F. Supp. 688 (W.D.Pa.), aff'd, 493 F.2d 1402 (3d Cir. 1973). The value may be determined at the time of theft or its transportation for prosecutions under 18 U.S.C. § 2314, United States v. McMahan, 548 F.2d 712 (7th Cir. 1977), and at time of theft or at anytime during its receipt, possession,

concealment, or disposition under 18 U.S.C. § 2315. See United States v. Luckey, 655 F.2d 203 (9th Cir. 1981); United States v. Reid, 586 F.2d 393 (5th Cir. 1978); United States v. McClain, 545 F.2d 988 (5th Cir. 1977).

Although the definition of value appears to permit the aggregation of the total amount in an indictment, it has been held that what is meant is that each count must allege the \$5,000 threshold amount. See United States v. Markus, 721 F.2d 442 (3d Cir. 1983). Transactions involving less than \$5,000 can be aggregated and combined into a single count if there is sufficient relationship between the transactions or they are part of a single plan or conspiracy. See Schaffer v. United States, 362 U.S. 511 (1960); United States v. Honey, 680 F.2d 1228 (8th Cir. 1982); United States v. Perry, 638 F.2d 862 (5th Cir. 1981).

"Stolen, converted, or taken by fraud"

The phrase "stolen, converted, or taken by fraud" is intended to cover all forms of theft offenses regardless of whether such "taking" was in the nature of common law larceny, embezzlement, or false pretenses. United States v. Lyda, 279 F.2d 461 (5th Cir. 1960). See also United States v. Turley, 352 U.S. 407 (1957) (under 18 U.S.C. § 2312); and Bell v. United States, 462 U.S. 356 (1983) (under 18 U.S.C. § 2113). The phrase covers the felonious taking or conversion of another's property right in the particular object. Hence, the phrase covers any deprivation of one's title. United States v. Zepin, 533 F.2d 279 (5th Cir. 1976). There must be a deprivation of an existing property right, so the movement of one's own money out of state to avoid general creditors would not constitute such a taking. See United States v. Carman, 577 F.2d 556 (9th Cir. 1978).

Although a forged endorsement may not constitute a violation of the third paragraph of 18 U.S.C. § 2314, a false endorsement of a security having the value of \$5,000

or more would make the security "converted or taken by fraud" within the meaning of the first paragraph of 18 U.S.C. §§ 2314 and 2315. See United States v. Tyson, 690 F.2d 9 (1st Cir. 1982).

The property must retain its stolen character during the transportation under 18 U.S.C. § 2314 or the receipt, possession, concealment, storing, disposing of, under 18 U.S.C. § 2315. Full recovery by the owner or his/her agents, including law enforcement officials, will terminate the stolen character. On the other hand, if the stolen property is not in their sole possession and is only under their "surveillance," the stolen character remains. See United States v. Muzij, 676 F.2d 919 (2d Cir. 1982); United States v. Dove, 629 F.2d 325 (4th Cir. 1980).

To effectuate the legislative purposes of the statutes, the courts, utilizing the principles of equity, have created a tracing doctrine for the proceeds of such thefts or frauds. The seminal case is United States v. Walker, 176 F.2d 504, 566 (2d Cir. 1949). The change in form doctrine has been recognized and followed in other cases. See United States v. Davis, 608 F.2d 555 (5th Cir. 1979); United States v. Levy, 579 F.2d 1332 (5th Cir. 1978); United States v. Pomponio, 558 F.2d 1172 (4th Cir. 1977); United States v. Poole, 557 F.2d 531 (5th Cir. 1977); United States v. Wright, 791 F.2d 133 (10th Cir. 1986).

Venue

Venue for offenses under 18 U.S.C. § 2314 are governed by the provisions of 18 U.S.C. § 3237 which provide that a defendant may be prosecuted in any district where the interstate transportation was begun, continued, or completed.

The essence of the offense under the second paragraph of 18 U.S.C. § 2314 is the interstate transportation of the victim and hence venue would exist in any district that the

victim began, continued, or completed his/her interstate journey, see United States v. Coppola, 486 F.2d 882 (10th Cir. 1973). However, since the statute also prohibits acts of inducement, venue probably also exists where such acts were made or had their effect.

Venue for an offense under 18 U.S.C. § 2315 would normally be where one of the enumerated acts was performed. But see United States v. Melia, 741 F.2d 70 (4th Cir. 1984).

Forfeiture and Money Laundering

Forfeiture and restitution are two distinct concepts that have many similarities. Restitution, which is discussed more fully below, serves primarily to compensate the victim. Forfeiture, on the other hand, has a primary goal of divesting the criminal of his/her ill-gotten gains and exacting a punishment. Some forfeiture statutes also allow forfeiture of property the criminal has used illegally to facilitate his/her crime in addition to the property directly involved in or traceable to the offense.

The significance of forfeiture to this discussion is that it is often another vehicle the government uses to restore property to victims of fraud offenses. This happens in one of two ways. An individual with an interest in property that has been criminally forfeited can petition the Attorney General for remission or mitigation of the forfeiture and ask that it be turned over to them. See 21 U.S.C. § 853(i) authorizing the Attorney General to "grant petitions for mitigation or remission of forfeiture . . . or take any other action to protect the rights of innocent persons which is in the interest of justice . . ." Regulations governing remission and mitigation as applied to crime victims are found at 28 C.F.R. § 9.8. An alternative vehicle for restoring property to a victim is dismissal of a forfeiture action by the government in favor of restitution. In some instances, the government will prosecute a criminal forfeiture and establish clear title to the defendant's property, but subordinate its

right to forfeiture in order to allow the property to be turned over to victims who are entitled to restitution.

Forfeiture statutes fall into two broad categories: civil and criminal. Civil forfeiture is an *in rem* action against the property itself. No criminal charges need even be brought against an individual,

**Two Categories of
Forfeiture Statutes**
* Civil * Criminal *

and an acquittal on related criminal charges does not prevent the government from civilly forfeiting property. United States v. One Assortment of 89 Firearms, 465 U.S. 354, 361 (1984). Civil forfeiture is useful in situations where the government does not plan to prosecute an individual, possibly because proving the crime beyond a reasonable doubt would be unlikely. In addition, when the defendant is a fugitive and there is no expectation that he/she will ever be convicted of a crime, civil forfeiture is an effective method of divesting the wrongdoer of property because it does not require the presence of an individual defendant. Unfortunately, the means of getting civilly forfeited property to victims are few because of the lack of enabling legislation in the civil forfeiture statutes. See 18 U.S.C. § 981(e), which allows transfer of civilly forfeited property only to financial institutions and government agencies.

Criminal forfeiture requires a criminal conviction of a statute that imposes forfeiture as part of the sentence for the offense of conviction. See United States v. Aramony, 88 F.3d 1369, 1373 (4th Cir. 1997) (criminal forfeiture order vacated because underlying money laundering conviction reversed). The criminal forfeiture statute applicable in fraud and financial crimes is 18 U.S.C. § 982. Section 982(a)(1)(A) provides that a court imposing sentence on a person convicted of certain enumerated money laundering offenses, "shall order that the person forfeit to the United States any property, real or personal, involved in

such offense, or any property traceable to such property." Generally, only property involved in the offense of conviction can be forfeited. United States v. Garcia-Guizar, 160 F.3d 511 (9th Cir. 1998) (where defendant charged with selling only \$5,000 of drugs, jury could not order forfeiture of \$43,000 seized). Criminal forfeiture only forfeits the defendant's interest in property. United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Chawla), 46 F.3d 1185, 1190 (D.C. Cir. 1995) ("only the property of the defendant . . . can be confiscated in a RICO proceeding."). However, property held by third-party nominees may be forfeited because a nominee does not acquire any interest in the property. United States v. Houlihan, 92 F.3d 1271 (1st Cir. 1996) (house forfeited from defendant based on evidence showing that defendant's uncle, whose name appeared on deed, was a mere straw owner).

When the property actually involved in the offense cannot be located, has been transferred or sold to a third party, has been placed beyond the jurisdiction of the court, has substantially diminished in value or has been commingled with other property which cannot be divided without difficulty, the court "shall order the forfeiture of any other property of the defendant up to the value of any property" whose forfeiture was sought initially. 21 U.S.C. § 853(p).² This is known as the forfeiture of substitute assets. An order forfeiting substitute assets operates like a personal money judgment against the defendant and can be collected out of any assets he/she owns. United States v. Amend, 791 F.2d 1120, 1127 n. 6 (4th Cir. 1986); United States v. Conner, 752 F.2d 566, 576 (11th Cir. 1985) (because criminal forfeiture is *in personam*, it follows the defendant; it is a money judgment against him for the amount of

² The forfeiture statute found at 21 U.S.C. § 853 applies in the case of drug offenses. However, the procedures found in this statute have been incorporated by reference for forfeitures involved in money laundering and certain fraud offenses. See 18 U.S.C. § 982(a)(7)(B).

money that came into his hands illegally; government not required to trace the money to any specific asset); United States v. Ginsburg, 773 F. 2d 798, 801 (7th Cir. 1985) (en banc).

An important tool provided by the criminal forfeiture statutes is the ability to restrain assets of the defendant prior to trial. See 21 U.S.C. § 853(e) and (f). Among the options available to the government are 1) an *ex parte*, pre-indictment restraining order, 2) an *ex parte*, post-indictment restraining order, and 3) a warrant authorizing the seizure of property subject to forfeiture. The procedure for each of these tools is different. For example, to obtain a pre-indictment restraining order, the government must show a substantial probability that the United States will prevail on the issue of forfeiture, that failure to enter the order will result in property being unavailable for forfeiture and that the need to preserve the property outweighs the hardship on the party against whom it is sought. 21 U.S.C. § 853(e)(1)(B). An *ex parte* order is valid for only ten days unless the defendant consents or the court conducts a hearing or the court extends it for good cause. 21 U.S.C. § 853(e)(2). A post-indictment restraining order generally does not require a hearing and has no expiration date. 21 U.S.C. § 853(e)(1)(A). Pre-trial restraint of substitute assets is allowed only in a minority of circuits. Compare In Re Billman, 915 F.2d 916 (4th Cir. 1990) (permitting pre-trial restraint of substitute assets) and United States v. Gottj, 155 F.3d 144 (2nd Cir. 1998) (holding pre-trial restraint of substitute assets not authorized by statute). Any time a defendant's property can be restrained until the conclusion of the trial, there is a much greater chance of assets being available to satisfy an order of forfeiture or restitution.

Forfeiture must be charged in the indictment or criminal information, Rule 7(c), F.R.Crim.P., but the rule is a notice provision and property subject to forfeiture need not be itemized. United States v. DeFries, 129 F.3d 1293 (D.C. Cir. 1997). The trial need not be

bifurcated into guilt and forfeiture phases, except in the Fifth Circuit, but that is the more common practice. United States v. Garcia-Guizar, 160 F.3d 511 (9th Cir. 1998) (bifurcation not required); but see United States v. Cantu, 167 F.3d 198 (5th Cir. 1999) (noting bifurcation required in Fifth Circuit). Criminal forfeiture is part of the sentence. It is not a substantive element of the offense. Libretti v. United States, 516 U.S. 29 (1995). As a result of the Supreme Court's decision in Libretti, most courts have concluded that the standard of proof in the forfeiture phase of the trial is preponderance of the evidence. United States v. Garcia-Guizar, 160 F.3d 511 (9th Cir. 1998), but see United States v. Voigt, 89 F.3d 1050 (3rd Cir. 1996) (post-Libretti case not citing Libretti and reaffirming reasonable doubt standard for RICO forfeiture because scope of forfeiture is greater under RICO than under § 982). Each defendant is jointly and severally liable for all foreseeable proceeds of the scheme, and the government can collect the total amount from any defendant. United States v. Simmons, 154 F.3d 765 (8th Cir. 1998).

Once the defendant is found guilty of an offense triggering forfeiture and the court or the jury has made a finding that certain property is subject to forfeiture, the court enters a preliminary order of forfeiture. At that point, the defendant's interest in the property is forfeited, and he/she has no further role in the process. The government must give notice of the forfeiture of the defendant's interest to anyone reasonably believed to have an interest in the property. This is done by direct personal notice and by publication. 21 U.S.C. § 853(n)(1). The notice provides that anyone, other than the defendant, asserting a legal interest in property ordered forfeited may file a petition with the court. The court, without a jury, then rules on the petition. A petitioner will prevail and defeat a forfeiture if he/she establishes either 1) that he/she has a legal, right, title or interest in the property that was vested in the petitioner rather than the defendant at the time of the acts giving rise to

forfeiture, or 2) that the petitioner is a bona fide purchaser for value of a right, title or interest in the property and was at the time of purchase reasonably without notice to believe that the property was subject to forfeiture. 21 U.S.C. § 853(n)(6). This is known as the ancillary hearing process, and it is designed to insure that only the interest of the defendant is forfeited. For example, if a petitioner can show that the defendant had no interest in the property subject to forfeiture because the property had been stolen from the petitioner, the court will amend the preliminary order of forfeiture and restore the property to the owner/petitioner. Secured creditors who have a valid security interest in property of the defendant often file a petition to have their lien recognized when the property is disposed of. If no petitions are filed or the court dismisses the petitions, the government obtains clear title to the property, and a final order of forfeiture is entered.

The defendant then has the right to challenge the forfeiture as a violation of the excessive fines clause of the Eighth Amendment. United States v. Bajakajian, ___ U.S. ___, 118 S.Ct. 2028 (1998). In that case, the Supreme Court held that the test for excessiveness under the Eighth Amendment is whether the forfeiture is "grossly disproportional" to the gravity of the underlying offense. Pre-Bajakajian case law held that forfeiting proceeds of the crime is never excessive. United States v. Ursery, 518 U.S. 267, 291 (1996) (eight justice majority observed that "proceeds" forfeitures serve the remedial "goal of ensuring that persons do not profit from their illegal acts . . ."). The four dissenters in Bajakajian, a non-proceeds case, declared without objection by the majority, that, "As a rule, forfeitures of criminal proceeds serve the nonpunitive ends of making restitution to the rightful owners and of compelling the surrender of property held without right or ownership." 518 U.S. at 284. However, a recent Ninth Circuit case casts some doubt on what was thought to be a settled principle. See

United States v. 3814 Thurman Street, 164 F.3d 1191 (9th Cir. 1999) (holding that forfeiture of claimant's interest in property directly traceable to the proceeds of criminal activity may be constitutionally excessive).

With this general understanding of the procedural aspects of forfeiture, a brief explanation of the substantive statutes which trigger a forfeiture in a fraud case is in order. It is important to remember that there is no general forfeiture statute for proceeds of crime. While some states have laws forfeiting the proceeds or instrumentalities of crime, federal statutes which permit forfeiture are relatively narrow in scope. Title 18 U.S.C. § 982(a)(1) provides that "the court, in imposing sentence on a person convicted of an offense in violation of section . . . 1956, 1957 or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." Sections 1956 and 1957 are what are commonly referred to as money laundering offenses. Those statutes are often violated as part of a fraud scheme. For example, § 1957 makes it a crime to conduct a financial transaction in criminally derived property of a value greater than \$10,000. If a fraud artist purchases a car for more than \$10,000 with the proceeds of a federal mail fraud scheme, he/she has violated § 1957, and the money involved in the transaction is subject to forfeiture as well as the car itself. Section 1956 proscribes a variety of conduct involving property that represents proceeds of unlawful activity. It provides in pertinent part:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity –

(A)(i) with the intent to promote the carrying on of specified unlawful activity;

or ...

(B) knowing that the transaction is designed in whole or in part –

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine . . . or imprisonment for not more than twenty years, or both. 18

U.S.C. § 1956(a)(1)

The term "specified unlawful activity" is a term of art that is defined in the statute at 18 U.S.C. § 1956(c)(7). Either explicitly or by reference, it includes most federal fraud and corruption offenses. Thus if a defendant engaged in a mail fraud thereafter deposits a check from the victim of his/her scheme into a bank account and uses those funds to pay his/her employees, he/she is guilty of promotion money laundering under 18 U.S.C. § 1956(a)(1)(A)(i) because he/she engaged in a financial transaction, which involved the proceeds of specified unlawful activity, with the intent to promote the carrying on of specified unlawful activity. Another common fact scenario occurs when a defendant takes the proceeds of mail fraud and deposits those funds into a bank account that has been set up using a bogus name. That defendant is guilty of concealment money laundering under 18 U.S.C. § 1956(a)(1)(B)(i) because he/she engaged in a financial transaction, which involved the proceeds of specified unlawful activity, knowing the transaction was designed to conceal or disguise the ownership or control of the proceeds of the specified unlawful

activity. There is a myriad of factual variations where the money laundering statutes will be implicated as part of a fraud scheme. Unlike § 1957, § 1956 contains no requirement that the amount of money involved exceed \$10,000. In addition to the fact that a money laundering conviction triggers forfeiture, federal Sentencing Guidelines for money laundering are substantially stiffer than for the underlying fraud offense alone. For example, promotion money laundering in violation of 18 U.S.C. § 1956(a)(1)(A), starts with a base offense level of 23 as compared to a base offense level of 6 for mail and wire fraud. Compare USSG § 2S1.1 with USSG § 2F1.1. This merits consideration of charging a money laundering violation when the facts support such a charge.

Criminal forfeiture is also triggered by the mere conviction of certain offenses without reference to money laundering. 18 U.S.C. § 982(a)(2)B provides in pertinent part:

The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate –

section 1341, 1343, or 1344 of this title, affecting a financial institution . . .

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation. 18 U.S.C. § 982(a)(2)(A)

In this case, however, the phrase "affecting a financial institution" modifies all of the preceding statutes recited in the sub-section. Under this sub-section, no money laundering need be charged to trigger a forfeiture; however, the sub-section is inapplicable unless the crime affects a financial institution, which really means that the financial institution must suffer the loss to eliminate the need to convict the defendant of money laundering in order to trigger a criminal forfeiture.

Conspiracy

The general conspiracy statute, 18 U.S.C. § 371, creates an offense "[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose" (emphasis added). See Project, Tenth Annual Survey of White Collar Crime, 32 Am. Crim. L. Rev. 137, 379-406 (1995) (generally discussing § 371). The operative language is the so-called "defraud clause," that prohibits conspiracies to defraud the United States. This clause creates a separate offense from the "offense clause" in Section 371. Both offenses require the traditional elements of Section 371 conspiracy, including an illegal agreement, criminal intent, and proof of an overt act. The conspiracy statute's primary advantage is that all of the defendants can be tried together. This often resolves certain evidentiary legal issues as well.

SENTENCING IN THE FEDERAL SYSTEM

In deciding whether to proceed federally or in state court, the applicability of the United States Sentencing Guidelines (U.S.S.G.) provides a straightforward means to reliably estimate the likely sentence for the fraud discovered. While relevant caselaw will differ on the specific application of guideline provisions, in general the sentence can be calculated prior to the charging decision.

The U.S.S.G. establishes a calculation formula for any federal criminal offense. Specific offense characteristics are taken into account to determine a base offense level. The defendant's prior criminal history is also calculated with points assigned for each prior

conviction. The sentencing range is then found by consulting the sentence chart. The court must sentence within that range unless there are specific grounds to depart from the guidelines.

In fraud cases, the governing guideline is U.S.S.G. §2F1.1(a). The base offense level is then increased based on the total value of property defrauded which aggregates all of the defendant's conduct and that conduct of others for which the defendant is held culpable. U.S.S.G. §2F1.1(b)(1)(I). If the defendants engaged in more than minimal planning or defrauded multiple victims, the base offense level is further increased. U.S.S.G. §2F1.1(b)(2). Where the victim is unusually vulnerable, all too common in these types of cases, the base offense level is increased. U.S.S.G. §3A1.1(b). If the defendant abused a position of trust, again an all too frequent occurrence, the base offense level is increased. U.S.S.G. §3B1.3. The organizer or leader of the scheme will be increased above the other participants. U.S.S.G. §3B1.1(a). Finally, if the defendant demonstrates an acceptance of responsibility, most often by a guilty plea prior to the government having to prepare for trial, the base offense level can be reduced. U.S.S.G. §3E1.1.

Applying these sentencing formula rules to a hypothetical fraud scheme targeted against several elderly home owners, carried out by several persons, which resulted in approximately \$303,000 in proceeds, where the defendant to be sentenced led the group and pled guilty early, and the defendant had only one prior felony conviction, the guideline calculation would result as follows:

THE FEDERAL OPTION

GUIDELINES SECTION	EFFECT ON BASE OFFENSE LEVEL	RUNNING TOTAL - sentencing guideline range
1. U.S.S.G. §2F1.1(a)	+6	6
2. U.S.S.G. §2F1.1(b)(1)(I) – (\$303,000 in proceeds)	+8	14
3. U.S.S.G. §2F1.1(b)(2) – More than minimal planning/multiple victim	+2	16
4. U.S.S.G. §3A1.1(b) – (Vulnerable victim)	+2	18
5. U.S.S.G. §3B1.1(a) – (Organizer/leader)	+4	22
6. U.S.S.G. §3B1.3 – (Position of trust)	+2	24
7. U.S.S.G. §3E1.1 – (Acceptance of responsibility)	-3	21
Sentencing Range		Crim.Hist.i - 37-46 mos.

In this hypothetical case, the district court would be required to impose a sentence between 37 and 46 months. The sentence would be served without parole and would be followed by a 3-5 year term of supervised release in which the defendant would be supervised by an U.S. Probation Officer. Any further criminal conduct would result in a sentence potentially the length of the term of supervised release.

In addition, the district court could sentence above the guidelines formula calculation where the court found one or more factors justified upward departure from the

guidelines. Some factors for departure are mandatory and others are encouraged³. Departure (up or down) are governed by U.S.S.G. § 5K2.0. This section allows the court to impose a sentence other than as calculated where certain factors may apply. U.S.S.G. § 5K2.0 provides,

Under 18 U.S.C. § 3553(b) the sentencing court may impose a sentence outside the range established by the applicable guideline, if the court finds "there exists an aggravating . . . circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." Circumstances that may warrant departure from the guidelines pursuant to this provision cannot, by their very nature, be comprehensively listed and analyzed in advance. The controlling decision as to whether and to what extent departure is warranted can only be made by the courts.

The departure provisions have been held to apply even though the reason for departure may be taken into consideration in the guidelines (e.g., as a specific offense characteristic or other adjustment) if the court determines that, in light of unusual circumstances, the guideline level attached to that factor is inadequate.

In cases of frauds targeting the elderly, several factors regarding the victims exist which would justify upward departure. See, egs., United States v. Bailey, 892 F.Supp. 997, 1006.(N.D. Ill. 1995). In particular, several factors will exist in these types of cases to levels not seen in routine fraud cases. First, the elderly are particularly vulnerable to schemes such as the defendants.¹ Second, upward departure is appropriate where, as here, the defendants

³ See, United States v. Rybicki, 96 F.3d 754, 757-758 (4th Cir. 1996); and, United States v. Hairston,

exploited the unique characteristics of the elderly victims' situations and their trusting nature. Third, upward departure is appropriate where these defendants evade detection by exploiting and victimizing those least likely to report the crime. Fourth upward departure is appropriate because the defendants' scheme denigrates the memory and legacy of the departed spouse who has worked throughout life to provide for the surviving spouse who has often been left destitute by the scheme. Finally, fifth, demographic trends suggest the problem will increase. The demographic reality is that the United States' population is aging. At current demographic trends, a much larger percentage of our population will be over 65 years of age.⁴ Thus, the potential group of particularly vulnerable victims will grow substantially. In sentencing the defendants, the Court must send a clear, strong message that pillaging the elderly is abhorrent.

Other grounds for departure may also exist. First, the defendants' criminal history may understate the nature and seriousness of their past criminal record. Many of these defendants will have on the criminal records multiple arrests that did not result in convictions. Especially with elderly victims, the victim may have a poor memory or even have died before the case was brought. Thus, where a defendant has multiple arrests but no or few convictions, the court could determine that the defendant's criminal history category should actually be higher and sentence above the computed range. See, egs., United States v.

96 F.3d 102, 105-106 (4th Cir. 1996).

⁴ Between 1989 and 2030, the 65+ population is expected to more than double. By 2020, the 65+ population will reach 52 million, and by 2030, the graying of the baby boom will result in 65.6 million 65+ years of age. U.S. Bureau of the Census, "*Projections of the Population of the United States by Age, Sex, and Race: 1988 to 2080*", by Gregory Spencer, printed in *Current Population Reports*, Series P-25, no.1018 (January 1989).

Bailey, 892 F.Supp. 997, 1008 (N.D. Ill. 1995). Recidivism is certainly a reason for departure. USSG §4A1.3, comment. (backg'd).

Second, where there is death and/or psychological injury resulting from the defendant's conduct, the court may order an upward departure. See, USSG § 5K2.1, 5K2.3 (psychological injury knowingly risked). The impact on an elderly victim losing his/her home or all of his/her life's savings cannot be overestimated; it has been at least anecdotally noted that on losing their independence and savings, many elderly do in fact die. See, egs., United States v. Dobish, 102 F.3d 760, 763 (6th Cir. 1996) (psychological impact justified upward departure of four levels); United States v. Kaye, 23 F.3d 50, 53-55 (2d Cir. 1994) (affirming upward departure based on finding that defendant's fraud, depriving his great-aunt of her life savings, involved a degree of harm not adequately considered by Commission); United States v. Stouffer, 986 F.2d 916, 927-28 (5th Cir.) (affirming departure based on finding that fraud scheme caused thousands of investors to lose their life savings), cert. denied, 114 S. Ct. 115 (1993); United States v. Pelkey, 57 F.3d 1061, Unpublished Disposition, 1995 WL 365998, *2 (1st Cir.(1995)) (defendant had knowingly endangered the solvency of several of her victims; departed upward two levels); United States v. Benskin, 926 F.2d 562 (6th Cir.1991) (upward departure to statutory maximum sentence).

Third, upward departure is appropriate in these type cases where there is property damage or loss not taken into account within guidelines. See, U.S.S.G. § 5K2.5. Illustrative examples justifying departure include:

- (a) . . . the fraud caused or risked reasonably foreseeable, substantial non-monetary harm;
- (b) the offense caused reasonably foreseeable physical or psychological harm. . . ;
- (c) the offense caused a loss of confidence in an important institution;

(d) the offense involved the knowing endangerment of the solvency of one or more victims.

U.S.S.G. §§ 2B1.3 and 2F1.1 (comment, n.10(a)). *See, egs., United States v. Dobish*, 102 F.3d 760, 763n.1 (6th Cir. 1996) (departing upward four levels based on factors of nonmonetary harm and serious psychological injury suffered by victims, jeopardizing of victims' solvency, and repetitive and prolonged nature of defendant's crimes); *United States v. Benskin*, 926 F.2d 562 (6th Cir.1991); *United States v. Astorri*, 923 F.2d 1052, 1058 (3rd Cir. 1991); *United States v. Strouse*, 882 F.Supp. 1461, 1466 (M.D. Pa.1995) (psychological injury from loss of retirement savings, loss of home and damage to relationships merited a 3 level upward departure).

Fourth, these defendants will often be found in possession of weapons, kept in their vehicles, even though the weapons are not used in the actual fraud. Courts have held that applying U.S.S.G. § 5K2.6 (mere possession of a weapon during criminal activity), the defendants' possession of weapons during the criminal conduct merits an upward departure. *U.S. v. Gaddy*, 909 F.2d 196 (7th Cir.1990) (2 level increase for merely having a gun while committing a fraud). Certainly it is clear that a felon with a gun is a more dangerous person. *See, United States v. Aiken*, 775 F.Supp. 855 (D.Md. 1991); *United States v. Washington*, 907 F.Supp. 476 (D.D.C. 1995).

Finally, fifth, the threat to public welfare from defendants' conduct may merit an upward departure. U.S.S.G. § 5K2.14. While the basis for this ground is somewhat redundant, courts have held that targeting the elderly does uniquely impact on the general public welfare. *United States v. Harris*, 920 F.Supp. 132-33 (D. Nev. 1996) (*in bond hearing* fraud rings which target and swindle the elderly have ruled they present clear dangers to the community's welfare). The detection of this type of crime is difficult, defrauding the elderly is

an underreported⁵ crime due to the social stigma and trauma associated with disclosure and the fear of the elderly, and the success rate in investigating these crimes is poor. Thus, the threat to public welfare is real and continuing in these cases.

RESTITUTION

"Federal courts possess no inherent authority to order restitution, and may only do so as explicitly empowered by statute." United States v. Hensley, 91 F.3d 274, 276 (1st Cir. 1996). But Congress has increasingly made it clear that restitution is an important component of a federal sentence. Since passage of the Victim and Witness Protection Act of 1982 [VWPA], federal judges have had the discretion to order a defendant to pay restitution to victims. See 18 U.S.C. §3663-64. Case law in many circuits required the court to take into account the defendant's resources and the needs and earning ability of the defendant and his/her dependents. See United States v. Bruchey, 810 F.2d 456 (4th Cir. 1987). Effective September 13, 1994 courts for the first time were required to order restitution for certain enumerated offenses. Among those offenses that required mandatory restitution was telemarketing fraud in violation of 18 U.S.C. §1028-29 and 18 U.S.C. §§1341-44. The mandatory restitution provision is found at 18 U.S.C. §2327.

On April 24, 1996 the Mandatory Victims Restitution Act [MVRA] went into effect. That act now requires that a defendant convicted of a federal crime that is a crime of violence or an offense against property must be ordered to pay full restitution to the victim of the

⁵ It is estimated that over 40% of all crimes committed in the United States are not reported. Moreover, in swindles against the elderly, even if reported, nonrecording in the form of official police reports is common, reflecting the mistaken belief that these are not "serious" crimes. *Confidence Swindles Survey*, p.25-26. In the national survey, some of the respondents volunteered higher estimates for unreported swindles of elderly, ranging from 50 to 90 percent. *Confidence Swindles Survey*, p.41.

offense. 18 U.S.C. §3663A. The defendant's financial situation is no longer a consideration because §3663A(a)(1) states that a court "shall order" restitution "notwithstanding any other provision of law . . ." E.g., United States v. Baggett, 125 F.3d 1319, 1322 (9th Cir. 1997); United States v. Newman, 144 F.3d 531 (7th Cir. 1998). The defendant's financial situation remains relevant only for purposes of establishing a payment schedule. E.g., United States v. Reg, 161 F.3d 1111 (8th Cir. 1999) ("When fashioning a payment schedule, a court is required to consider the defendant's financial resources . . . 18 U.S.C. § 3664(f)(2)"). The only exceptions to mandatory restitution that exist in these situations are cases involving property crimes where 1) the court determines that the number of identifiable victims is so large as to make restitution impracticable, or 2) the court determines that deciding complex issues of fact related to losses would complicate the sentencing process to a degree that the need to provide restitution is outweighed by the burden on the sentencing process. 18 U.S.C. §3663A(c)(3). However, unless the offense falls into one of the three broad categories found at §3663A(c)(1), which appear to encompass most federal crimes, restitution is not mandatory and the economic factors cited above are still factors the court must consider. 18 U.S.C. §3663(a)(1)(B)(i)(ii).

If the court concludes to award restitution in those cases where restitution is not mandatory, the court must order restitution to each victim in the full amount of each victim's losses, without consideration of the economic circumstances of the defendant. 18 U.S.C. §3664(f)(1)(A). In other words, the court can, in cases of discretionary restitution, consider the defendant's economic situation in determining whether to even order restitution in any amount. But once it concludes to award restitution in those situations, it must award restitution for the full amount of the loss, just as in the case of mandatory restitution.

However, even when full restitution is ordered, the court can conclude that the defendant's economic circumstances do not allow the payment of any restitution, and it can order "nominal periodic payments." 18 U.S.C. §3664(f)(3)(B). This later section appears to contradict the language in §3664(f)(1)(A), which directs full restitution "without consideration of the economic circumstances of the defendant." The two apparently conflicting provisions, §3664(f)(1)(A) and (f)(3)(B), may be reconciled by focusing on the fact that §3664(f)(3)(B) refers only to "payments" and does not speak to the actual amount of the restitution order which is addressed at §3664(f)(1)(A). For example, a defendant may be ordered to pay full restitution as determined by the victim's loss, §3664(f)(1)(A), but to only make nominal payments on that debt if his/her economic situation does not permit full payment. This procedure would leave the victim with the ability to enforce the restitution order (for the full amount) if the defendant's finances improved in the future.

Perhaps the most succinct statement of the changes brought about by the enactment of the MVRA and how it works in practice is the following:

[T]he amended version of the VWPA [referring to the MVRA] requires the court to impose "full" restitution without considering the defendant's economic circumstances. 18 U.S.C. §3664(f)(1)(A) (1996). After ordering full restitution, the court must set a payment schedule. 18 U.S.C. §3664(f)(2). If the defendant proves indigency, the court can order nominal periodic payments. 18 U.S.C. §3664(f)(3)(B). But under the old version of the VWPA, the procedure is reversed; the court must first consider the defendant's financial circumstances before setting the amount of restitution to be paid. 18 U.S.C. §3664(a) (1995).

United States v. Baggett, 125 F.3d 1319, 1322 (9th Cir. 1997); see also United States v. Mathison, 157 F.3d 541, 551 (8th Cir. 1998) (MVRA requires restitution be ordered "without considering the economic circumstances of the defendant."); United States v. Jacobs, 167 F.3d 792 (3rd Cir. 1999) ("at least four other circuits have found the MVRA is a mandate requiring full restitution for certain crimes . . .").

A majority of decisions on the effective date of the MVRA amendments holds that the new act only applies to offenses occurring after that date. United States v. Siegel, 153 F.3d 1256, 1260 (11th Cir. 1998); United States v. Edwards, 162 F. 3d 87 (3rd Cir. 1998) (holding that retrospective application of the mandatory restitution provisions of the MVRA would violate the Ex Post Facto Clause); United States v. Duncan, 1998 WL 558756 (4th Cir. 1998) (unpublished) (holding MVRA applicable because conviction included conduct that was not completed until after April 24, 1996); United States v. Thompson, 113 F.3d 13, 15 n.1 (2nd Cir. 1997); United States v. Williams, 128 F.3d 1239, 1241-42 (8th Cir. 1997) (holding that restitution under MVRA is punishment for ex post facto purposes, but affirming full restitution under MVRA because a small portion of conduct occurred after effective date of MVRA); United States v. Sclafani, 996 F. Supp. 400 (D. N.J. 1998); but see United States v. Nichols, 169 F.3d 1255, 1279 (10th Cir. 1999) (rejecting majority view and following United States v. Hampshire, 95 F.3d 999, 1006 (10th Cir. 1996) which characterized restitution as compensation as opposed to punishment for ex post facto analysis); United States v. Newman, 144 F.3d 531 (7th Cir. 1998) (victim restitution is not criminal punishment, but remedial, therefore application of MVRA to conduct prior to MVRA does not violate ex post facto clause); United States v. Szarwark, 168 F.3d 993, 998 (7th Cir. 1999) (re-affirming Newman, *supra*.). The

enforcement provisions of the MVRA should not be subject to ex post facto considerations and are therefore applicable to all sentences imposed after the effective date.

Forfeiture and restitution are not mutually exclusive, and there is nothing wrong with a sentencing court requiring a defendant to, in effect, pay twice by forfeiting to the government the property involved in the offense and ordering restitution to the victim. United States v. Emerson, 128 F.3d 557, 566-67 (7th Cir. 1997); United States v. Tencer, 107 F.3d 1120, 1135 (5th Cir. 1997) (affirming restitution order for \$451,000 to fraud victims plus criminal forfeiture of \$1 million which included the fraud proceeds plus commingled funds); but cf United States v. Hawkey, 148 F.3d 920, 928 (8th Cir. 1998) (remanding forfeiture judgment to the district court to reduce it by the amount defendant returned to the victims of the underlying fraud). However, from a practical standpoint, very few defendants have the resources to pay restitution other than with the proceeds of their crime. Funds collected by the United States from a defendant are first applied to the mandatory special assessment (which ultimately goes into the Crime Victims Fund), then to restitution and finally to fines and other penalties. 18 U.S.C. § 3612(c). As a matter of policy, property subject to forfeiture will be applied to restitution when, as is commonplace, the defendant has insufficient assets to pay both forfeiture and restitution.



CHAPTER EIGHT: PREVENTION

INTRODUCTION

Even though many remodeling and repair projects cost as much as or more than a new car, the typical consumer spends significantly less time researching the remodeling or repair project. The Better Business Bureau says complaints about home repair and remodeling are always in the top ten of the more than three hundred types of businesses the BBB monitors. In many jurisdictions, only auto repairs, car dealers, and dry cleaning generate more consumer complaints than home repair and remodeling.

Prosecutors in jurisdictions with a high proportion of elderly are generally aware that a significant proportion of their constituency represents potential victims of home improvement fraud scams. These offices also realize that the effective prosecution of such scams requires the cooperation of other agencies to detect and enforce regulations. The inclusion of a strong, multidisciplinary prevention component to increase the public's awareness and willingness to report such cases and ultimately reduce the number of potential victims.

To effectively reduce fraudulent activities in a community, coordinated efforts involving local, state, and federal authorities combined with targeted public awareness and prevention efforts are the most promising approach. Currently, such coordinated efforts exist mainly between state, federal or national agencies and organizations. The link to local efforts is often missing. The involvement of local prosecutors is not only needed to enhance the justice systems' capability to prosecute the offenders, but especially to assist the victims

of such scams and create a local awareness of home improvement fraud and its related issues.

With local prevention and prosecution collaboration in mind, this chapter offers some practical tips and basic information prosecutors can use as the foundation for their community education efforts.

PRACTICAL TIPS

Don't Ever Do This

Unless you want to lose a lot of money, **DON'T EVER** do the following:

- ⊗ Hire a contractor who solicited you by knocking on your door.
- ⊗ Hire a contractor who uses high-pressure sales tactics ("sign today or the price will go up").
- ⊗ Hire a contractor who offers a reduced price because he/she has "leftover" material from a previous job nearby, or is already working in the neighborhood.
- ⊗ Hire a contractor who offers you a discount or a low price if you find other customers, or if you will allow your job to be a "demonstration project."
- ⊗ Hire an unregistered contractor.
- ⊗ Hire a supposedly registered contractor whose registration you don't check.
- ⊗ Hire on a handshake – rather, get everything in writing and read everything the contractor gives you.
- ⊗ Go on vacation while the contractor is working at your home and give the contractor your house key.

- ⊙ Ignore Notices of Intent to File Lien that you receive from subcontractors or suppliers.

Finding Good Contractors

Word of mouth is the best way to locate a good contractor. Good sources include neighbors, co-workers, friends (especially if their project was similar to yours), architects, building supply stores, building inspectors, and trade associations. Many are part of the National Association of Home Builders Remodelers Council (<http://www.remodelingresource.com/>), (800) 368-5242. Call the national association for names of remodelers in other geographic areas, or use their list of remodeling councils. Another trade association is the National Association of the Remodeling Industry (NARI) (<http://www.nari.org/>), (703) 575-1100. Another possible source is ImproveNet (<http://www.improvenet.com>), a private source of recommended contractors and other remodeling and repair tips.

Interviewing Potential Contractors

Before interviewing the potential contractors you have found, you should have plans or at least a good idea of what your project will be, the kinds and quantities of materials you want, your budget, and when you want to begin the job. Remember: you are buying a service, not a product. Your goal is to find contractors you think you can work and communicate well with, who listen carefully to you, and who are interested in your project. Here are some preliminary questions you want to ask:

- Are you registered? What is your registration number?
- Have you done a job similar to this before? If so, may I contact the owners?

- Please give me a list of at least three references I can contact.
- When could you start this job? How long do you estimate it will take to complete it?
- Who are your suppliers and subcontractors?
- Do you have a current worksite I could visit?
- How long have you been in business? (Most contractor business failures occur in the first 3-5 years).

Checking References

This is one of the most important parts of hiring a good contractor. You should personally visit as many of the jobs as possible and necessary to get a good sense of the quality of the contractor's work. Here are some suggested questions to ask a contractor's references:

- What was the type and size of the job done?
- How accurate and complete were the contractor's plan, budget and schedule?
Did the contractor offer options or alternate plans?
- Did the contractor keep appointments and return phone calls promptly?
- Was the contractor easy to talk with and responsive to concerns, questions, and requests?
- How did you resolve any problems that arose during the job? How did the contractor contribute to problem solving and the resolution?
- Was the contractor well organized?
- Did the contractor meet promised deadlines?
- Did the contractor present written change orders in advance of doing extra work?

- Did the contractor maintain a neat worksite? Did work crews show up on time?
- Were you pleased with the quality of work? Was the architect pleased?
- Was your project completed on time and within budget?
- What kinds of problems arose after the project was completed? Has the contractor fixed them? Were they fixed promptly?
- Did you enjoy working with the contractor? Did he/she keep you informed as the job progressed?
- Are you pleased with how your project turned out?
- Would you hire this contractor again?

Checking Out a Contractor



Is he/she registered? Registered contractors must post a bond that is available to pay civil judgments, must pay workers compensation (which means the homeowner can't be sued for injuries to a worker), and must carry liability insurance to protect the homeowner from suits by third parties. How long has he/she been registered? Have there been claims against the contractor's bond? To check registration:

- Department of Labor and Industries Registration Database: <http://www.lni.wa.gov/contractors/contractor.asp>
- The Department of Labor and Industries offers a free brochure. "Hiring a Contractor or Remodeler: What you Should Know."

-  Check with the Better Business Bureau (<http://www.bbb.org/>) for complaints or lawsuits filed. You'll need the telephone number of the contractor including the area code.
-  Has he/she been sued? Inquire in at the clerk of courts office in your local county courthouse.
-  Check the contractor's payment history, credit reputation, and general reputation with the suppliers and subcontractors given as references. Ask suppliers whether the contractor has an account with them or is required to pay cash when the materials are delivered. This is one of the best ways to identify a contractor who is a poor financial manager or is having financial problems despite a good reputation and long history. Ask whether bills are paid in a timely manner.
-  Visit current worksites of the contractor. Check for organization, cleanup, quality of work.
-  ImproveNet (<http://www.improvenet.com>) will run a legal and credit check on a contractor for \$29 (3/99).

Obtaining and Assessing Bids

-  Conventional wisdom is to obtain three bids, from the three contractors you have selected as your finalists. Bidding is time consuming, so many contractors insist there be no more than two or three bidders. It is important that your scope of work and materials be clearly defined, so that the bids are for the identical work.
-  Take time to compare the bids carefully. Be sure each bid includes everything you want. If a bid contains unwanted or unneeded items, keep these in mind for possible

negotiations with the contractor. Remember that the bid is a starting point in your negotiations.



Be cautious of low bids. Sometimes a low bidder is planning to steal your down payment or is financially shaky and desperate for a contract. A particularly low bid may indicate that the contractor does not fully understand the scope of the project or is too inexperienced to accurately estimate the amount of labor and materials required. If the bidder has made a mistake, there may be a temptation to cut corners on the job to avoid a loss on the contract; or the contractor may end up walking off your job.



Remodeling is a very personal process. You will be working with your contractor for weeks, or months, so personal compatibility is critical. If one of your bidders stands out as compatible with you, it probably is worth paying extra for that compatibility. If that contractor ranks highest in competence and customer service, but is beyond your budget, you may want to work with him/her to change some of the materials or other aspects of the job to meet your budget.



Price and personality are not the only considerations. You also should ask about the following important items (discussed in detail in the Put it in Writing section below):

- Payment amounts and schedule.
- Beginning date and construction schedule.
- The contractor will obtain the necessary permits.
- Warranty – coverage and duration.

Put It in Writing

You should have a written contract for any job that is more than a minor home repair. The homeowner(s) and the contractor should sign the contract. The contract should cover the following issues:

- ☞ The contractor's name, address, telephone number, and registration number. Get a copy of the contractor's registration and certificate of issuance.
- ☞ A visual representation - blueprint, floor plan, sketches - that shows what the remodeler will do and where.
- ☞ The timetable for the project, including approximate start and completion dates.
- ☞ The price, sales tax, and building permit fees.
- ☞ It should provide that the contractor will obtain the necessary permits. This protects you in three ways:
 - A contractor must be registered to obtain a permit.
 - Permits insure the job will be inspected by building inspectors. This is a check on the adequacy of the work.
 - "Bootleg" jobs, those done without the required permits, can become a significant issue when you sell your home.
- ☞ It must specify in detail the work to be performed and the materials to be used (grade of lumber, brand name, model number, color, size).
- ☞ Include any oral promises made by the contractor and/or salesperson/estimator.
- ☞ Specify a payment schedule. **"Control the money, and you control the job."**
 - Most commentators suggest that any down payment not be more than 10-20% of the total contract price. Remember, a financially sound contractor will receive credit from suppliers and should be able to meet payrolls until the first payment

PREVENTION

event is achieved. If there is a larger down payment for the purchase of specific items (often custom items) or labor, be sure that the purpose of the down payment is specified in the contract. If the contractor uses the money for some other purpose, the contractor may be guilty of theft by embezzlement. You could make the check payable to the supplier and contractor jointly or pay the supplier directly.

- There should be "progress payments" made as specific parts of the job are completed and liens are released. The homeowner's greatest leverage for getting the job done on time is holding back payments.
- The payment schedule should include "retainage" of 5-20% of the total price. Retainage is an amount held back by the homeowner until everything is completed to the homeowner's satisfaction. The retainage amount should not be payable until the job site is cleaned up satisfactorily, all building inspections have been completed, all suppliers and subcontractors have been paid, all requested lien releases have been provided to the homeowner, and the homeowner is satisfied with the work (the homeowner must act reasonably).
- ☞ It should sets forth procedures for handling change orders (changes to the job). Changes should be in writing and should include prices, full descriptions, and authorization in writing before any new work begins.
- ☞ There should be provisions for resolution of any conflicts that may arise. Many contracts provide for arbitration or mediation.
- ☞ The duration (one year is typical) and coverage of the contractor's warranty. Typical coverage is all labor and any materials the contractor installs that are not covered

by a manufacturer's warranty.

☞ The contract can also cover such issues as access to your home, care of the premises, use of your telephone and bathroom, and cleanup and trash removal, or these can be agreed on orally before the job starts. For possible issues, see Pre-Construction Details and Managing the Job.

☞ ImproveNet (<http://www.improvenet.com>) will review your contract for \$35 (3/99).

Pre-Construction Details

Much of this section is from Living With Your Project, from the Remodelers Council of the National Association of Homebuilders.

Some commentators suggest a pre-construction meeting. An alternative is to discuss these issues with your contractor before you sign a contract. Any important provisions can be written into the contract.

The pre-construction meeting allows your remodeler to clarify procedures and explain how the job will progress. It also offers both you and your remodeler an opportunity to resolve the details of how the job will be done. You should think of this meeting as a forum for you and your contractor to define your expectations and agree on the anticipated outcome.

Some of the issues you may wish to cover at this meeting include:

- Will you allow your remodeler to place a company sign on your property? In addition to being a marketing tool, signs help contractors and suppliers locate your home.
- How will workers, construction equipment, and vehicles get to the job site without damaging outside structures, plants, and flower beds?
- What areas of your home will be off limits to workers?

PREVENTION

- Do you have a place on site to store building materials for your project?
- Who is responsible for removing your belongings and later returning them to the newly remodeled space?
- Will workers need access to the electrical panel, the water shut-off valve, and areas not being remodeled?
- Does your house have an alarm system? Will workers need a key or will someone always be there?
- How will you ensure that your children and pets stay out of the workspace?
- Does the space to be remodeled contain any special items that you would like to save from demolition? If so, where should they be stored?
- What are your expectations regarding clean up? Will sweeping be sufficient for a daily cleaning, or will you need a more thorough cleaning in order to use the space?
- How will trash removal be handled?
- Where will the remodeler put a dumpster on your property?
- Does the remodeler anticipate any interruptions of utilities during the project? If so, when and for how long? At certain stages of construction, the project may affect basic household necessities like water and electricity. Will you need to vacate the house at any time?

You should also use the pre-construction meeting to establish guidelines for the remodeling crew working on the project:

- What times will workers begin and end work at your home? Be sure to consider the neighbors as well as household members. Your remodeler may contact your

neighbors and give them a phone number to call if they have any concerns about your project.

- Where can workers park near your jobsite?
- Will you allow workers to use your phone for local business calls?
- Will bathroom facilities in your home be available to workers?
- What is the remodeler's policy on smoking on the jobsite?
- What is the remodeler's policy on the use of profanity? If you are especially sensitive to this issue, you should let your remodeler know.
- Will you allow workers to play their radios at a reasonable volume? Are there any stations or programs that you do not want played?

Managing the Job

Much of this section is from [Living With Your Project](#), from the Remodelers Council of the National Association of Homebuilders.

Make frequent inspections of the job. Be sure all permits are in place and inspections are in order. If problems arise during the project, address and resolve them immediately. Regular meetings with your contractor during the course of the project will keep you in touch with the project as it progresses and will facilitate timely resolution of any problems.

Experienced mediators say homeowners are the cause of half the disputes they handle, and lack of communication usually is the problem. Consistent and open communication between you and your remodeler will enhance your understanding of the project, provide an opportunity to exchange ideas and concerns, and ultimately help to make the experience a positive one for everyone involved. To facilitate this process, you need to:

- Determine who you and your remodeler should contact for daily decisions or an after-hours emergency. For example, your contact may be the lead carpenter for the job, while the remodeler's contact could be your spouse.
- Designate a backup for each contact person to assure continuity in anyone's absence.
- Create a place in your house where the contact persons can leave messages for each other (a securely anchored notebook is a good idea since it is less likely to disappear).
- Speak up. If you are uncertain about any aspect of the project, be sure to let the contact person know.

Consider keeping your own daily journal of what happens and what is said. Keep a job file of all papers relating to the project.

Be sure your progress payments don't get ahead of the actual work done. To stay on schedule, you need to plan ahead:



Expect to set aside time for telephone calls and regular meetings with your contact person to review progress and discuss the schedule for remaining work.



Ask your remodeler to provide you with a weekly schedule.



Ask your remodeler which product orders require the longest lead times. For custom-made items, it is especially important to make your selections as early in the process as possible.



Realize that changes you make to the project after work has begun may affect the schedule and the budget.

Having your home remodeled is uniquely different from having a new home built. With remodeling, your home is the worksite. You live side-by-side with the project from start to finish. Once construction begins, you'll probably long for simple pleasures like a dust-free home or a fully functioning kitchen or bath. Many homeowners feel a loss of control that results from disrupted routines and the impact on your personal space. Remember that "this too shall pass," focus on the progress being made, and remember that the end result will be well worth these inconveniences. To help you arrive at a completed remodel with your sanity intact, here are some tips on adapting to your home as a worksite:

- Prepare for inconvenience. A remodeling project can turn your home and, on some days, your life upside down. A kitchen remodel will, of course, affect meal planning. But a little ingenuity and some culinary shortcuts can lessen the impact. Set up a temporary cooking quarters by moving the refrigerator, toaster oven, and microwave to another room. Arrange a dishwashing station in your laundry room. If the weather is warm, fire up the grill and dine alfresco.
- Designate a safe haven in your home where you can escape from the chaos and commotion.
- Guard against dust. During a remodeling project, dust has the unfortunate tendency to appear everywhere from lampshades to plates stacked inside your kitchen cabinets. To keep out as much dust as possible: 1) Seal off doorways and stairs; 2) Turn off central air or heat when workers are sanding and stock up on extra filters so that you can change them often; 3) Have deliveries made through a designated entrance; 4) Use doormats and temporary floor coverings where appropriate; and 5) Remove anything that might get damaged by the dust or at least cover it with plastic drop cloths that are taped shut.

- Maintain a sense of humor. Remember that certain things are out of your control and it's best to laugh rather than upset yourself about things like the weather or delayed delivery of materials.
- See the remodeling process as an adventure. Tell the kids that you are "camping in" and transform inconvenience into fun. Along the way, celebrate as different stages of the project are completed. A nice dinner out, for instance, could mark the day the drywall is completed.

How to Avoid Lien Problems

Before starting work, a contractor must provide you with a disclosure statement that advises consumers about lien releases. This requirement applies to projects where the combined cost of labor and materials is over \$1,000.

Understanding lien releases is very important because a contractor's \$4,000 or \$6,000 bond may not be enough to cover a claim if one arises on your job. If any worker, subcontractor or supplier of materials is not paid, a lien may be filed against your property to force you to pay. You could pay twice for the same work or materials. Or worse, an unpaid lien could lead to foreclosure of the lien. (For remodeling projects, liens can only be filed for the amount left unpaid to the general contractor.)

Liens can be avoided. If during your project you receive a "notice of intent" to file a lien on your property, you may ask your general contractor to provide you with lien release documents from the supplier or subcontractor who has sent this notice. You can make the check payable to both the contractor and the person who sent you the notice of intent to file a lien.

The contractor is required to provide you with more information about lien release documents if you request it. If you have requested lien release documents, do not make final payment until you have received the lien release documents.

If Your Contractor Doesn't Finish the Job, Does Shoddy Work, or Leaves You with Liens

If the job isn't finished, or the work is substandard:

- ❑ Photograph or videotape (with your commentary) your property showing the condition in which the contractor left it.
- ❑ Take steps to protect your property from further damage. This may mean hiring another contractor to complete the work, to fix dangerous conditions, or to prevent damage to your home from weather.
- ❑ Figure out your damages. Ask your new contractor, or a contractor you specifically hire for this purpose to give you three written estimates:
 - One stating the work and estimated cost for the entire job, as if he/she were starting the job before your first contractor did anything.
 - One stating the work the second contractor will actually perform to protect your property and complete the job, and the cost. Don't forget to have a written contract for this work.
 - One estimating the value of the work performed by your first contractor.
- ❑ Report the contractor to the Department of Labor and Industries or similar agency in your state. They will review your report to determine whether a *crime* has occurred. The Department of Labor and Industries will not get your money back, or get your

damages for you, or arrange for completion of your project. These matters are your responsibility. The Department of Labor and Industries can advise you about the contractor's bond and how to file a claim against it.

- ❑ You can file a report with the Attorney General Consumer Protection Division.
- ❑ Consider filing a complaint with the Better Business Bureau.
- ❑ You can file a Small Claims lawsuit in court. Check with the clerk to verify jurisdictional limits.
- ❑ You can hire an attorney and file a lawsuit. Often your loss must be \$50,000 or more to make this cost effective. Consult a private attorney.

Is it a Crime for an Unlicensed Person to Contract to do my Home Improvement Project?

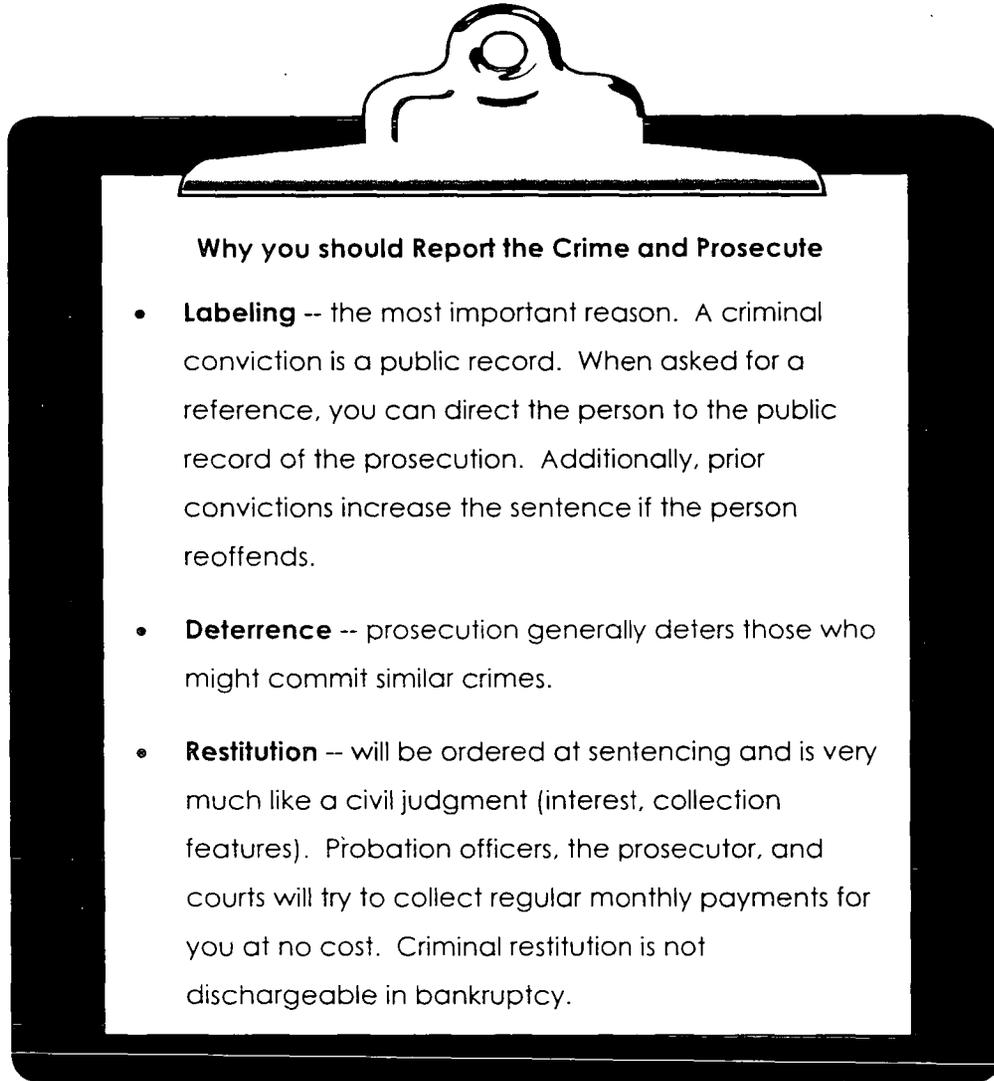
In some jurisdictions, it is a misdemeanor for a contractor to construct, alter, repair, improve or demolish your home, garage or other structure attached to your real estate, if the project cost is over a certain dollar amount and your contractor is not licensed and bonded.

If your home improvement project was not completed or was poorly done, and your contractor was not licensed, you should report this to the Department of Labor and Industries or similar agency in your state.

What if Your Contractor Took Your Money but Failed to Perform the Work?

If your contractor took your money and failed to perform promised work, he/she might have also committed the crime of theft.

If you think your contractor has stolen your money, report the theft to your local police and/or the appropriate state agency. They will review your complaint for sufficiency and investigate it if they think it is sufficient. They may forward their investigative report to the prosecutor, who will then determine whether to charge the contractor with a crime.



Concerns about Prosecuting Unregistered Contractors or Contractors who Steal

Many victims fear embarrassing publicity. In most counties however, there is usually little or no publicity, unless the dollar amount is extreme, the victim is the government, the

victim or defendant already is a public figure, or computers are used in some unique way to commit or cover up the theft.

Some victims overestimate the likely hassle in prosecuting. Most cases result in a guilty plea, meaning the victim never has to come to court unless he/she wants to attend the sentencing. In those few cases that go to trial, witnesses typically are scheduled and do not spend the legendary "days hanging around the courthouse waiting to testify."

OTHER RESOURCES

 [National Association of Home Builders Remodelers Council](#), 1-800-368-5242, or send mail to 1201 15th St. NW, Washington DC 20005-2800 offers a brochure titled "Choosing Your Builder."

 "What You Should Know Before You Hire a Contractor" is a free, 37-page booklet published by the [California Contractors State License Board](#), 800-321-2752.

 [NARI Homeowner Help](#) includes a brochure "Select a Professional Remodeling Contractor," and the site includes Red Flags (covering potential problems), Design Ideas, and a Library of home improvement articles.





RESOURCE DIRECTORY

FBI State Contacts

Federal Bureau of Investigation
Room 1400
2121 Building 8th. Avenue N.
Birmingham, Alabama 35203
(205) 252-7705
<http://www.fbi.gov/contact/fo/birmingham/framepage.htm>

Federal Bureau of Investigation
One St. Louis Centre
1 St. Louis Street, 3rd. Floor
Mobile, Alabama 36602
(334) 438-3674
<http://www.fbi.gov/contact/fo/mobile/home.htm>

Federal Bureau of Investigation
101 East Sixth Avenue
Anchorage, Alaska 99501
(907) 258-5322

Federal Bureau of Investigation
Suite 400
201 East Indianola Avenue
Phoenix, Arizona 85012
(602) 279-5511
<http://www.fbi.gov/contact/fo/phnx/default.htm>

Federal Bureau of Investigation
Suite 200
Two Financial Centre
10825 Financial Centre Parkway
Little Rock, Arkansas 72211-3552
(501) 221-9100
<http://www.fbi.gov/contact/fo/lr/main.htm>

Federal Bureau of Investigation
Suite 1700, FOB
11000 Wilshire Boulevard
Los Angeles, California 90024
(310) 477-6565
<http://www.fbi.gov/contact/fo/la/main.htm>

Federal Bureau of Investigation
4500 Orange Grove Avenue
Sacramento, California 95841-4205
(916) 481-9110
<http://www.fbi.gov/contact/fo/sc/fbisc.htm>

Federal Bureau of Investigation
Federal Office Building
9797 Aero Drive
San Diego, California 92123-1800
(619) 565-1255
<http://www.fbi.gov/contact/fo/sandiego/index.htm>

Federal Bureau of Investigation
450 Golden Gate Avenue, 13th. Floor
San Francisco, California 94102-9523
(415) 553-7400

Federal Bureau of Investigation
Federal Office Building, Suite 1823
1961 Stout Street, 18th Floor
Denver, Colorado 80294
(303) 629-7171

Federal Bureau of Investigation
Room 535, FOB
150 Court Street
New Haven, Connecticut 06510
(203) 777-6311

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Federal Bureau of Investigation
Washington Metropolitan Field Office
601 4th Street, N.W.
Washington, D.C. 20535-0002
(202) 278-2000

Federal Bureau of Investigation
Suite 200
7820 Arlington Expressway
Jacksonville, Florida 32211
(904) 721-1211

Federal Bureau of Investigation
16320 Northwest Second Avenue
North Miami Beach, Florida 33169
(305) 944-9101
<http://www.fbi.gov/contact/fo/mb/index.htm>

Federal Bureau of Investigation
Room 610, FOB
500 Zack Street
Tampa, Florida 33602
(813) 273-4566
http://www.fbi.gov/contact/fo/tampa/tampa_home.htm

Federal Bureau of Investigation
Suite 400
2635 Century Parkway, Northeast
Atlanta, Georgia 30345
(404) 679-9000

Federal Bureau of Investigation
Room 4-230, Kalaniana'ole FOB
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
(808) 521-1411

Federal Bureau of Investigation
Room 905
E.M. Dirksen Federal Office Building
219 South Dearborn Street
Chicago, Illinois 60604
(312) 431-1333
<http://www.fbi.gov/contact/fo/chgo/index.html>

Federal Bureau of Investigation
Suite 400
400 West Monroe Street
Springfield, Illinois 62704
(217) 522-9675
<http://www.fbi.gov/contact/fo/si/spfldfbi.htm>

Federal Bureau of Investigation
Room 679, FOB
575 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 639-3301

Federal Bureau of Investigation
Room 500
600 Martin Luther King Jr. Place
Louisville, Kentucky 40202
(502) 583-3941
<http://www.fbi.gov/contact/fo/louisville/Fbiou.htm>

Federal Bureau of Investigation
Suite 2200
1250 Poydras Street
New Orleans, Louisiana 70113-1829
(504) 522-4671
<http://www.fbi.gov/contact/fo/neworleans/index.htm>

Federal Bureau of Investigation
7142 Ambassador Road
Baltimore, Maryland 21244-2754
(410) 265-8080
<http://www.fbi.gov/contact/fo/balt/index.htm>

Federal Bureau of Investigation
Suite 600
One Center Plaza
Boston, Massachusetts 02108
(617) 742-5533
<http://www.fbi.gov/contact/fo/boston/Boston.html>

RESOURCE DIRECTORY

Federal Bureau of Investigation
26th Floor, P. V. McNamara FOB
477 Michigan Avenue
Detroit, Michigan 48226
(313) 965-2323

Federal Bureau of Investigation
Suite 1100
111 Washington Avenue, South
Minneapolis, Minnesota 55401
(612) 376-3200

Federal Bureau of Investigation
Room 1553, FOB
100 West Capitol Street
Jackson, Mississippi 39269
(601) 948-5000
<http://www.fbi.gov/contact/fo/jackson/jackson.htm>

Federal Bureau of Investigation
1300 Summit
Kansas City, Missouri 64105-1362
(816) 512-8200
<http://www.fbi.gov/contact/fo/kc/kcpage.htm>

Federal Bureau of Investigation
Room 2704
L. Douglas Abram Federal Bldg.
2222 Market Street
St. Louis, Missouri 63103
(314) 589-2500
<http://www.fbi.gov/contact/fo/sl/home.htm>

Federal Bureau of Investigation
10755 Burt Street
Omaha, Nebraska 68114
(402) 493-8688

Federal Bureau of Investigation
700 East Charleston Boulevard
Las Vegas, Nevada 89104
(702) 385-1281

Federal Bureau of Investigation
1 Gateway Center, 22nd. Floor
Newark, New Jersey 07102-9889
(973) 622-5613

Federal Bureau of Investigation
Suite 300
415 Silver Street, Southwest
Albuquerque, New Mexico 87102
(505) 224-2000
<http://www.fbi.gov/contact/fo/aq/aqhome.htm>

Federal Bureau of Investigation
Suite 502, James T. Foley Bldg.
445 Broadway
Albany, New York 12207
(518) 465-7551
<http://www.fbi.gov/contact/fo/alfo/alfohome.htm>

Federal Bureau of Investigation
One FBI Plaza
Buffalo, New York 14202-2698
(716) 856-7800
<http://www.fbi.gov/contact/fo/bffo/bffohome.htm>

Federal Bureau of Investigation
26 Federal Plaza, 23rd. Floor
New York, New York 10278
(212) 384-1000
<http://www.fbi.gov/contact/fo/nyfo/nyfohome.htm>

Federal Bureau of Investigation
Suite 900
400 South Tyron Street
Charlotte, North Carolina 28285
(704) 377-9200
http://www.fbi.gov/contact/fo/charlotte/ce_home.htm

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Federal Bureau of Investigation
Room 9000
550 Main Street
Cincinnati, Ohio 45202
(513) 421-4310
<http://www.fbi.gov/contact/fo/ci/index.htm>

Federal Bureau of Investigation
Room 3005
Federal Office Building
1240 East 9th Street
Cleveland, Ohio 44199-9912
(216) 522-1400
<http://www.fbi.gov/contact/fo/cleveland/cleveland1.htm>

Federal Bureau of Investigation
Suite 1600
50 Penn Place
Oklahoma City, Oklahoma 73118
(405) 290-7770

Federal Bureau of Investigation
Suite 400, Crown Plaza Building
1500 Southwest 1st. Avenue
Portland, Oregon 97201
(503) 224-4181
<http://www.fbi.gov/contact/fo/pd/portland.htm>

Federal Bureau of Investigation
8th. Floor
William J. Green Jr. FOB
600 Arch Street
Philadelphia, Pennsylvania 19106
(215) 418-4000
<http://www.fbi.gov/contact/fo/ph/philadelphia.htm>

Federal Bureau of Investigation
Suite 300
U.S. Post Office Building
700 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 471-2000
<http://www.fbi.gov/contact/fo/pt/pittsburgh.htm>

Federal Bureau of Investigation
Room 526, U.S. Federal Bldg.
150 Carlos Chardon Avenue
Hato Rey, **San Juan, Puerto Rico** 00918-1716
(787) 754-6000

Federal Bureau of Investigation
151 Westpark Blvd
Columbia, South Carolina 29210-3857
(803) 551-4200

Federal Bureau of Investigation
Suite 600, John J. Duncan FOB
710 Locust Street
Knoxville, Tennessee 37902
(423) 544-0751
<http://www.fbi.gov/contact/fo/kx/knoxhome.htm>

Federal Bureau of Investigation
Suite 3000, Eagle Crest Bldg.
225 North Humphreys Blvd.
Memphis, Tennessee 38120-2107
(901) 747-4300
<http://www.fbi.gov/contact/fo/memphis/default.htm>

Federal Bureau of Investigation
Room 300
1801 North Lamar
Dallas, Texas 75202
(214) 720-2200
<http://www.fbi.gov/contact/fo/dl/dallas.htm>

Federal Bureau of Investigation
Suite C-600
700 East San Antonio Avenue
El Paso, Texas 79901-7020
(915) 533-7451

RESOURCE DIRECTORY

Federal Bureau of Investigation
Room 200
2500 East TC Jester
Houston, Texas 77008-1300
(713) 693-5000
<http://www.fbi.gov/contact/fo/ho/houston.htm>

Federal Bureau of Investigation
Suite 200
U.S. Post Office & Courthouse Bldg.
615 East Houston Street
San Antonio, Texas 78205
(210) 225-6741
<http://www.fbi.gov/contact/fo/sanant/sanant.htm>

Federal Bureau of Investigation
Suite 1200, 257 Towers Bldg.
257 East, 200 South
Salt Lake City, Utah 84111
(801) 579-1400
<http://www.fbi.gov/contact/fo/saltlake/index.htm>

Federal Bureau of Investigation
150 Corporate Boulevard
Norfolk, Virginia 23502
(757) 455-0100
<http://www.fbi.gov/contact/fo/norfolk/home.htm>

State Attorneys General

Alabama
Honorable Bill Pryor
Attorney General of Alabama
Office of the Attorney General
State House
11 South Union Street
Montgomery, AL 36130
PHO:(334) 242-7300

Federal Bureau of Investigation
111 Greencourt Road
Richmond, Virginia 23228
(804) 261-1044
<http://www.fbi.gov/contact/fo/richmond/default.htm>

Federal Bureau of Investigation
Room 710
915 Second Avenue
Seattle, Washington 98174-1096
(206) 622-0460
<http://www.fbi.gov/contact/fo/seattle/default.htm>

Federal Bureau of Investigation
Suite 600
330 East Kilbourn Avenue
Milwaukee, Wisconsin 53202-6627
(414) 276-4684

Alaska
Honorable Bruce M. Botelho
Attorney General of Alaska
Office of the Attorney General
Post Office Box 110300
Diamond Courthouse
Juneau, AK 99811-0300
PHO:(907) 465-3600

American Samoa

Honorable Toetagata Albert Mailo
Attorney General of American Samoa
Office of the Attorney General
Post Office Box 7
Pago Pago, AS 96799
PHO:(684) 633-4163

Arizona

Honorable Janet Napolitano
Attorney General of Arizona
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007
PHO:(602) 542-4266

Arkansas

Honorable Mark Pryor
Attorney General of Arkansas
Office of the Attorney General
200 Tower Building, 323 Center Street
Little Rock, AR 72201-2610
PHO:(501) 682-2007

California

Honorable Bill Lockyer
Attorney General of California Office of the
Attorney General
1300 I Street, Suite 1740
Sacramento, CA 95814
PHO:(916) 324-5437

Colorado

Honorable Ken Salazar
Attorney General of Colorado
Office of the Attorney General
Department of Law
1525 Sherman Street
Denver, CO 80203
PHO:(303) 866-3052

Connecticut

Honorable Richard Blumenthal
Attorney General of Connecticut
Office of the Attorney General
55 Elm Street
Hartford, CT 06141-0120
PHO:(860) 808-5318

Delaware

Honorable M. Jane Brady
Attorney General of Delaware
Office of the Attorney General
Carvel State Office Building
820 North French Street
Wilmington, DE 19801
PHO:(302) 577-8400

District of Columbia

Honorable John M. Ferren
District of Columbia Corporation Counsel
Office of the Corporation Counsel
441 4th Street NW
Washington, DC 20001
PHO:(202) 727-6248

Florida

Honorable Robert A. Butterworth
Attorney General of Florida
Office of the Attorney General
The Capitol
PL 01
Tallahassee, FL 32399-1050
PHO:(850) 487-1963

Georgia

Honorable Thurbert E. Baker
Attorney General of Georgia
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
PHO:(404) 656-4585

RESOURCE DIRECTORY

Guam

Honorable John F. Tarantino
Acting Attorney General of Guam
Office of the Attorney General
Judicial Center Building
120 West O'Brien Drive
Agana, GU 96910
PHO:(671) 475-3324

Hawaii

Honorable Margery S. Bronster
Attorney General of Hawaii
Office of the Attorney General
425 Queen Street
Honolulu, HI 96813
PHO:(808) 586-1282

Idaho

Honorable Alan G. Lance
Attorney General of Idaho
Office of the Attorney General
Statehouse
Boise, ID 83720-1000
PHO:(208) 334-2400

Illinois

Honorable Jim Ryan
Attorney General of Illinois
Office of the Attorney General
James R. Thompson Center
100 West Randolph Street
Chicago, IL 60601
PHO:(312) 814-2503

Indiana

Honorable Jeffrey A. Modisett
Attorney General of Indiana
Office of the Attorney General
Indiana Government Center South
Fifth Floor
402 West Washington Street
Indianapolis, IN 46204
PHO:(317) 233-4386

Iowa

Honorable Tom Miller
Attorney General of Iowa
Office of the Attorney General
Hoover State Office Building
Des Moines, IA 50319
PHO:(515) 281-3053

Kansas

Honorable Carla J. Stovall
Attorney General of Kansas
Office of the Attorney General
Judicial Building
301 West Tenth Street
Topeka, KS 66612-1597
PHO:(785) 296-2215

Kentucky

Honorable Albert Benjamin "Ben" Chandler
III
Attorney General of Kentucky
Office of the Attorney General
State Capitol, Room 116
Frankfort, KY 40601
PHO:(502) 564-7600

Louisiana

Honorable Richard P. Ieyoub
Attorney General of Louisiana
Office of the Attorney General
Department of Justice
Post Office Box 94095
Baton Rouge, LA 70804-4095
PHO:(225) 342-7013

Maine

Honorable Andrew Ketterer
Attorney General of Maine
Office of the Attorney General
State House Station, Six
Augusta, ME 04333
PHO:(207) 626-8800

Maryland

Honorable J. Joseph Curran Jr.
Attorney General of Maryland
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202-2202
PHO:(410) 576-6300

Massachusetts

Honorable Tom Reilly
Attorney General of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1698
PHO:(617) 727-2200

Michigan

Honorable Jennifer Granholm
Attorney General of Michigan
Office of the Attorney General
Post Office Box 30212
525 West Ottawa Street
Lansing, MI 48909-0212
PHO:(517) 373-1110

Minnesota

Honorable Mike Hatch
Attorney General of Minnesota
Office of the Attorney General
State Capitol
Suite 102
St. Paul, MN 55155
PHO:(651) 296-6196

Mississippi

Honorable Mike Moore
Attorney General of Mississippi
Office of the Attorney General
Department of Justice
Post Office Box 220
Jackson, MS 39205-0220
PHO:(601) 359-3692

Missouri

Honorable Jeremiah W. (Jay) Nixon
Attorney General of Missouri
Office of the Attorney General
Supreme Court Building
207 West High Street
Jefferson City, MO 65101
PHO:(573) 751-3321

Montana

Honorable Joseph P. Mazurek
Attorney General of Montana
Office of the Attorney General
Justice Building, 215 North Sanders
Helena, MT 59620-1401
PHO:(406) 444-2026

Nebraska

Honorable Don Stenberg
Attorney General of Nebraska
Office of the Attorney General
State Capitol
Post Office Box 98920
Lincoln, NE 68509-8920
PHO:(402) 471-2682
FAX:(402) 471-3297

Nevada

Honorable Frankie Sue Del Papa
Attorney General of Nevada
Office of the Attorney General
Old Supreme Court Building
100 North Carson Street
Carson City, NV 89701
PHO:(775) 687-4170

New Hampshire

Honorable Philip T. McLaughlin
Attorney General of New Hampshire
Office of the Attorney General
State House Annex, 25 Capitol Street
Concord, NH 03301-6397
PHO:(603) 271-3658

New Jersey

Honorable Peter Verniero
Attorney General of New Jersey
Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market Street, CN 080
Trenton, NJ 08625
PHO:(609) 292-4925

New Mexico

Honorable Patricia Madrid
Attorney General of New Mexico
Office of the Attorney General
Post Office Drawer 1508
Santa Fe, NM 87504-1508
PHO:(505) 827-6000

New York

Honorable Eliot Spitzer
Attorney General of New York
Office of the Attorney General
Department of Law - The Capitol
2nd Floor
Albany, NY 12224
PHO:(518) 474-7330

North Carolina

Honorable Michael F. Easley
Attorney General of North Carolina
Office of the Attorney General
Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
PHO:(919) 716-6400

North Dakota

Honorable Heidi Heitkamp
Attorney General of North Dakota
Office of the Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040
PHO:(701) 328-2210

N. Mariana Islands

Honorable Maya Kara
Acting Attorney General of the
Northern Mariana Islands
Office of the Attorney General
Administration Building
Saipan, MP 96950
PHO:(670) 664-2341

Ohio

Honorable Betty D. Montgomery
Attorney General of Ohio
Office of the Attorney General
State Office Tower
30 East Broad Street
Columbus, OH 43266-0410
PHO:(614) 466-3376

Oklahoma

Honorable W.A. Drew Edmondson
Attorney General of Oklahoma
Office of the Attorney General
State Capitol, Room 112
2300 North Lincoln Boulevard
Oklahoma City, OK 73105
PHO:(405) 521-3921

Oregon

Honorable Hardy Myers
Attorney General of Oregon
Office of the Attorney General
Justice Building
1162 Court Street NE
Salem, OR 97310
PHO:(503) 378-6002

Pennsylvania

Honorable Mike Fisher
Attorney General of Pennsylvania
Office of the Attorney General
Strawberry Square
Harrisburg, PA 17120
PHO:(717) 787-3391

Puerto Rico

Honorable José A. Fuentes-Agostini
Attorney General of Puerto Rico
Office of the Attorney General
Post Office Box 192
San Juan, PR 00902-0192
PHO:(787) 721-7700

Rhode Island

Honorable Sheldon Whitehouse
Attorney General of Rhode Island
Office of the Attorney General
150 South Main Street
Providence, RI 02903
PHO:(401) 274-4400

South Carolina

Honorable Charlie Condon
Attorney General of South Carolina
Office of the Attorney General
Rembert C. Dennis Office Building
Post Office Box 11549
Columbia, SC 29211-1549
PHO:(803) 734-3970

South Dakota

Honorable Mark Barnett
Attorney General of South Dakota
Office of the Attorney General
500 East Capitol
Pierre, SD 57501-5070
PHO:(605) 773-3215

Tennessee

Honorable Paul Summers
Attorney General of Tennessee
Office of the Attorney General
500 Charlotte Avenue
Nashville, TN 37243
PHO:(615) 741-6474

Texas

Honorable John Cornyn
Attorney General of Texas
Office of the Attorney General
Capitol Station
Post Office Box 12548
Austin, TX 78711-2548
PHO:(512) 463-2191

Utah

Honorable Jan Graham
Attorney General of Utah
Office of the Attorney General
State Capitol, Room 236
Salt Lake City, UT 84114-0810
PHO:(801) 538-1326

Vermont

Honorable William H. Sorrell
Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
PHO:(802) 828-3171

Virgin Islands

Honorable Iver A. Stridiron
Acting Attorney General of the Virgin Islands
Office of the Attorney General
Department of Justice
G.E.R.S. Complex
48B-50C Kronprinsdens Gade
St. Thomas, VI 00802
PHO:(809) 774-5666

Virginia

Honorable Mark L. Earley
Attorney General of Virginia
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
PHO:(804) 786-2071

Washington

Honorable Christine O. Gregoire
Attorney General of Washington
Office of the Attorney General
P.O. Box 40100
1125 Washington Street, SE
Olympia, WA 98504-0100
PHO:(360) 753-6200

West Virginia

Honorable Darrell V. McGraw Jr.
Attorney General of West Virginia
Office of the Attorney General
State Capitol
1900 Kanawha Boulevard East Charleston,
WV 25305
PHO:(304) 558-2021

Wisconsin

Honorable James E. Doyle
Attorney General of Wisconsin
Office of the Attorney General
State Capitol
Post Office Box 7857
Suite 114 East
Madison, WI 53707-7857
PHO:(608) 266-1221

Wyoming

Honorable Gay Woodhouse
Attorney General of Wyoming
Office of the Attorney General
State Capital Building
Cheyenne, WY 82002
PHO:(307) 777-7841

AARP State Contacts

Alabama - Mobile

1717 Dauphin Street
Mobile, AL 36604
Phone: 334-470-5235
Fax: 334-478-3357

Arizona State Office

302 North First Ave., #410
Phoenix, AZ 85003
Phone: 602-256-2277
Fax: 602-256-2928
TTY: 602-262-5177

Arkansas

300 South University,
Suite 234
Little Rock, AR 72205
Phone: 501-664-1444

California - Los Angeles

3460 Wilshire Blvd.
Suite 300
Los Angeles, CA 90010
Phone: 213-380-1800
Fax: 213-637-2200
TTY: 213-637-2202

Colorado State Office

1301 Pennsylvania St., #200
Denver, CO 80203
Phone: 303-830-2277
Fax: 303-764-5999
TTY: 303-764-5993

Florida - St. Petersburg

9600 Koger Boulevard
#100
St. Petersburg, Fl 33702
Phone: 727-576-1155
Fax: 727-576-7566
TTY: 727-576-3474

Georgia State Office

999 Peachtree Street, NE #1645
Atlanta, GA 30309
Phone: 404-881-0292
Fax: 404-881-6997
TTY: 404-888-7742

Southeast Regional Office

999 Peachtree Street, NE, Suite 1650
Atlanta, GA 30309
Phone: 404-888-0077
Fax: 404-888-0902
TTY: 404-888-7742

Oahu Information Center

1199 Dillingham Blvd.
Suite A-106
Honolulu, HI 96817
Phone: 808-843-1906
Fax: 808-843-1909

Idaho Information Center

5400 Franklin Rd.
Boise, ID 83705
Phone: 208-344-5700
(in ID)
Fax: 800-922-8716
Email: jdboise@aol.com

Midwest Regional Office

8750 W. Bryn Mawr Avenue
Suite 600
Chicago, IL 60631
Phone: 773-714-9800
Fax: 773-714-9927
TTY: 773-714-9995

Indiana Information Center

Glendale Mall
6101 N. Keystone Ave.
Indianapolis, IN 46220
Phone: 317-202-9910
Fax: 317-202-9914

Iowa

West Bank Plaza
1603 22nd Street, Suite 203
West Des Moines, IA 50265
Phone: 515-267-8956
Fax: 515-267-0279

Kansas/Missouri State Office

700 West 47th St., #110
Kansas City, MO 64112
Phone: 816-561-0044
Fax: 816-561-3107
TTY: 816-561-2221

Louisiana

339 Florida Street, Suite 210
Baton Rouge, LA 70801
Phone: 225-344-3956
Fax: 225-344-3960

Maine

307 Cumberland Ave.
Portland, ME 04101
Phone: 207-773-2277
Fax: 207-773-1480

Massachusetts State Office

1 Boston Place, Suite 1900
Boston, MA 02108
Phone: 617-720-5600
Fax: 617-305-0560
TTY: 617-305-0404

Michigan State Office

309 N. Washington Square
Suite 110
Lansing, MI 48933
Phone: 517-482-2772
Fax: 517-482-2794
TTY: 517-267-8929

Minnesota

Mall of America
60 E. Broadway W-334
Bloomington, MN 55425
Phone: 612-858-9040
Fax: 612-858-9131

Mississippi

Tougaloo College
500 W. County Line Rd.
Tougaloo, MS 39174
Phone: 601-956-3210
In MS: 800-698-4860

Nebraska Information Center

808 S. 74th Plaza
Suite 106
Omaha, NE 68114
Phone: 402-398-9568
Fax: 402-398-9587
Email: omnebraska@aol.com

Nevada Information Center

340 N 11th St.
Las Vegas, NV 89101
Phone: 702-386-8661
Fax: 702-386-2617
Email: NVVegas@aol.com

New Hampshire

118 North Main Street
Concord, NH 03301
Phone: 603-224-6095
Fax: 603-224-5029

New Jersey State Office

Forrestal Village
132 Main Street
Princeton, NJ 08540
Phone: 609-987-0744
Fax: 609-987-4634
TTY: 609-514-3925

New Mexico

Winrock Center, Suite 252
2100 Louisiana, NE
Albuquerque, NM 87110
Phone: 505-830-3096
Fax: 505-830-3097

New York State Office

919 Third Avenue, 9th floor
New York, NY 10022
Phone: 212-758-1411
Fax: 212-644-6399
TTY: 212-644-3486

North Carolina State Office

225 Hillsborough Street #440
Raleigh, NC 27603
Phone: 919-755-9757
Fax: 919-755-9684
TTY: 919-508-0290

AARP Ohio Office

One South High Street
Columbus, Ohio 43215
Phone: 614-224-9800
Fax: 614-224-9801
TTY: 614-224-9802

Oklahoma

Crossroads Mall, Suite 2055
7000 Crossroads Blvd.
Oklahoma City, OK 73149
Phone: 405-632-1945
Fax: 405-632-1955

Oregon State Office

8440 SE Sunnybrook Blvd. #101
Clackamas, OR 97105
Phone: 503-652-8855
(in OR) 800-922-8716
Fax: 503-652-9933
TTY: 503-513-7351

Pennsylvania State Office

225 Market Street, Suite 502
Harrisburg, PA 17101
Phone: 717-238-2277
Fax: 717-236-4078
TTY: 717-236-6494

South Dakota

Rushmore Mall
2200 N. Maple Avenue
Rapid City, SD
Phone: 605-394-7798
Fax: 605-394-7727

Tennessee State Office

150 4th Ave, North #180
Nashville, TN 37219
Phone: 615-259-2277
Fax: 615-313-8414

Texas State Office

98 San Jacinto Boulevard
#750
Austin, TX 78701
Phone: 512-480-9797
Fax: 512-480-9799
TTY: 512-480-2439

Southwest Regional Office

8144 Walnut Hill Lane, Suite 700 LB-39
Dallas, TX 75321
Phone: 214-265-4060
Fax: 214-265-4061
TTY: 214-265-4062

Utah State Office

6975 Union Park Center #320
Midvale, UT 84047
Phone: 801-561-1037
Fax: 801-561-2209
TTY: 801-567-2656

Vermont

P.O. Box 6385
Rutland, VT 05702 or
AARP
P.O. Box 9478
Burlington, VT 05407

VA/DC/MD State Office

1600 Duke Street
Alexandria, VA 22314
Phone: 703-739-9220
Fax: 703-739-0064
TTY: 703-739-6347

Washington State Office

9750 Third Avenue, NE #102
Seattle, WA 98115
Phone: 206-517-9348
In WA: 800-922-8716
Fax: 206-517-9350
TTY: 206-517-9344

West Regional Office

9750 Third Avenue, NE
Suite 400
Seattle, WA 98115
Phone: 206-526-7918
Fax: 206-523-8138
TTY: 206-517-9344

Wisconsin State Office

3 S. Pinckney Street
Suite 801
Madison, WI, 53703
Phone: 608-251-2277
Fax: 608-251-7612
TTY: 608-286-6333

Better Business Bureau State Contacts

Alabama

Better Business Bureau
Serving Central Alabama & the Wiregrass
Area
P.O. Box 55268
Birmingham AL 35255-5268
Phone: (205) 558-2222 9:00 - 4:00
Fax: (205) 558-2239
<http://www.birmingham-al.bbb.org>

Better Business Bureau
Serving Northern Alabama
P.O. Box 383
Huntsville AL 35804-0383
Phone: (205) 533-1640 24 hours
Fax: (205) 533-1177
<http://www.northalabama.bbb.org/>

Better Business Bureau
Serving Southern Alabama
100 North Royal Street
Mobile AL 36602-3295
Phone: (334) 433-5494 9:00 - 4:00
Fax: (334) 438-3191
<http://www.mobile.bbb.org>

Better Business Bureau
Serving West Georgia, East Alabama
P.O. Box 2587
Columbus GA 31902-2587
Phone: (706) 324-0712 9:00 - 5:00
Fax: (706) 324-2181
<http://www.columbus-ga.bbb.org>

Alaska

Better Business Bureau
Serving BBB of Alaska, Inc.
2805 Bering Street Suite 5
Anchorage AK 99503-3819
Phone: (907) 562-0704
Fax: (907) 562-4061
email: info@anchorage.bbb.org
<http://www.alaska.bbb.org>

Better Business Bureau
Fairbanks Branch
P.O. Box 74675
Fairbanks AK 99707
Phone: (907) 451-0222
Fax: (907) 451-0228
<http://www.alaska.bbb.org>

Arizona

Better Business Bureau
Serving Central, Northeast, Northwest, and
Southwest Arizona
4428 North 12th Street
Phoenix AZ 85014-4585
Phone: (602) 264-1721 24 hour Automated -
Operators 9 - 4
Fax: (602) 263-0997
<http://www.phoenix.bbb.org>

Better Business Bureau
Serving Pima, Cochise, Santa Cruz, Graham
& Greenlee Counties
3620 N. 1st Avenue, Suite 136
Tucson AZ 85719
Phone: (520) 888-5353 9:00 - 4:00
Fax: (520) 888-6262
<http://www.tucson.bbb.org>

Arkansas

Better Business Bureau
Serving Arkansas
1415 South University
Little Rock AR 72204-2605
Phone: (501) 664-7274 9:00 - 4:00
Fax: (501) 664-0024
E-mail: arkbbb@aol.com
<http://www.arkansas.bbb.org>

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Better Business Bureau
Serving West Tennessee, North Mississippi
and Eastern Arkansas
P.O. Box 17036
Memphis TN 38187-0036
Phone: (901) 759-1300 24 hours
Fax: (901) 757-2997
<http://www.memphis.bbb.org>

California

Better Business Bureau
Serving Kern, Inyo, Kings and South Tulare
Counties
705 Eighteenth Street
Bakersfield CA 93301-4882
Phone: (661) 322-2074 9:00 - 4:00
Fax: (661) 322-8318
<http://www.bakersfield.bbb.org>

Better Business Bureau
Serving Los Angeles, Orange, Riverside & San
Bernardino Counties
BBB of the Southland
315 N. La Cadena
P.O. Box 970 (92324-0814)
Colton, CA 92324
Phone: (909) 225-5222 24 hours (live operator
6:30-4:00) / \$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50
(909) 426-0813 \$3.00 flat rate chargeable to
major credit card
Fax: (909) 825-6246
<http://www.la.bbb.org>

Better Business Bureau
Encino, CA (Branch of Colton)
17609 Ventura Blvd., Suite LL03
Encino, CA 91316
818.386.5510 main public line
(818)386-5513 fax
818.386.5510 Credit card line
<http://www.la.bbb.org>

Better Business Bureau
Serving Central California
2519 W Shaw Suite 106
Fresno CA 93711
Phone: (559) 222-8111
Fax: (559) 228-6518
<http://www.cencal.bbb.org>

Better Business Bureau
City of Los Angeles(Branch of Colton)
3727 West Sixth Street, Suite 607
Los Angeles CA 90020
Phone: (909) 225-5222 24 hours (live operator
6:30-5:00) / \$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50
(909) 426-0813 \$3.00 flat rate chargeable to
major credit card
Fax: (213) 251-9986
<http://www.la.bbb.org>

Better Business Bureau
Serving San Mateo County
510 Broadway, Suite 200
Millbrae, CA 94030-1966
Phone: (650) 552-9222 9:00 - 4:00
Fax: (650) 652-1748
<http://www.sanmateo.bbb.org>

Better Business Bureau
Serving Oakland/San Francisco Area and
Northwest Coastal California
510 16th Street Suite 550
Oakland CA 94612-1584
Phone: (510) 238-1000 24 hours
Fax: (510) 238-1018
<http://www.oakland.bbb.org>

RESOURCE DIRECTORY

Better Business Bureau
Serving Placentia (Branch of Colton)
550 W. Orangethorpe Ave.
Placentia CA 92870-6837
Phone: (900) 225-5222 24 hours (live operator
6:30-5:00) / \$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50
(909) 426-0813 \$3.00 flat rate chargeable to
major credit card
714.985.8922 main public line
714.985.8920 fax
<http://www.la.bbb.org>

Better Business Bureau
Serving North Central California
400 S Street
Sacramento CA 95814-6997
Phone: (916) 443-6843 8:30 - 5:00
Fax: (916) 443-0376
<http://www.sacramento.bbb.org>

Better Business Bureau
Serving San Diego and Imperial Counties
5050 Murphy Canyon, Suite 110
San Diego CA 92123
Phone: (619) 496-2131 24 hours
Fax: (619) 496-2141
<http://www.sandiego.bbb.org/>

Better Business Bureau
BBB of San Francisco (Branch of Oakland)
114 Sansome Street, Suite 1108
San Francisco, CA 94104
Phone: (415) 243-9999 24 hours
Fax: (415) 291-8172
<http://www.oakland.bbb.org>

Better Business Bureau
Serving Santa Clara Valley
2100 Forest Ave, Suite 110
San Jose CA 95128
Phone: (408) 278-7400 9:00 - 4:00
Fax: (408) 278-7444
<http://www.sanjose.bbb.org>

Better Business Bureau
Serving Tri Counties--San Luis Obispo, Santa
Barbara, Ventura Counties
P. O. Box 129
Santa Barbara CA 93101
Phone: (805) 963-8657 8:30 - 4:30
Fax: (805) 962-8557
<http://www.santabarbara.bbb.org>

Better Business Bureau
Serving Mid Counties
11 S. San Joaquin St. Suite 803
Stockton CA 95202-3202
Phone: (209) 948-4880 9:00 - 12:00 / 1:00 -
4:00
Fax: (209) 465-6302
<http://www.stockton.bbb.org>

Better Business Bureau
City of Torrance (Branch of Colton)
20280 S. Vermont Ave., Suite 201
Torrance, CA 90502
Phone: (900) 225-5222 24 hours (live operator
6:30-5:00) / \$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50
(909) 426-0813 \$3.00 flat rate chargeable to
major credit card
Fax: (310) 771-1446
<http://www.la.bbb.org>

Colorado

Better Business Bureau
Serving Pike's Peak Region
P.O. Box 7970
Colorado Springs CO 80933-7970
Phone: (719) 636-1155 24 hours
Fax: (719) 636-5078
<http://www.coloradosprings.bbb.org>

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Better Business Bureau
Serving Denver-Boulder Metro Area
1780 S Bellaire Suite 700
Denver CO 80222-4350
Phone: (303) 758-2100 24 hours
TDD: (303) 758-4786
Fax: (303) 758-8321
<http://www.denver.bbb.org>

Better Business Bureau
Serving Mountain States -- Northern
Colorado, East & Central Wyoming
1730 S College Avenue Suite 303
Fort Collins CO 80525-1073
Phone: (970) 484-1348 24 hours
Fax: (970) 221-1239
<http://www.rockymtn.bbb.org>

Better Business Bureau
Serving Southern Colorado
119 West 6th Street Suite 203
Pueblo CO 81003-3119
Phone: (719) 542-6464
Fax: (719) 542-5229
<http://www.pueblo.bbb.org>

Better Business Bureau
Serving Four Corners and Grand Junction,
Colorado
308 North Locke
Farmington NM 87401-5855
Phone: (505) 326-6501 9:00 - 12:00 / 1:00 - 3:00
Fax: (505) 327-7731
<http://www.farmington.bbb.org>

Connecticut

Better Business Bureau
Serving Connecticut
Parkside Building
821 N Main Street Ext
Wallingford CT 06492-2420
Phone: (203) 269-2700 24 hours
Fax: (203) 269-3124
<http://www.connecticut.bbb.org>

Better Business Bureau
Serving Central Massachusetts, Northeast
Connecticut
P.O. Box 16555 Worcester MA 01601-6555
Phone: (508) 755-2548 9:00 - 4:00
Fax: (508) 754-4158
<http://www.worcester.bbb.org>

Delaware

Better Business Bureau
Serving Delaware
1010 Concord Avenue
Wilmington DE 19802
Phone: (302) 594-9200 8:30 - 12:00 / 1:00 -
4:00
Fax: (302) 594-1052
<http://www.wilmington.bbb.org>

District of Columbia

Better Business Bureau
Serving Metropolitan Washington
1012 14th Street, N.W. 14th Fl.
Washington DC 20005-3410
Phone: (202) 393-8000 24 hours
Fax: (202) 393-1198
<http://www.dc.bbb.org>

Florida

Better Business Bureau
Serving Central Florida
151 Wymore Rd, Ste 100
Altamonte Springs FL 32714
Phone: (407) 621-3300 24 hours
Fax: (407) 786-2625
<http://www.orlando.bbb.org>

Better Business Bureau
Serving West Florida
P.O. Box 7950
Clearwater FL 34618-7950
Phone: (727) 535-5522 24 hours
Fax: (727) 530-5863
<http://www.clearwater.bbb.org>

Better Business Bureau
Serving Northeast Florida
7820 Arlington Expressway #147
Jacksonville FL 32211
Phone: (904) 721-2288 9:00 - 4:00
Fax: (904) 721-7373
<http://www.jacksonville.bbb.org>

Better Business Bureau
Serving Northwest Florida
912 E. Gadsden Street
P.O. Box 1511
Pensacola FL 32597-1511
Phone: (850) 429-0002
Fax: (850) 429-0006
<http://www.pensacola.bbb.org>

Better Business Bureau
BBB of Port St. Lucie, Inc.: Branch of West
Palm Beach
1950 Port St. Lucie Blvd. Suite 211
Port St. Lucie FL 34952-5579
Phone: (561) 878-2010
Fax: (561) 337-2083 call first
<http://www.westpalm.bbb.org>

Better Business Bureau
Serving Palm Beach, Martin, St. Lucie,
Okeechobee, Indian River, Broward, Hendry,
Glades, and Highland Counties
580 Village Blvd. Suite 340
West Palm Beach FL 33409
Phone: (561) 686-2200 9:00 - 12:00 / 1:00 -
4:00
automated system 24 hours/day
Fax: (561) 686-2775
<http://www.westpalm.bbb.org>

Georgia

Better Business Bureau
Serving Southwest Georgia, Inc.
101 1/2 S. Jackson
Suite #2
Albany GA 31702-3241
Phone: (912) 883-0744 9:00 - 5:00
Fax: (912) 438-8222
<http://www.columbus-ga.bbb.org>

Better Business Bureau
Serving Metropolitan Atlanta
PO Box 2707
Atlanta GA 30301
Phone: (404) 688-4910 8:30 - 4:30
Fax: (404) 688-8901
<http://www.atlanta.bbb.org>

Better Business Bureau
Serving Northeast Georgia, Southwest South
Carolina
301 7th Street
Augusta GA 30901
Phone: (706) 722-1574 9:00 - 12:30 / 1:30- 4:00
Fax: (706) 724-0969
<http://www.augusta-ga.bbb.org>

Better Business Bureau
Serving West Georgia, East Alabama
P.O. Box 2587
Columbus GA 31902-2587
Phone: (706) 324-0712 9:00 - 5:00
Fax: (706) 324-2181
<http://www.columbus-ga.bbb.org>

Better Business Bureau
Serving Central Georgia
277 Martin Luther King Blvd., Suite 102
Macon GA 31201-3476
Phone: (912) 742-7999
Fax: (912) 742-8191
<http://www.macon.bbb.org>

Better Business Bureau
Serving Southeast Georgia and Southeast
South Carolina
6606 Abercorn Street Suite 108C
Savannah GA 31405
Phone: (912) 354-7521 9:00 - 1:00 M-Th
Fax: (912) 354-5068
<http://www.savannah.bbb.org>

Better Business Bureau
Serving Southeast Tennessee, Northwest
Georgia
1010 Market Street Suite 200
Chattanooga TN 37402-2614
Phone: (423) 266-6144 9:00 - 12:00 / 1:00 -
4:00
Fax: (423) 267-1924
<http://www.chattanooga.bbb.org>

Hawaii

Better Business Bureau
Serving Hawaii
First Hawaiian Tower
1132 Bishop Street, 15th Floor
Honolulu HI 96813-2822
Phone: (808) 536-6956 24 hours
Fax: (808) 523-2335
<http://www.hawaii.bbb.org>

Idaho

Better Business Bureau
Serving Southwest Idaho/Eastern Oregon
4619 Emerald, Suite A2
Boise, ID 83706
Phone: (208) 342-4649 8:30 - 4:00 M-Th, 9:00 -
3:00 Fri
Fax: (208) 342-5116
<http://www.boise.bbb.org>

Better Business Bureau
Serving Eastern Idaho and Western
Wyoming
1575 South Boulevard
Idaho Falls ID 83404-5926
9:00 - 4:00
Phone: (208) 523-9754
24 hour Voice Response
Fax: (208) 524-6190
<http://www.idahofalls.bbb.org>

Illinois

Better Business Bureau
Serving Chicago & Northern Illinois
330 N. Wabash Ave.
Chicago IL 60611
Phone: 312-832-0500, 8:00-6:00 CC#
(3.80/call)
900-225-5222 (\$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50)
Fax: (312) 832-9985
<http://www.chicago.bbb.org>

Better Business Bureau Serving Central Illinois
Including: Bloomington, Champaign,
Decatur, Danville, East Peoria, Galesburg,
Jacksonville, Kewanee, Lincoln, Macomb,
Pekin, Peoria, Pontiac, Springfield, and
Taylorville
3024 West Lake
Peoria IL 61615-3770
Phone: (309) 688-3741 9:30 - 3:30 M-Th, 8:30 -
2:30 F
For areas outside of the Peoria metro area,
please call (800) 500-3780
Fax: (309) 681-7290
<http://www.peoria.bbb.org>

RESOURCE DIRECTORY

Better Business Bureau
Branch of Chicago.
810 E. State Street 3rd Floor
Rockford IL 61104-1001
Phone: 312-832-0500, 8:00-6:00 CC#
(3.80/call)
900-225-5222 (\$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50)
Fax: (815) 963-0329
<http://www.chicago.bbb.org>

Better Business Bureau
Serving East Missouri and South Illinois
12 Sunnen Drive Suite 121
St. Louis MO 63143-1400
Phone: (314) 645-3300 24 hours
Fax: (314) 645-2666
<http://www.stlouis.bbb.org>

Indiana

Better Business Bureau
Serving Elkhart & LaGrange Counties
P.O. Box 405
Elkhart, IN 46515-0405
Phone: (219) 262-8996 9:30 - 3:30
Fax: (219) 266-2026
<http://www.elkhart.bbb.org>

Better Business Bureau
Serving Tri-State--Southwest Indiana
1139 Washington Square
Evansville IN 47715
Phone: (812) 473-0202 9:00 - 4:00
Fax: (812) 473-3080
<http://www.evansville.bbb.org>

Better Business Bureau
Serving Northeastern Indiana
1203 Webster Street
Fort Wayne IN 46802-3493
Phone: (219) 423-4433 9:00 - 4:00
Fax: (219) 423-3301
<http://www.fortwayne.bbb.org>

Better Business Bureau
Serving Central Indiana
Victoria Centre
22 E. Washington Street Suite 200
Indianapolis IN 46204-3584
Phone: (317) 488-2222 9:00 - 1:00 / 2:00 - 4:00
Fax: (317) 488-2224
<http://www.indianapolis.bbb.org>

Better Business Bureau
Serving Northwest Indiana
6111 Harrison St., Suite 101
Merrillville, IN 46410
Phone: (219) 980-1511 10:00 - 12:00 / 1:00 -
3:00
Fax: 2198842123
<http://www.gary.bbb.org>

Better Business Bureau
BBB of Michiana, Inc. (Branch of Gary)
207 Dixie Way North Suite 130
South Bend IN 46637-3360
Phone: (219) 277-9121 8:30 - 12:00 / 1:00 -
3:00
Fax: (219) 273-6666
<http://www.gary.bbb.org>

Better Business Bureau
Serving Western Kentucky, Southern Indiana
844 South 4th Street
Louisville KY 40203-2186
Phone: (502) 583-6546 24 hours
Fax: (502) 589-9940
<http://www.louisville.bbb.org>
<http://www.ky-in.bbb.org>

Better Business Bureau
Serving Southern Ohio, Northern Kentucky, &
Southeastern Indiana
898 Walnut Street
Cincinnati OH 45202-2097
Phone: (513) 421-3015 24 hours
Fax: (513) 621-0907
<http://www.cincinnati.bbb.org>

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Iowa

Better Business Bureau
Serving BBB/Quad Cities
852 Middle Road Suite 290
Bettendorf IA 52722-4100
Phone: (319) 355-6344 9:00 - 3:00
Fax: (319) 355-0306
<http://www.desmoines.bbb.org>

Better Business Bureau
Serving Central & Eastern Iowa
505 5th Avenue Suite 950
Des Moines IA 50309-2375
Phone: (515) 243-8137
Fax: (515) 243-2227
<http://www.desmoines.bbb.org>

Better Business Bureau
Serving 29 Counties in South Dakota, Iowa
and Nebraska
505 Sixth Street Suite 300
Sioux City IA 51101
Phone: (712) 252-4501 8:30 - 4:00
Fax: (712) 252-0285
<http://www.siouxcity.bbb.org>

Better Business Bureau
Serving Northern Nebraska & Southwest
Iowa
2237 N. 91st Court
Omaha NE 68134-6022
Phone: (402) 391-7612 10:00 - 4:00
Fax: (402) 391-7535
<http://www.omaha.bbb.org>

Kansas

Better Business Bureau
Serving Northeast Kansas
501 Southeast Jefferson Suite 24
Topeka KS 66607-1190
Phone: (785) 232-0454 9:00 - 12:00 / 1:00 -
4:30
Fax: (785) 232-9677
<http://www.topeka.bbb.org>

Better Business Bureau
Serving Kansas, except for Northeast
328 Laura
Wichita KS 67211
Phone: (316) 263-3146 9:00 - 4:00
Fax: (316) 263-3063
<http://www.wichita.bbb.org>

Kentucky

Better Business Bureau
Serving Central and Eastern Kentucky
410 West Vine Street Suite 340
Lexington KY 40507-1616
Phone: (606) 259-1008 24 hours
Fax: (606) 259-1639
<http://www.lexington.bbb.org>

Better Business Bureau
Serving Western Kentucky, Southern Indiana
844 South 4th Street
Louisville KY 40203-2186
Phone: (502) 583-6546 24 hours
Fax: (502) 589-9940
<http://www.louisville.bbb.org>
<http://www.ky-in.bbb.org>

Better Business Bureau
Serving Southern Ohio, Northern Kentucky
and Southeastern Indiana
898 Walnut Street
Cincinnati OH 45202-2097
Phone: (513) 421-3015 24 hours
Fax: (513) 621-0907
<http://www.cincinnati.bbb.org>

Louisiana

Better Business Bureau
Serving Central Louisiana
5220-C Rue Verdun
Alexandria LA 71303
Phone: (318) 473-4494 8:30 - 4:30
Fax: (318) 473-8906
<http://www.alexandria-la.bbb.org>

RESOURCE DIRECTORY

Better Business Bureau
Serving South Central Louisiana
2055 Wooddale Boulevard
Baton Rouge LA 70806-1546
Phone: (504) 926-3010 8:00 - 12:00 / 1:00 - 4:30
Fax: (504) 924-8040
<http://www.batonrouge.bbb.org>

Better Business Bureau
Serving BBB/Tri Parish Area (Branch of New Orleans)
5953 West Park Ave.
Suite 4005
Houma LA 70364
Phone: (504) 868-3456 8:30 - 4:30
Fax: (504) 876-7664
<http://www.neworleans.bbb.org>

Better Business Bureau
Serving Acadiana
100 Huggins Road
Lafayette LA 70506
Phone: (318) 981-3497 9:00 - 4:00
Fax: (318) 981-7559
<http://www.lafayette.bbb.org>

Better Business Bureau
Serving Southwest Louisiana
P.O. Box 7314
Lake Charles LA 70606-7314
Phone: (318) 478-6253 9:00 - 12:00 / 1:00 - 5:00
Fax: (318) 474-8981
<http://www.lakecharles.bbb.org>

Better Business Bureau
Serving Northeast Louisiana
141 Desiard Street Suite 808
Monroe LA 71201-7380
Phone: (318) 387-4600 9:00-3:00
Fax: (318) 361-0461
<http://www.monroe.bbb.org>

Better Business Bureau
Serving Greater New Orleans
1539 Jackson Avenue Suite 400
New Orleans LA 70130-5843
Phone: (504) 581-6222 24 hours
Fax: (504) 524-9110
<http://www.neworleans.bbb.org>

Better Business Bureau
Serving The Ark-La-Tex
3612 Youree Drive
Shreveport LA 71105-2122
Phone: (318) 868-5146 8:30 - 12:00 / 1:00 - 4:00
Fax: (318) 861-6426
<http://www.shreveport.bbb.org>

Maine

Better Business Bureau
Serving BBB of Maine, Inc. (Branch of Boston)
812 Stevens Avenue
Portland ME 04103-2648
Phone: (207) 878-2715 9:00 - 12:30 / 1:00 - 4:00
Fax: (207) 797-5818
<http://www.bosbbb.org>

Better Business Bureau
Serving Eastern Massachusetts, Vermont & Maine
20 Park Plaza, Suite 820
Boston MA 02166-4344
Phone: (617) 426-9000 (800) 4BBB-811 (802 area code only)
Fax: (617) 426-7813
<http://www.bosbbb.org>

Maryland

Better Business Bureau
Serving Greater Maryland
2100 Huntingdon Avenue
Baltimore MD 21211-3215
Phone: (900) 225-5222 24 hours / \$3.80 first 4 min., \$.95/minute thereafter, not to exceed \$9.50
Fax: (410) 347-3936
<http://www.baltimore.bbb.org>

Massachusetts

Better Business Bureau
Serving Eastern Massachusetts, Vermont & Maine
20 Park Plaza, Suite 820
Boston MA 02166-4344
Phone: (617) 426-9000 (800) 4BBB-811(802 area code only)
Fax: (617) 426-7813
<http://www.bosbbb.org>

Better Business Bureau
Serving Western Massachusetts
293 Bridge Street Suite 320
Springfield MA 01103-1402
Phone: (413) 734-3114 9:00 - 12:00 / 1:00 - 4:00
Fax: (413) 734-2006
<http://www.springfield-ma.bbb.org>

Better Business Bureau
Serving Central Massachusetts, Northeast Connecticut
P.O. Box 16555 Worcester MA 01601-6555
Phone: (508) 755-2548 9:00 - 4:00
Fax: (508) 754-4158
<http://www.worcester.bbb.org>

Michigan

Better Business Bureau
Serving Western Michigan
40 Pearl NW Suite 354
Grand Rapids MI 49503
Phone: (616) 774-8236 24 hours (800) 684-3222 (from Western Michigan only)
Fax: (616) 774-2014
<http://www.grandrapids.bbb.org>

Better Business Bureau
Serving Detroit & Eastern Michigan
30555 Southfield Road Suite 200
Southfield MI 48076-7751
Phone: (248) 644-9100 24 hours
Fax: (248) 644-5026
<http://www.detroit.bbb.org>

Better Business Bureau
Serving Northwest Ohio & Southeast Michigan
3103 Executive Parkway Suite 200
Toledo OH 43606-1310
Phone: (419) 531-3116 9:00 - 4:00
Fax: (419) 578-6001
<http://www.toledo.bbb.org>

Minnesota

Better Business Bureau
Serving Minnesota and North Dakota
2706 Gannon Road
St. Paul MN 55116-2600
Phone: (651) 699-1111 9:00 - 4:00
Fax: (651) 699-7665
<http://www.mnd.bbb.org>
<http://www.minnesota.bbb.org>

Mississippi

Better Business Bureau
Serving Mississippi
P.O. Box 12745
Jackson MS 39206
Phone: (601) 987-8282 8:30 - 12:00 / 1:00 - 3:30
Fax: (601) 987-8285
<http://www.bbbmississippi.org>

Better Business Bureau
Serving West Tennessee, North Mississippi
and Eastern Arkansas
P.O. Box 17036
Memphis TN 38187-0036
Phone: (901) 759-1300 24 hours
Fax: (901) 757-2997
<http://www.memphis.bbb.org>

Missouri

Better Business Bureau
Serving Greater Kansas City
306 East 12th Street Suite 1024
Kansas City MO 64106-2418
Phone: (816) 421-7800 9:00 - 12:00 / 1:00 -
4:00
Fax: (816) 472-5442
<http://www.kansascity.bbb.org>

Better Business Bureau
Serving Southwest Missouri
205 Park Central East Suite 509
Springfield MO 65806-1326
Phone: (417) 862-4222 9:00 - 4:00 M-Th, 9:00 -
3:00 F
Fax: (417) 869-5544
<http://www.springfield-mo.bbb.org>

Better Business Bureau
Serving East Missouri and South Illinois
12 Sunnen Drive Suite 121
St. Louis MO 63143-1400
Phone: (314) 645-3300 24 hours
Fax: (314) 645-2666
<http://www.stlouis.bbb.org>

Montana

Currently, there are no Better Business
Bureaus which serve this state. You may wish
to check with your local better Business
Bureau for assistance, or contact the
Consumer Affairs office in that state.

Nebraska

Better Business Bureau
Serving 29 Counties in South Dakota, Iowa
and Nebraska
505 Sixth Street Suite 417
Sioux City IA 51101
Phone: (712) 252-4501 8:30 - 4:00
Fax: (712) 252-0285
<http://www.siouxcity.bbb.org>

Cornhusker BBB
3633 O Street, Suite 1
Lincoln NE 68510-1670
Phone: (402) 436-2345 8:00 to 5:00 M-F
Fax: (402) 476-8221
<http://www.lincoln.bbb.org>

Better Business Bureau
Serving Northern Nebraska & Southwest
Iowa
2237 N. 91st Court
Omaha NE 68134-6022
Phone: (402) 391-7612 10:00 - 4:00
Fax: (402) 391-7535
<http://www.omahabb.org>

Nevada

BBB of Southern Nevada, Inc.
5595 Spring Mountain Road
Las Vegas, NV 89146
(702) 320-4500 Public line
(702) 320-4560 FAX
Email: vegasbbb@vegas.infi.net
<http://www.lasvegas.bbb.org>

Better Business Bureau
Serving Northern Nevada
991 Bible Way
Reno NV 89502
Phone: (775) 322-0657 8:30 - 5:00
Fax: (775) 322-8163
<http://www.renobbb.org>

HOME IMPROVEMENT FRAUD AGAINST SENIORS

New Hampshire

Better Business Bureau
Serving New Hampshire
410 South Main Street Suite #3
Concord NH 03301-3483
Phone: (603) 224-1991 9:00 - 4:00
Fax: (603) 228-9035
<http://www.concord.bbb.org>

New Jersey

Better Business Bureau
Serving Northern New Jersey
400 Lanidex Plaza
Parsippany NJ 07054-2797
Phone: (973) 581-1313 10:00 - 4:00
Fax: (973) 581-7022
<http://www.parsippany.bbb.org>

Better Business Bureau
Serving Ocean County BBB
1721 Route 37, East
Toms River NJ 08753-8239
Phone: (908) 270-5577 8:30 - 4:30
Fax: (908) 270-8739
<http://www.westmont.bbb.org>

Better Business Bureau
Serving Central New Jersey
1700 Whitehorse-Hamilton Square Suite D-5
Trenton NJ 08690-3596
Phone: (609) 588-0808 9:00 - 4:30
Fax: (609) 588-0546
<http://www.trenton.bbb.org>

Better Business Bureau
Serving South Jersey
16 Maple Avenue
Westmont NJ 08108-0303
Phone: (609) 854-8467 9:00 - 12:00 / 1:00 - 4:00
Fax: (609) 854-1130
<http://www.westmont.bbb.org>

New Mexico

Better Business Bureau
Serving New Mexico, except for Four
Corners Area
2625 Pennsylvania NE Suite 2050
Albuquerque NM 87110-3657
Phone: (505) 346-0110 24 hours
Fax: (505) 346-0696
<http://www.bbbsnm.com>

Better Business Bureau
Serving Four Corners and Grand Junction,
Colorado
308 North Locke
Farmington NM 87401-5855
Phone: (505) 326-6501 9:00 -12:00 / 1:00 - 3:00
Fax: (505) 327-7731
<http://www.farmington.bbb.org>

New York

Better Business Bureau
Serving Western New York and The Capital
District
741 Delaware Avenue, Suite 100
Buffalo NY 14209
Phone: (900) 225-5222 24 hours (live operator
8:30-6:00) / \$3.80 first 4 min., \$.95/minute
thereafter, not to exceed \$9.50
Fax: (716) 883-5349
<http://www.buffalo.bbb.org>

Better Business Bureau
Serving Long Island BBB (Branch of New York
City)
266 Main Street
Farmingdale NY 11735-9998
Phone: (516) 420-0766. M-F 8:30 a.m.-7:00
p.m. (\$3.80 flat rate chargeable to major
credit) -or-
(900) CALLBBB. Automated 24 hrs/7 days;
operators M-F 8:30 a.m.-7:00 p.m. (\$3.80 first
4 min., \$.95/minute thereafter, not to
exceed \$9.50)
Fax: (516) 420-1095
<http://www.newyork.bbb.org>

RESOURCE DIRECTORY

Better Business Bureau
Serving Metropolitan New York, Mid-Hudson
and Long Island Regions
257 Park Avenue South
New York City NY 10010-7384
Phone: (212) 533-6200. M-F 8:30 a.m.-7:00
p.m. (\$3.80 flat rate chargeable to major
credit) -or-
(900) CALLBBB. Automated 24 hrs/7 days;
operators M-F 8:30 a.m.-7:00 p.m. (\$3.80 first
4 min., \$.95/minute thereafter, not to
exceed \$9.50)
Fax: (212) 477-4912
<http://www.newyork.bbb.org>

Better Business Bureau
Serving Central New York, N. County and S.
Tier
Learbury Centre
401 N. Salina Street
Syracuse, NY 13203-2552
Phone: (315) 479-6635
Fax: (315) 479-5754
<http://www.syracuse.bbb.org>

Better Business Bureau
Serving The Mid-Hudson BBB (Branch of New
York City)
30 Glenn Street
White Plains NY 10603-3213
Phone: (914) 428-1233. M-F 8:30 a.m.-7:00
p.m. (\$3.80 flat rate chargeable to major
credit) -or-
(900) CALLBBB. Automated 24 hrs/7 days;
operators M-F 8:30 a.m.-7:00 p.m. (\$3.80 first
4 min., \$.95/minute thereafter, not to
exceed \$9.50)
Fax: (914) 428-6030
<http://www.newyork.bbb.org>

North Carolina

Better Business Bureau
Serving Asheville/Western North Carolina
1200 BB&T Building
Asheville NC 28801-3418
Phone: (828) 253-2392 9:00 - 4:00
Fax: 828-252-5039
<http://www.asheville.bbb.org>

Better Business Bureau
Serving Southern Piedmont Carolinas
5200 Park Road Suite 202
Charlotte NC 28209-3650
Phone: (704) 527-0012 24 hours
Fax: (704) 525-7624
<http://www.charlotte.bbb.org>

Better Business Bureau
Serving Central North Carolina
3608 West Friendly Avenue
Greensboro NC 27410-4895
Phone: (336) 852-4240 24 hours
Fax: (336) 852-7540
<http://www.greensboro.bbb.org>

Better Business Bureau
Serving Eastern North Carolina
3125 Poplarwood Court Suite 308
Raleigh NC 27604-1080
Phone: (919) 872-9240 24 hours
Fax: (919) 954-0622
<http://www.raleigh-durham.bbb.org>

Better Business Bureau
Serving BBB Serving Catawba and Lincoln
Counties (Branch of Charlotte)
P.O. Box 69
Sherrills Ford NC 28673-0069
Phone: (828) 478-5622 10:00 - 1:00 / 2:00 -
5:00
Fax: (828) 478-5622
<http://www.charlotte.bbb.org>

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Better Business Bureau
Serving Northwest North Carolina
500 West 5th Street Suite 202
Winston-Salem NC 27101-2728
Phone: (336) 725-8348 9:00 - 3:30
Fax: (336) 777-3727
email: wsbbb@wsbbb.com
<http://www.winstonsalem.bbb.org>

North Dakota

Better Business Bureau
Serving Minnesota and North Dakota
2706 Gannon Road
St. Paul MN 55116-2600
Phone: (651) 699-1111 9:00 - 4:00
Fax: (651) 699-7665
<http://www.mnd.bbb.org>
<http://www.minnesota.bbb.org>

Ohio

Better Business Bureau
Serving Summit, Portage, Medina, Wayne,
Ashland, Richland Counties
222 W. Market Street
Akron OH 44303-2111
Phone: (330) 253-4590 24 hours
Fax: (330) 253-6249
<http://www.akronbbb.org>

Better Business Bureau
Serving Canton Regional/West Virginia
P.O. Box 8017
Canton OH 44711-8017
Phone: (330) 454-9401 9:00 - 4:00
Fax: (330) 456-8957
<http://www.canton.bbb.org>

Better Business Bureau
Serving Southern Ohio, Northern Kentucky, &
Southeastern Indiana
898 Walnut Street
Cincinnati OH 45202-2097
Phone: (513) 421-3015 24 hours
Fax: (513) 621-0907
<http://www.cincinnati.bbb.org>

Better Business Bureau
Serving Lorain, Cuyahoga, Geauga, Lake,
Ashtabula Counties
2217 East 9th Street Suite 200
Cleveland OH 44115-1299
Phone: (216) 241-7678 24 hours
Fax: (216) 861-6365
<http://www.cleveland.bbb.org>

Better Business Bureau
Serving Central Ohio
1335 Dublin Road #30-A
Columbus OH 43215-1000
Phone: (614) 486-6336 8:15 - 12:00 / 1:00 -
4:25
Fax: (614) 486-6631
<http://www.columbus-oh.bbb.org>

Better Business Bureau
Serving Dayton/Miami Valley
40 West Fourth Street Suite 1250
Dayton, OH 45402-1830
Phone: (937) 222-5825 24 hours
800 Number: 800-776-5301 24 hours
Fax: (937) 222-3338
<http://www.dayton.bbb.org>

Better Business Bureau
Serving West Central Ohio
P.O. Box 269
Lima OH 45802-0269
Phone: (419) 223-7010 9:00 - 4:00
Fax: (419) 229-2029
<http://www.wcoho.bbb.org>

Better Business Bureau
Serving Northwest Ohio & Southeast
Michigan
3103 Executive Parkway Suite 200
Toledo OH 43606-1310
Phone: (419) 531-3116 9:00 - 4:00
Fax: (419) 578-6001
<http://www.toledo.bbb.org>

Better Business Bureau
Serving Columbiana, Trumbull, and
Mahoning Counties
P.O. Box 1495
Youngstown OH 44501-1495
Phone: (216) 744-3111 9:00 - 12:00 / 1:00 -
4:00
Fax: (330) 744-7336
<http://www.youngstown.bbb.org>

Oklahoma
Better Business Bureau
Serving Central Oklahoma
17 South Dewey
Oklahoma City OK 73102-2400
Phone: (405) 239-6081 24 hours
Fax: (405) 235-5891
<http://www.oklahomacity.bbb.org>

Better Business Bureau
Serving Eastern Oklahoma
6711 South Yale Suite 230
Tulsa OK 74136-3327
Phone: (918) 492-1266 24 hours
Fax: (918) 492-1276
<http://www.tulsabb.org>

Oregon
Better Business Bureau
Serving Southwest Idaho/Eastern Oregon
4619 Emerald, Suite A2
Boise, ID 83706
Phone: (208) 342-4649 8:30 - 4:00 M-Th, 9:00 -
3:00 Fri
Fax: (208) 342-5116
<http://www.boise.bbb.org>

Better Business Bureau
Serving Oregon/Southwest Washington
333 SW Fifth Avenue, Suite 300
Portland OR 97204
Phone: (503) 226-3981 24 hours
800-488-6166 (SW Washington only) Fax:
(503) 226-8200
<http://www.oregonandwesternwa.bbb.org>

Pennsylvania
Better Business Bureau
Branch of Philadelphia, Lehigh Valley
Division
528 North New Street
Bethlehem PA 18018-5789
Phone: (610) 866-8780 10:00 - 4:00
Fax: (610) 868-8668
<http://www.easternpa.bbb.org>

Better Business Bureau
Branch of Philadelphia, Capital Division
29 East King Street Suite 322
Lancaster PA 17602-2852
Phone: (215) 985-9313
Fax: (717) 291-3241
<http://www.easternpa.bbb.org>

Better Business Bureau
Serving Eastern Pennsylvania
1608 Walnut Street Suite 600
Philadelphia, PA 19103-0297
Phone: 215-893-9314
Fax: 215-893-9312
<http://www.easternpa.bbb.org>

Better Business Bureau
Serving Western Pennsylvania
300 Sixth Street, Suite 100-UL
Pittsburgh PA 15222-2511
Phone: (412) 456-2700 9:30 - 4:15
Fax: (412) 456-2739
<http://www.pittsburgh.bbb.org>

Better Business Bureau
Serving Northeastern Pennsylvania
P.O. Box 993
Scranton PA 18501-0993
Phone: (570) 342-9129 9:00 - 12:00 / 1:00 -
4:00
Fax: (570) 342-1282
<http://www.nepa.bbb.org>

Puerto Rico

Better Business Bureau
Serving Puerto Rico
PO BOX 363488
San Juan PR 00936-3488
Physical Address:
123 O'Neill St.
Second Floor
San Juan PR 00918
Phone: (787) 756-5400 8:30 - 4:30
FAX: (787) 758-0095
E-mail: info@sanjuan.bbb.org
<http://www.sanjuan.bbb.org>

Rhode Island

Better Business Bureau
Serving Rhode Island
120 Lavan Street
Warwick RI 02888-1071
Phone: (401) 785-1212 9:00 - 12:00 / 1:00 - 4:00
Fax: (401) 785-3061
<http://www.rhodeisland.bbb.org>

South Carolina

Better Business Bureau
Serving Northeast Georgia, Southwest South Carolina
301 7th Street
Augusta GA 30901
Phone: (706) 722-1574 9:00 - 12:30 / 1:30- 4:00
Fax: (706) 724-0969
<http://www.augusta-ga.bbb.org>

Better Business Bureau
Serving Southeast Georgia and Southeast South Carolina
6606 Abercorn Street Suite 108C
Savannah GA 31405
Phone: (912) 354-7521 9:00 - 1:00 M-Th
Fax: (912) 354-5068
<http://www.savannah.bbb.org>

Better Business Bureau
Serving Southern Piedmont Carolinas
5200 Park Road Suite 202
Charlotte NC 28209-3650
Phone: (704) 527-0012 24 hours
Fax: (704) 525-7624
<http://www.charlotte.bbb.org>

Better Business Bureau
Serving Central South Carolina & Charleston Area
2330 Devine Street
Columbia SC 29205
Phone: (803) 254-2525 9:00 - 4:00 M-Th 9:00 - 12:00 / 1:00 - 4:00 F
Fax: (803) 779-3117
<http://www.columbia.bbb.org>

Better Business Bureau
Serving The Foothills
307-B Falls Street
Greenville SC 29601-2829
Phone: (864) 242-5052
Fax: (864) 271-9802
<http://www.greenville.bbb.org>

Better Business Bureau
Serving Coastal Carolina
1601 North Oak Street Suite 101
Myrtle Beach SC 29577-1601
Phone: (843) 626-6881
Phone for 843, 910 area codes: 803-951-3569
Fax: (843) 626-7455
<http://www.carolina.bbb.org>
<http://www.mb.bbb.org>

South Dakota

Better Business Bureau
Serving 29 Counties in South Dakota, Iowa and Nebraska
505 Sixth Street Suite 417
Sioux City IA 51101
Phone: (712) 252-4501 8:30 - 4:00
Fax: (712) 252-0285
<http://www.siouxcity.bbb.org>

RESOURCE DIRECTORY

Tennessee

Better Business Bureau
Serving BBB of Greater East Tennessee, Inc.
P.O. Box 1178 TCA
Blountville TN 37617-1178
Phone: (423) 325-6616
Fax: (423) 325-6620
<http://www.knoxville.bbb.org>

Better Business Bureau
Serving Southeast Tennessee, Northwest
Georgia
1010 Market Street Suite 200
Chattanooga TN 37402-2614
Phone: (423) 266-6144 9:00 - 12:00 / 1:00 -
4:00
Fax: (423) 267-1924
<http://www.chattanooga.bbb.org>

Better Business Bureau
Serving Greater East Tennessee
P.O. Box 10327
Knoxville TN 37939-0327
Phone: (423) 522-2552 9:00 - 12:00 / 1:00 -
4:00
Fax: (423) 637-8042
<http://www.knoxville.bbb.org>

Better Business Bureau
Serving West Tennessee, North Mississippi
and Eastern Arkansas
P.O. Box 17036
Memphis TN 38187-0036
Phone: (901) 759-1300 24 hours
Fax: (901) 757-2997
<http://www.memphis.bbb.org>

Better Business Bureau
Serving Nashville/Middle Tennessee
P.O. Box 198436
Nashville TN 37219-8436
Phone: (615) 242-4222 24 hours
Fax: (615) 254-8356
email: BBBNash@aol.com
<http://www.nashville.bbb.org>

Texas

Better Business Bureau
Serving Abilene Area
3300 South 14th Street Suite 307
Abilene TX 79605-5052
Phone: (915) 691-1533 10:00 - 4:00
Fax: (915) 691-0309
<http://www.abilene.bbb.org>

Better Business Bureau
Serving the Twenty-Six Counties of the Texas
Panhandle
P.O. Box 1905
Amarillo TX 79101-3408
8:30-5:30 M-F
Phone: (806) 379-6222 9-noon, 1 p.m.-4 p.m.
M-F
Fax: (806) 379-8206
<http://www.amarillo.bbb.org>

Better Business Bureau
Serving Central Texas
2101 S. IH 35 Suite 302
Austin TX 78741-3854
Phone: (512) 445-2911 24 hours
Fax: (512) 445-2096
<http://www.centraltx.bbb.org>

Better Business Bureau
Serving Southeast Texas
P.O. Box 2988
Beaumont TX 77701-2988
Phone: (409) 835-5348 9:00 - 4:00
VRS 24 hours a day
Representatives 9-4 M-Th 10-4 F
Fax: (409) 838-6858
<http://www.southeasttexas.bbb.org/>

Better Business Bureau
Serving Brazos Valley and Deep East Texas
P.O. Box 3868
Bryan TX 77805-4413
Phone: (409) 260-2222
Fax: (409) 846-0276
<http://www.bryan.bbb.org>

HOME IMPROVEMENT FRAUD AGAINST SENIORS

Better Business Bureau
Serving Coastal Bend
4301 Ocean Drive
Corpus Christi TX 78412
Phone: (361) 654-4949 8:30 - 4:30
Fax: (361) 654-4931
<http://www.caller.com/bbb/>

Longview Office (a Branch of Central East Texas)
2002 Judson, Ste. 107
Longview, TX 75605
Phone: (903) 758-3222
Fax: (903) 758-3226
<http://www.tyler.bbb.org>

Better Business Bureau
Serving Metropolitan Dallas and Northeast Texas
2001 Bryan Street Suite 850
Dallas TX 75201-3093
Phone: (900) 225-5222 24 hours (live operator 8 - 5) / \$.95/minute
Fax: (214) 740-0321
<http://www.dallas.bbb.org>

Better Business Bureau
Serving South Plains
916 Main Street Suite 800
Lubbock TX 79401-3410
Phone: (806) 763-0459 24 hours
Fax: (806) 744-9748
<http://www.lubbock.bbb.org/>

Better Business Bureau
Serving El Paso Area
Norwest Plaza Suite 1101
El Paso, TX 79901
Phone: (915) 577-0191 9:00 - 4:00
Fax: (915) 577-0209
<http://www.elpaso.bbb.org>

Better Business Bureau
Serving Permian Basin
P.O. Box 60206
Midland TX 79711
Phone: (915) 563-1880 9:00 - 12:00 / 1:00 - 4:00
Fax: (915) 561-9435
<http://www.midland.bbb.org>

Better Business Bureau
Serving Tarrant, Johnson, Hood, Wise, Parker, Erath & Palo Pinto Counties
1612 Summit Avenue Suite 260
Fort Worth TX 76102-5978
Phone: (817) 332-7585 24 hours
Fax: (817) 882-0566
<http://www.fortworth.bbb.org>

Better Business Bureau
Serving San Angelo Area
P.O. Box 3366
San Angelo TX 76902-3366
Phone: (915) 949-2989 9:00 - 12:00 / 1:00 - 4:00
Fax: (915) 949-3514
<http://www.sanangelo.bbb.org>

Better Business Bureau
Serving Metropolitan Houston
5225 Katy Freeway Suite 500
Houston TX 77007
Phone: (713) 341-6137 24 hours (live operator 7:30-5:30) / \$3.80 first 4 min., \$.95/minute thereafter, not to exceed \$9.50
(713) 868-9500
(713) 867-4944 (Spanish Language Line)
Fax: (713) 867-4947
<http://www.bbbhou.org>

Better Business Bureau
Serving South Central Area
1800 Northeast Loop 410 Suite 400
San Antonio TX 78217-5296
Phone: (210) 828-9441 9:00 - 4:00
Fax: (210) 828-3101
<http://www.sanantonio.bbb.org>

RESOURCE DIRECTORY

Better Business Bureau of Central East Texas
P.O. Box 6652
Tyler TX 75711-6652
Phone: (903) 581-5704
Fax: (903) 534-8644
<http://www.tyler.bbb.org>

Better Business Bureau
Serving the Heart of Texas
2210 Washington Ave.
Waco TX 76701-1019
Phone: (254) 755-7772 9:00 - 4:00
Fax: (254) 755-7774
<http://www.waco.bbb.org>

Better Business Bureau
Serving South Texas
P.O. Box 69
Weslaco TX 78599-0069
Phone: (956) 968-3678 9:00 - 3:30
Fax: (956) 968-7638
<http://www.weslaco.bbb.org>

Better Business Bureau
Serving North Central Texas
4245 Kemp Boulevard Suite 900
Wichita Falls TX 76308-2830
Phone: (940) 691-1172 8:30 - 12:00 / 1:00 - 4:30
Fax: (940) 691-1175
<http://www.wichitafalls.bbb.org>

Utah

Better Business Bureau
Serving Utah
1588 South Main Street
Salt Lake City UT 84115-5382
Phone: (801) 487-4656 24 hours
Fax: (801) 485-9397
<http://www.saltlakecity.bbb.org>

Vermont

Better Business Bureau
Serving Eastern Massachusetts, Vermont & Maine
20 Park Plaza Suite 820
Boston MA 02166-4344
Phone: (617) 426-9000 (800) 4BBB-811 (802 area code only)
Fax: (617) 426-7813
<http://www.bosbbb.org>

Virginia

Council of Better Business Bureaus, Inc.
4200 Wilson Blvd.
Suite 800
Arlington, Va. 22203-1838
Phone: (703) 276-0100
Fax: (703) 525-8277
<http://www.bbb.org>

Better Business Bureau
Serving Central Virginia (Branch of Richmond)
11903 Main Street
Fredricksburg, VA, 22408
(703) 373-9872 (9 - 4)
(703) 373-0097
<http://www.richmond.bbb.org>

Better Business Bureau
Serving Greater Hampton Roads
586 Virginian Drive
Norfolk VA 23505
Phone: (757) 531-1300 9:00 - 4:00
Fax: (757) 531-1388
<http://www.hamptonroads.bbb.org>

Better Business Bureau
Serving Central Virginia
701 East Franklin Suite 712
Richmond VA 23219-2332
Phone: (804) 648-0016 24 hours
Fax: (804) 648-3115
E-mail: bbbcenva@richmond.infi.net
<http://www.richmond.bbb.org>

Better Business Bureau
Serving Western Virginia
31 West Campbell Avenue
Roanoke VA 24011-1301
Phone: (540) 342-3455 9:30 - 4:00
Fax: (540) 345-2289
<http://www.roanoke.bbb.org>

Washington

Better Business Bureau
Serving Tri-City BBB, Inc. (Branch of Yakima)
101 North Union #105
Kennewick WA 99336-3819
Phone: (509) 783-0892 9:00 - 12:00 / 1:00 - 4:00
Fax: (509) 783-2893
<http://www.yakima.bbb.org>

Better Business Bureau
Serving Oregon and Western Washington
4800 S. 188th Street Suite 222
Sea Tac WA 98188
Phone: (206) 431-2222 24 hours
Fax: (206) 431-2211
<http://www.oregonandwesternwa.bbb.org>

Better Business Bureau
Serving Inland Northwest
508 W. Sixth Avenue, Suite 401
Spokane WA 99204-2730
Phone: (509) 455-4200 9:00 - 3:30
Fax: (509) 838-1079
<http://www.spokane.bbb.org>

Better Business Bureau
Serving Central Washington
32 N. 3rd St. Suite 410
P.O. Box 1584
Yakima WA 98901
Phone: (509) 248-1326 9:00 - 12:00 / 1:00 - 3:00
Fax: (509) 248-8026
<http://www.yakima.bbb.org>

West Virginia

Better Business Bureau
Serving Canton Regional/West Virginia
1434 Cleveland Avenue NW
Canton OH 44703
Phone: (330) 454-9401 9:00 - 4:00
Fax: (330) 456-8957
<http://www.canton.bbb.org>

Wisconsin

Better Business Bureau
Serving Wisconsin
740 North Plankinton Ave.
Milwaukee WI 53203-2478
Phone: (414) 273-1600 8:45 - 4:30
Fax: (414) 224-0881
E-mail: bbbwi@execpc.com
<http://www.wisconsin.bbb.org>

Wyoming

Better Business Bureau
Serving Mountain States--Northern Colorado,
East & Central Wyoming
1730 S. College Avenue Suite 303
Fort Collins CO 80525-1073
Phone: (303) 484-1348 8:00 - 5:00
Fax: (303) 221-1239
<http://www.fortcollins.bbb.org>

Better Business Bureau
Serving Eastern Idaho and Western
Wyoming
1575 South Boulevard
Idaho Falls ID 83404-5926
Phone: (208) 523-9754 9:00 - 12:00 / 1:00 - 4:00
Fax: (208) 524-6190
<http://www.idahofalls.bbb.org>

WEBLINKS

WEBLINKS

Name	Address
AARP	http://www.aarp.org/
Better Business Bureau	http://www.bbb.org/
California Contractors State License Board	http://www.cslb.ca.gov/
Department of Labor and Industries Registration Database	http://www.lni.wa.gov/contractors/contractor.asp
Federal Bureau of Investigation	http://www.fbi.gov/
Improve Net	http://www.improvenet.com
Improve Net - Find a Contractor	http://www.improvenet.com/tools/form/form35.asp
Living with your Project	http://www.remodelingresource.com/management/fr_befor.htm
National Association of Home Builders Remodelers Council	http://www.remodelingresource.com
National Association of the Remodeling Industry	http://www.nari.org

