STATEMENT OF

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ON TELEMARKETING FRAUD

BEFORE

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I. INTRODUCTION

Good morning, Mr. Chairman and Members of the Commission. I am Jonathan J. Rusch, Senior Litigation Counsel with the Fraud Section of the Criminal Division at the Department of Justice. I am pleased to appear before you this morning to present the views of the Department of Justice concerning telemarketing fraud.

In a November, 1997, report to President Clinton and Canadian Prime Minister Chretien, the United States-Canada Working Group on Telemarketing Fraud stated that "[t]elemarketing fraud has become one of the most pervasive and problematic forms of white-collar crime in Canada and the United States, accounting for as much as 10% of the total volume of telemarketing [$400 billion per year]."[1] Although the report of your staff on telemarketing fraud indicates that the Commission has some familiarity with the problem, I want to focus my testimony on the factors that make telemarketing fraud so problematic and so distinctive a form of fraud.

At the outset, I should note that my testimony is based partly on my personal experience in prosecuting telemarketing cases, but primarily on my experience as the Chair of the Telemarketing Fraud Working Group. The Working Group consists of Assistant United States Attorneys from various districts; investigative agencies, including the Federal Bureau of Investigation and the Postal Inspection Service; senior officials with regulatory agencies, such as the Federal Trade Commission and the Securities and Exchange Commission; and various

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1 United States-Canada Working Group on Telemarketing Fraud, UNITED STATES-CANADA COOPERATION AGAINST TELEMARKETING FRAUD 1 (1997) [WORKING GROUP REPORT].

representatives of state attorneys general. In this capacity, I have had frequent contacts with prosecutors and agents throughout the country, and have had the opportunity to review materials from numerous telemarketing fraud cases that the Department has prosecuted since the 1980s.

Based on our experience prosecuting more than 1,300 individuals in telemarketing fraud cases, the Department of Justice urges the Commission to amend the sentencing guidelines to recognize the seriousness of this form of fraud. Telemarketing fraud is typified by a high level of culpability on the part of offenders and an extreme degree of disruption and harm to the lives of many victims. The nature of this offense prompted Congress to single it out for enhanced penalties. In 1994, Congress provided that offenders convicted of certain fraud offenses in connection with telemarketing may be imprisoned for a term of up to five years in addition to any term imposed for the underlying offenses. Moreover, Congress provided that if the telemarketing offense victimized ten or more persons over the age of 55 or targeted persons over this age, the offender may be imprisoned for a term of up to 10 years in addition to the term for the underlying offense.[2]

Despite this enhanced penalty provided by statute, the guidelines fail to recognize the seriousness of telemarketing fraud. Therefore, courts have departed upward from the applicable sentencing guideline range in order to provide an enhanced penalty. A category of crime that Congress has recognized as especially serious should be reflected in the sentencing guidelines themselves, rather than through departure from the guidelines. We would be happy to work with

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2 *See* 18 U.S.C. § 2326.

you through Commissioner Harkenrider to develop appropriate guideline amendments for telemarketing fraud.

Telemarketing fraud is a serious crime for a number of reasons. For example, telemarketers typically prey on older victims through various identification techniques, often revictimize those who have already been defrauded, and commonly work as part of well-organized schemes that involve close coordination to carry out the defrauding of victims. While these aggravating factors are important in assessing the seriousness of telemarketing fraud, however, it is the essential nature of this offense in any form that makes it such a critical problem. In essence, telemarketing fraud in most cases is sustained psychological warfare, waged through ongoing and extensive personal contact by those experienced at deceiving others for personal profit. Their victims are people who have little experience or skill in recognizing and protecting themselves against such psychological manipulation, and whose defenses are gradually worn down over time.

One criminal telemarketer described his technique in very striking terms. He explained to undercover agents that as soon as a victim answers the phone, the telemarketer's "two hands go through that phone" and he proceeds to paint a picture of well-being to the victim with one hand — while reaching for the victim's checkbook with the other. This form of fraud cannot be accomplished without conversation (often numerous conversations with the victim) and sustained and varied techniques of persuasion that depend on false and deceptive statements. In short, a criminal telemarketer weaves a web around the victim in a way not possible in mail fraud and other types of federal fraud addressed by the guidelines. I will describe some of these techniques that criminal telemarketers use in greater detail.

Our knowledge of the practices of criminal telemarketers has been enhanced by two major undercover operations directed at telemarketing fraud, Operation Disconnect and Operation Senior Sentinel. These operations have produced a wealth of empirical evidence about how criminal telemarketers actually think and behave towards their victims. In Operation Disconnect, undercover FBI agents made hundreds of hours of tape-recordings in which criminal telemarketers freely explained how they did their pitches and why they chose to use particular techniques. In Operation Senior Sentinel, and to a lesser extent in Operation Disconnect, FBI agents and others working under federal agents’ supervision posed as victims of previous telemarketing schemes and tape-recorded telephone solicitations by other fraudulent telemarketers. To date, Operation Senior Sentinel and similar operations conducted by state and local authorities have generated more than 10,000 tapes of such conversations. Although I cannot do complete justice to this substantial body of evidence, I will incorporate portions of and examples from various FBI undercover tapes throughout my testimony.

II. MAJOR TYPES OF FRAUDULENT TELEMARKETING

Over the years, criminal telemarketers have shown a high degree of creativity in devising fraudulent "pitches" (i.e., solicitations) to try to appeal to prospective victims. The following are some of the most common telemarketing schemes that law enforcement authorities have observed in the 1990s.

A. Advance-fee Loan or Credit Schemes

In these schemes, telemarketers seek out people with bad credit and "guarantee" that they will receive loans, "major bank" credit cards, or cards with credit lines to buy catalog items, in exchange for advance fees ranging from $69 or $79 to a few hundred dollars. Those who are offered loans never receive them; those who are offered credit cards usually only get a standard application form or generic information on how to apply. These schemes are among the most elementary forms of fraudulent telemarketing, as the victim who sends his money and receives no loan or credit card will not be receptive to similar solicitations in the future. The profitability of these schemes typically depends on reaching several thousand victims throughout the United States, and to some degree Canada as well.

B. Foreign Lottery Schemes

In these schemes, telemarketers offer victims the opportunity to "invest" in tickets in well-known foreign lotteries (e.g., Canada or Australia), or give them a "one in six" chance of winning a substantial prize. Although the would-be "investor" initially may be invited, through mail solicitations, to send in as little as $5 or $10, followup contacts by telemarketers rapidly increase demands to hundreds, thousands, and even tens of thousands of dollars. These schemes, however, are often highly sophisticated in the manner in which victims are solicited and defrauded, including the persuasion techniques that the telemarketers use.

C. Investment Schemes

In these schemes, telemarketers sell victims "investments" in a wide range of merchandise or securities that appear to offer high profit margins. Common "investment opportunities" have involved the Internet, investment-grade gemstones, precious or securities, telecommunications technology such as wireless cable systems and home shopping networks, strategic metals or minerals, and business opportunities ranging from oil and gas ventures to pizza ovens and ostrich farms. Inevitably, the investment proves to be far below what the telemarketer has represented its worth to be, or is wholly nonexistent.

What is essential to the success of these schemes is a carefully crafted pitch by the telemarketers with one fundamental purpose: to make an unsophisticated investor believe he knows enough about the purported investment to make an informed and rational decision. To accomplish that purpose, the telemarketer must simultaneously accomplish two tasks: to conceal from the investor the substantial disparity between the amount of the knowledge needed for a truly objective and rational investment decision and the amount of the investor's actual knowledge, and to manipulate the investor's perception about the extent of that disparity. Accordingly, the typical fraudulent investment pitch builds upon widely reported recent events or developments (e.g., the growing popularity of the Internet), so that a typical unsophisticated investor, who would likely read or hear such reports in general news media but who has no informed training in investment decision-making or expertise in that type of investment, could readily find the pitch to be plausible. The pitch routinely involves not only outright false statements but the withholding of material information about the nature and degree of risk associated with that type of investment. Some prosecutors have reported that the prospective victims of these schemes appear hesitant to challenge the telemarketer's assertions about the value or quality of the purported investment -- perhaps because they are reluctant to admit the limits of their knowledge to the telemarketer.

D. Office Supply/Toner Schemes

In these schemes, telemarketers first contact a business organization and, through false pretenses, obtain the make and model number of a photocopier at that business. A telemarketer then recontacts the business soon after. Pretending to be affiliated with the copier company, the telemarketer tells the businessperson that the company's prices for toner or other office supplies are about to increase, but that the business is being offered an opportunity to buy the product before the increase takes effect.

If the business receives any toner at all from the telemarketer, it soon learns that (1) the toner is "graymarket" toner, rather than genuine toner distributed by the real copier company, and will probably jam their copier if used; and (2) the toner is far more expensive in fact than the genuine toner from the business's regular supplier. Some telemarketers do not even bother to recontact the business, but simply send invoices to the companies' employees without sending any product.

E. "Prize-Promotion" Schemes

In these schemes, telemarketers "guarantee" that the victims have won cash or valuable prizes or gifts, such as vacations or cars, but require victims to submit one or more payments for nonexistent shipping, taxes, customs or bonding fees, or anything else the telemarketer thinks will sound plausible to the victim. Some schemes never provide their victims with any prize or gift; others provide inexpensive items that may appear valuable, but are worth far less than what the victim has paid or what the victim believes their value to be. These items are known to criminal telemarketers as "gimme gifts."

Beginning in approximately the early 1990s, for example, many prize-promotion schemes began adopting a tactic known as the "one-in-four" or "one-in-five." In a one-in-four scheme, the telemarketer would guarantee a prospective victim that he or she would win one of four or five "valuable" prizes. All but one of the promised prizes were items that had a specific or obvious high value, such as a $3,000 cashier's check, a $5,000 cashier's check, and a nationally advertised automobile such as a Ford Taurus. The last of the four (or five) promised prizes, however, was invariably a "gimme gift." Telemarketers could create a false impression that the gimme gift had a high value, in either of two ways: (1) the terms used to describe it (e.g., "diamond watches" or "limited edition artwork" by named artists); or (2) the manner in which it was presented to the victim (e.g., presenting the items in what appeared to be ascending order of value, but inserting the gimme gift between two items of much higher actual value, so that the gimme gift's value appeared to fall somewhere between those two items).

One example of a typical one-in-five scheme is the "magazine room." A magazine room offers the victim a "guaranteed" prize, but represents or strongly indicates that his eligibility for that prize depends on his ordering multi-year subscriptions to numerous magazines. Magazine-room telemarketers have typically described themselves as being "like" major magazine distribution organizations such as Publishers Clearing House and American Family Publishers. Unlike those latter organizations, however, magazine rooms do not disclose the exact titles or subscription rates of the magazines they purport to offer when their telemarketers contact prospective victims. Instead, the victims are told that once their payment -- ranging from several hundred to several thousand dollars -- is received, they will be sent a list of magazines from which they can choose. The lists do not disclose the actual cost to the magazine room or to the victim, for two reasons: (1) in some cases, the magazines on the lists would be free if the victim had tried to subscribe to them directly; and (2) if the telemarketers were to include purported prices for the other magazines, the victim could readily compare those prices to the true cover prices once they began to receive their magazines.

Other telemarketers appear to have recognized that promising specific prizes, but failing to deliver those prizes while taking substantial funds from their victims, attracted attention from law enforcement and regulatory authorities. In response, some telemarketers adopted what is called the "mystery" or "integrity" pitch. In a typical "mystery" pitch, telemarketers tell prospective victims that they will be receiving the "gift of a lifetime," but avoid telling the victims the type or actual value of the "gift." In this way, telemarketers evidently hope that if victims later complain to law enforcement authorities, they can literally tell the authorities that there was no "misrep" (i.e., misrepresentation) because they never promised the victim a specific gift or prize.

Some telemarketers, however, have also concluded that the one-in-five scheme may be less appealing to prospective victims. Many victims, in their view, may want to win something but not the specific prizes or gifts offered in the one-in-five, and may be disinclined to send money if they think it will be too time-consuming and effortful to obtain cash by selling the nonmonetary prize they think they would receive. These telemarketers, preferring simplicity over subtlety, rely on what is called a "cash sweepstakes" pitch. In this pitch, the telemarketer promises the victim a specific cash prize or an undefined portion of that prize, such as "your fair share of $50,000."

F. "Telefunding" Schemes

In these schemes, telemarketers prey on the charity of victims, soliciting donations for worthy causes that are likely to have received extensive publicity in general news media. Fraudulent charity pitches, for example, have sought funds for the victims of the Oklahoma City bombing, Mississippi River floods, and antidrug programs directed at children. The pitch may simply ask for donations, or it may include other inducements, such as donor eligibility for valuable prizes which never materialize (see "Prize-Promotion" Schemes, above).

Charitable donors do not usually expect something in return for their contribution, and may thus never become aware that they have been defrauded. Some telemarketers, however, spend a modest additional sum of money to provide victims with some tangible materials or item that enhances the impression that the victims' "donations" have in fact been distributed to the worthy cause. At one Las Vegas charity room, United Holdings, a victim would receive a brass plaque, mounted on a marbleized wood backing, that thanked the victim for his "caring contribution to Express Line Foundation" and asserted that the Foundation was "[a] non-profit organization providing free transportation, food and clothing for the handicapped and those in need." In fact, only a small percentage of the "donations" to United Holdings actually went to Express Line Foundation, and that foundation — while it had been granted tax-exempt status as a nonprofit organization — had been established by former telemarketers and actually did little or nothing for the disadvantaged people it claimed to be helping.

G. Travel-Related Schemes

Some telemarketers operate what are known as "travel rooms." These schemes purport to be, or to work with, travel agencies that offer what appear to be substantial travel packages at comparatively low cost. The fraud usually involves lies, misrepresentations, or non-disclosure of information about the true value of travel and accommodations, limitations or restrictions on when or where purchasers may go, or what awaits them at the destination. In some cases, the travel proves to be a complete fabrication or has so many terms and conditions as to be completely unusable.

For example, a prospective victim may be told that his travel package will include low-cost airfares and hotel rooms "at the lowest available commercial rate." The uninformed customer is not informed that "commercial rate" may be among the highest rates that particular hotels may charge. When the victim, after sending his money for a travel package, learns that the "commercial rate" being offered is exorbitantly high and objects, the travel room emphasizes the victim's assent to the "commercial rate" as a basis for retaining the victim's funds.

H. "Reloading," "Recovery Room," and "Rip-and-Tear" Schemes

"Reloading" and "recovery room" schemes are conceptually similar, in that both approaches involve targeting of the same victims again and again. "Reloading" involves the same telemarketing operation contacting its past victims and, through various lies and misrepresentations, inducing those victims to spend still more money to maintain or improve their existing situation with the operation (e.g., inducing the victim to purchase larger quantities of the same nonexistent investment item, or to spend more money to be eligible for more lucrative prizes).

"Recovery room" operations, in contrast, purport to have nothing to do with telemarketing, even though they may in fact be affiliated with other telemarketing schemes. Telemarketers in recovery-room schemes typically represent themselves to be affiliated in some manner with government agencies, and promise to help the victim recover all or some of his losses if he first pays certain "taxes" or "fees." By the time a recovery room scheme contacts a victim, the victim may have lost most of his funds to prior schemes. The recovery room scheme plays upon the victim's understandable desire to recover his original losses, which makes him more vulnerable to promises to help recover those losses, and frequently deprive victims of their last remaining funds.

One variation on reloading schemes that is especially pernicious is the "rip-and-tear" scheme. This type of scheme is conducted specifically to target persons who are known to be past victims of telemarketing schemes, and to do so in a manner that reduces the participants' risks of detection and apprehension. A rip-and-tear scheme typically involves a small number of people – sometimes one telemarketer acting alone, sometimes a group of several people that includes both telemarketers and "runners" who pick up victims' payments. The telemarketer in such a scheme typically represents either that he has a substantial prize (e.g., $50,000), or that he has control of money due to the victim from past "deals" or losses, for which the prospective victim needs to pay the taxes or bonding fees. Rip-and-tear schemes particularly encourage victims to send their funds by wire-transmission service, as this form of payment is extremely rapid and creates a less substantial paper trail than courier deliveries.

In contrast to other schemes that provide some form of gimme gift, rip-and-tear schemes never provide victims with even token prizes or awards. To increase the difficulties of locating them, rip-and-tear telemarketers typically operate out of multiple locations rather than a single, longer-term place of business, and have been known in some instances to use countersurveillance to try to detect law enforcement agents' surveillance at pickup points for victims' funds.

III. SELECTION OF VICTIMS

While some telemarketing schemes begin with "cold calls" to people who have had no prior contact with such schemes, the Department of Justice's experience in its investigations of telemarketing schemes has been that the schemes almost invariably engage in a two-stage process to select their prospective victims from pools of people who have had prior contact with one or more telemarketing schemes.

A. Buying "Leads"

One of the essential tools of the criminal telemarketer's trade is the "lead" --- that is, a piece of paper which typically contains the name, address, and telephone number of a person who was victimized in a previous telemarketing scheme, as well as the amount of money that the person sent to that scheme. Sometimes, although not always, the lead also lists the age of the victim. Leads may be purchased as separate pieces of paper for each prospective victim, or as lists that include information on several prospective victims on each page. These lists are known to fraudulent telemarketers as "sucker lists" or "mooch lists."

Criminal telemarketers typically buy their leads from several sources. "Lead brokers," who buy and sell leads by the hundreds or thousands at a time, provide a constant source of supply to telemarketers in many parts of the United States and Canada. In some cases, lead brokers advertise to or inform telemarketers that they can order lead lists based on certain demographic or personal characteristics. Individual telemarketers also sell leads that they have obtained, either through their telephone solicitations or by stealing leads from their telemarketing companies. In the case of recovery rooms or rip-and-tear schemes, telemarketers may also get their leads from another telemarketing scheme with which they or the recovery room's owners have been affiliated.

Although many criminal telemarketers do not readily admit to law enforcement that they "target" the elderly, some telemarketers have acknowledged that their preferred clientele consists of older people. One telemarketer described the ideal "mark" as "an elderly person who is home alone who has no contact with their family . . . a very vulnerable person and easy to extract money from."[3] Another telemarketer, when asked by an undercover agent what the age group average of his "customers" was, responded:

> Forty to eighty. . . . The — the average that we sell is in the seventies and above. That's where our . . . major, uh, buyers are probably in an age bracket from sixty five to eighty four.[4]

It should therefore not be surprising that many telemarketers have bought leads from lead brokers by requesting demographic categories that are highly likely to produce persons who are close to, at, or beyond the age of retirement. These include "retirees," "senior buyers," "widows/widowers," and persons who have had a residence, a bank account, or telephone service over a certain number of years. In this way, fraudulent telemarketers can obtain leads they think are most likely to be productive, without explicitly stating that they are targeting persons 55 and

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3 IV Transcript of Trial, *United States v. Baird*, Criminal No. 3:95-1045 (D.S.C., filed 1995) at 86, 87 [testimony of Henry Lewis].

4 Government Exhibit 108A, *United States v. Steblowsky*, No. 93-0229-R-Crim (S.D. Cal., filed 1993) at 11 [transcript of conversation, Dec. 3, 1991].

older. Some telemarketers have been less circumspect and simply ordered lists of people in the upper age ranges.

B. Timing of Calls to Victims

Many people who hear the word “telemarketing” immediately associate it with the telephone calls they receive during the dinner hour or evening hours at home for credit cards or other businesses. Criminal telemarketers, in contrast, typically do most of their calling during weekday daylight hours in their time zone: i.e., 9:00 a.m. to 5:00 or 6:00 p.m. (sometimes as late as 8:00 p.m. if they are located on the East Coast and seek to contact people in the Pacific Time Zone, and sometimes Saturday mornings). This means that for most of their working day, criminal telemarketers, regardless of where they are located, are conducting their schemes during hours when only certain people — principally people who work at home and people of retirement age or beyond — are likely to answer their telephones. As one telemarketer admitted when attempting to plead guilty to federal criminal charges, "We targeted to people who were homebound."[5]

The foregoing description should make clear that even though telemarketers try to claim that they do not target older people, their methods necessarily create a high likelihood that their schemes will be contacting older people, especially those who have participated in previous telemarketing schemes.

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5 Transcript of Proceedings, *United States v. St. Marie*, No. SACR96-135(A)-3 GLT (C.D. Cal., Feb. 19, 1997) at 25.

IV. INFLUENCE AND COMPLIANCE TECHNIQUES

Evidence from telemarketing fraud investigations shows that telemarketing schemes use a wide variety of influence techniques -- many of which are familiar to psychologists who study influence and persuasion -- to obtain victims' compliance in sending money to the telemarketers.[6] To convey the complexity and, at times, the subtlety with which telemarketing schemes engage in psychological manipulation of their victims, it is necessary to examine more closely three distinct phases of the telemarketers' relationship to a particular victim. These three phases can be characterized, in colloquial terms, as "pitching" the "deal," "verifying" the deal, and saving the "deal."

A. "Pitching" the "Deal"

Every fraudulent telemarketing call, by definition, involves at least one telemarketer making a "pitch" (i.e., an oral presentation) over the telephone to the prospective victim that relies on deliberate use of false or fraudulent statements regarding the telemarketer himself or the product or service he purports to offer to the victim. Fraudulent telemarketers typically write a "script," which itself contains certain false or fraudulent statements, and then allow their telephone solicitors to embellish on the script with still more false and fraudulent representations. Many people (including victims and even some law enforcement authorities) do not understand the extent to which the pitch, as delivered by the telemarketer, typically

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6 WORKING GROUP REPORT, *supra* note 1, at 7.

interweaves multiple sources of influence on the perceptions and judgment of the prospective victim.

1. Social Norms and Concepts

One of the most important, and least well understood, aspects of the telemarketers' efforts to gain their victims' compliance is their incorporation of various norms and concepts that powerfully influence behavior in everyday life. The following are the principal social norms and concepts that can be identified in fraudulent telemarketers' pitches:

a. Excitement

Certain telemarketing schemes, such as prize-promotion schemes, often begin with statements and representations intended to excite the victim. One fraudulent telemarketer advised undercover agents, "Get 'em all excited in the very beginning. Like really put 'em deep in the ether."[7] Another fraudulent telemarketer demonstrated the beginning of his pitch to undercover agents:

> You were involved in a [promotional] campaign, you were promised to receive some very large corporate award, do [you] remember that? . . . Great. Sit down. They told ya the man in charge of the place would be callin' ya. Well, that's me. Take a deep breath and don't be nervous. . . . [Readdressing agents] I just scare the [expletive] out of 'em right into it. . . . By the time, I wind 'em up and I go, I can't tell ya anything that you're receiving but, uh, I wish I was a relative. They, ohhh! (hissing sound) and the next thing you know they're on the ship.[8]

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[7] Government Exhibit 109A, *United States v. Steblowsky*, No. 93-0229-R (S.D. Cal.) at 3 [transcript of conversation, Dec. 4, 1991].

[8] Government Exhibit 131A, *United States v. Gesmundo*, No. 93-0228-GT-Crim (S.D. Cal., filed 1993) at 5 [transcript of conversation, July 29, 1992].

At a magazine-room telemarketing scheme, Universal Publishers, one of the "dialers" -- people who make the initial telephone contact with the prospective victim -- began the conversation by saying that he was calling from the "Bellevue Service Group" about delivery of "a large, very substantial cash award" and then asking, "Are you excited?" In fact, the dialer worked for Universal Publishers, and another salesperson at Universal called the prospective victim shortly thereafter with a more elaborate pitch.

Criminal telemarketers intuitively understand the need to simulate a sense of excitement and to draw the prospective victim into what, for the victim, is genuine excitement. As one telemarketer observed, "[I]f you sound excited about it, then they're gonna get excited about it."[9] Excitement also appears to have a more profound effect in laying the groundwork for the telemarketer to present his pitch and persuade the victim to part with his money. Psychological research has found that distracting activity tends to increase a person's willingness to accept a persuasive communication and to inhibit that person's counterarguing, at least where the communication was easy to counterargue.[10] When a fraudulent telemarketer is about to present a message that is otherwise likely to prompt counterarguments by a prospective victim (e.g., questions or skepticism about the need to send substantial amounts of money to the telemarketer, with whom the victim has had no prior relationship), shouts of feigned excitement by the

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9 Government Exhibit 137A, *United States v. Gesmundo*, No. 93-0228-GT-Crim (S.D. Cal., filed 1993) at 7 [transcript of conversation, July 29, 1992].

10 *See* Richard E. Petty, Gary L. Wells, & Timothy C. Brock, *Distraction Can Enhance or Reduce Yielding to Propaganda: Thought Disruption Versus Effort Justification*, 34 J. Personality & Soc. Psychol. 874 (1976); Robert E. Osterhouse & Timothy C. Brock, *Distraction Increases Yielding to Propaganda by Inhibiting Counterarguing*, 15 J. Personality & Soc. Psychol. 344 (1970).

telemarketer, and his representations that the victim has won a highly valuable prize, may serve as a powerful distraction from calmer and more logical trains of thought.

b. Authority

Psychologists have long recognized how responsive people are to the outward trappings of authority, even if those people have no prior relationship with the person asserting that authority.[11] Telemarketers in many schemes, including prize-promotion and rip-and-tear schemes, falsely claim that they hold a position of high authority in a business organization or as a government agency representative. One telemarketer at a prize-promotion scheme informed undercover agents:

> You know, when it’s turned over to me, the first thing I do is I congratulate ’em and I make them understand the importance of my position, being the . . . promotional director. . . . And right off the bat they're excited . . . because when [it's] the owner, they think of you as the higher source. . . . I don’t say I’m the owner, but I make ’em believe . . . I am the big boss . . . the one that runs the promotion. . . . And the fact that I’m taking time out of my day to go through this with ’em should make them feel like I’m special . . . and that’s what I key on to begin with.
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> . . . But the way that I do it, is, you know, I -- I build trust with ’em . . . First off I shock the [expletive] out of ’em and make ’em understand that they’re not talking with just anyone, they’re talking with the promotional director . . . and I don’t get on the phone . . . and speak to just anyone.[12]

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11 *See, e.g.*, ROBERT B. CIALDINI, INFLUENCE: THE PSYCHOLOGY OF PERSUASION 215 (rev. ed. 1993).

12 Government Exhibit 108A, *United States v. Steblowsky*, No. 93-0229-R-Crim (S.D. Cal. 1994) at 2-3, 23 [transcript of conversation, Dec. 3, 1991].

Some telemarketing schemes use "dialers," as mentioned above, to enhance the appearance of the telemarketer's position. In many schemes, a dialer makes the initial telephone contact with the prospective victim, and, following a prepared "pitch," tells the victim that he or she is the secretary or executive secretary for the telemarketer. At Universal Publishers, a written pitch for dialers read as follows:

> HELLO. MAY I SPEAK WITH _________________? MY NAME IS ________, EXECUTIVE SECRETARY, HERE IN THE PROMOTION OFFICE. MY DIRECTOR OF PROMOTIONS IS IN A MEETING AT THE MOMENT. HE'LL NEED TO SPEAK WITH YOU WHEN THE MEETING IS FINISHED. WILL YOU BE HOME FOR ABOUT THE NEXT TEN (10) MINUTES OR SO? SO HE CAN CALL YOU BACK? REASON: REGARDING GOOD NEWS.

In fact, as in other telemarketing schemes, there was no "Promotion Office" or "Director of Promotions" or other position, as the dialer had represented; the person who calls the prospective victim next is the "front-room" telemarketer.

Telemarketers also use other dialers' pitches that are even more deceptive. In the Universal Publishers dialer's conversation mentioned above at pages 18-19, the dialer specifically told the prospective victim that the "very substantial cash award" that was to be delivered to her was "$28,000." In her subsequent conversation with the prospective victim, however, the salesperson never mentioned the $28,000 or promised any specific cash award. In another Universal Publishers call, the dialer stated to the prospective victim that she was "eligible to receive, without purchase or consideration, one of our six great awards in our 1995 national sales promotion." In fact, the subsequent pitch by the front-room salesperson involved efforts to get the victim to send money for magazines, even though the dialer had promised that the victim could receive the award without a purchase.

Many telemarketers, through careful choices of words, invite an inference that they are affiliated with a government agency, without explicitly impersonating a government agent in a way that might constitute a separate violation of law. For example, some telemarketers state that they "work with" a law enforcement agency or a court, but do not claim that they are employed by the agency or court. Other telemarketers have no compunctions about falsely impersonating law enforcement agents or lawyers. Some telemarketers located in Canada, for example, have claimed that they "are with U.S. and Canadian Customs," and federal authorities in Las Vegas have brought criminal charges against several telemarketers in the past year for impersonating FBI and IRS agents and claiming that they needed victims' money to fund prosecution of telemarketers or to pay fees for the return of the victim's prior losses.[13]

Telemarketers who impersonate law enforcement officials have adopted various approaches to increasing the pressure on their victims to send money. In the Customs schemes, telemarketers have "reminded" victims that they are under a legal obligation to pay taxes on the funds that the telemarketers falsely state will be paid to the victims. In some of the FBI/IRS impersonation schemes, the telemarketer, using the same leads that he had used earlier to obtain victims' money, recontacted those victims as the federal "agent" and told the victims that the money was to be used to apprehend the telemarketer who had taken their money.

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13 *See* Indictment, *United States v. Tutunjian*, No. CR-S-97-302 (D. Nev., filed Dec. 3, 1997) (FBI impersonation); Indictment, *United States v. Balle*, No. CR-S-97-040 (D. Nev., filed March 5, 1997) (FBI impersonation); *United States v. Bonito*, No. CR-S-96-290 (D. Nev., filed Nov. 13, 1996) (IRS impersonation).

In other telemarketing schemes, such as investment schemes, telemarketers invoke the concept of authority by claiming special expertise or knowledge about a field relating to the purported investment opportunity, and by encouraging the prospective victims to infer that the telemarketers' advice is more reliable. For example, in one scheme that offered foreign lottery tickets, a telemarketer gained the confidence of a widowed housewife, who had begun with very small amounts of money, by promising her "financial freedom" if she followed his expert advice that he had acquired over 14 years in the lottery business. Ultimately, the woman sent the telemarketer more than $225,000, including $150,000 that she had withdrawn from her Individual Retirement Account (IRA); the telemarketer had led her to believe that her money would be better invested with him than in her IRA.[14] In the same scheme, a telemarketer told another victim that he had been in the business for 13 years and that she should not worry about losing, and assured her, "Put money in and I'll get you millions. . . . I know what I am doing; trust me and I'll make you a lot of money."[15]

Another technique that some telemarketing rooms use to play on the concept of authority is the "takeover" – a situation in which the telemarketer who has initiated the contact with a prospective victim brings his manager, or at least a more experienced telemarketer, onto the call so that the second person, asserting a higher authority within the company, seeks to close the deal. In some situations, where lower-key methods of persuasion do not appear to work on a particular victim, a telemarketer may engage in a more abusive assertion of authority by shouting

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14 *See* Affidavit of Douglas O. Pulling, *United States v. All Funds . . .*, No. C97-0931R (W.D. Wash., civil forfeiture complaint filed June 5, 1997) at 47 [Pulling Affidavit].

15 *Id.* at 55.

at, admonishing, and attempting to dominate the prospective victim and cow them into compliance.

In the Universal Publishers case, for example, one of our Senior Sentinel tapes recorded a telemarketer who joined a conversation with a prospective victim (actually an FBI undercover agent) after two other telemarketers had failed, despite 30 minutes of conversation with the victim, to persuade him to send money. The telemarketer spent several minutes on the telephone with the victim, repeatedly demanding that the victim give her his credit card number for the transaction, shouting at him, "Read it!", and insisting that the victim not "play games" with her because she was the head of the company (which she was not).

c. Liking and Friendship

Common experience and psychological research indicate that people tend to like those who like them, or who profess to like them.16 The fact that those professions may be false apparently makes no difference, as a 1986 study by two psychologists found.17

Fraudulent telemarketers routinely turn these tendencies to their advantage, by seeking to convince their prospective victims that they had interests or background in common with the victims or were sincerely interested in them on a personal level. Telemarketing fraud victims have frequently reported that in their initial contact with telemarketers, the telemarketer tried to ingratiate himself by sharing personal details with the victims about their own families, or by sending modest gifts, such as flowers, to reinforce their belief that they were dealing with friends. In one case, a woman who had already sent substantial amounts of money to a

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16 *See* ROBERT B. CIALDINI, *supra* note 11, at 167-70.

17 *See* Rebecca C. Curtis & Kim Miller, *Believing Another Likes or Dislikes You:*

telemarketer confided to him that her dog had just died. Shortly thereafter, the telemarketer arranged to have a puppy delivered to her residence, and continued to persuade the victim to send more money for other "deals."

Behaviors Making the Beliefs Come True, 51 J. PERSONALITY & SOC. PSYCHOL. 284 (1986).

Some telemarketers, in speaking with older victims, have encouraged the victims to treat their relationship as a family relationship. One telemarketer in a foreign lottery scheme, for example, referred to his 81-year-old female victim as "Grandma," and discussed families, personal interests, and financial affairs with her. The telemarketer ultimately persuaded her to spend nearly $120,000 on lottery chances.[18] Another telemarketer in the same scheme referred to his 80-year-old male victim as "Dad," and encouraged the victim to call him "Son."[19] When the victim resisted sending the telemarketer additional money at one point, the telemarketer openly appealed to their father-son "relationship," claiming, "I'm not dealing with you as a third person; you are my Dad anyways. I don't have a Dad and I plead you as a Dad."[20] The victim nonetheless lost approximately $86,000 on lottery "chances."[21]

Telemarketers will often display great persistence in trying to establish and maintain a "relationship" with a victim, or in ensuring that the victim has sent the money as promised. One victim told me that when a particular telemarketer called her, she did not have any interest in sending money, but "after the first eight or nine times" that he called her, she decided to send the

18 Pulling Affidavit, *supra* note 14, at 59.

19 *Id.* at 53.

20 *Id.* at 54.

21 *Id.* at 53.

money after all. Another telemarketer in Las Vegas, over a four-month period, telephoned the same victim 35 times.

What most telemarketing fraud victims never understand -- perhaps because it is too painful to accept -- is that the telemarketers' professions of liking and sympathy for them are completely spurious. Experienced criminal telemarketers, in fact, have displayed cynicism and contempt for their victims when talking about their efforts to encourage their victims' liking for them, as the following excerpt of conversation indicates:

> [Telemarketer] I get into the religious part of it. They love religion.
>
> [Undercover agent] Well how do you do that?
>
> [Telemarketer] Well the good Lord works in funny ways doesn't it [*sic*]? You get a reaction out of 'em. Some say, the hell with the good Lord, what am I getting? . . . So I, the sympathy -- sympathy is one of the best ones.[22]

d. Consistency and Commitment

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22 Government Exhibit GE131A, *United States v. Gesmundo*, No. 93-0228-GT-Crim (S.D. Cal., filed 1993) at 5 [transcript of conversation, July 29, 1992].

Another powerful social norm is our shared belief that it is important to be consistent in our behavior -- to do what we have promised, and to act consistently with our past actions and beliefs.23 Psychologists have found the norm of consistency to be especially powerful in people's decisionmaking processes, once people have made a commitment to a particular type of action or a particular expression of belief. A series of studies, for example, has shown that once a person has been induced to comply with a small request for some type of behavior, he is more likely to comply with a subsequent larger demand -- even if the subsequent demand calls for a commitment substantially greater or more costly than the original commitment.24

Fraudulent telemarketing frequently involves explicit or implicit invocations of the concept of consistency. In one call that a Universal Publishers telemarketer made to a prospective victim, for example, used such phrases as "You need to give me a date . . . when you can make good on this commitment" and "[S]o what you need to do is give me a date when you can . . . take care of your end of this." Although the victim had not in fact made any commitment to send money for magazines, the telemarketer made these statements as though the victim had done so.

"Reloading" is probably the most widespread form of commitment-invoking, and commitment-inducing, behavior in all types of telemarketing schemes. In prize-promotion schemes, a victim who has sent money for the promised prize is typically contacted soon after by the same telemarketer or a "reloader" in the scheme. In the subsequent contact, the telemarketer

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23 *See* ROBERT B. CIALDINI, *supra* note 11, at 57-59.

24 *See, e.g.,* Robert B. Cialdini, Rodney Bassett, John T. Cacioppo, & John A. Miller, *Low-Ball Procedure for Producing Compliance: Commitment then Cost*, 36 J. PERSONALITY & SOC. PSYCHOL. 463 (1978); Jonathan L. Freedman & Scott C. Fraser, *Compliance Without*

represents to the victim that he or she has now become eligible for an even more substantial prize, but must consequently send a larger amount of money to pay the nonexistent "fees" or "taxes." Similarly, in investment schemes, telemarketers "reload" a victim by indicating that they can obtain an even greater return on their prior investment if they send more money to buy still more units of the purported investment.

Pressure: The Foot-in-the-Door Technique, 4 J. PERSONALITY & SOC. PSYCHOL. 195 (1966).

In one large-scale foreign lottery scheme, victims frequently reported that they initially had sent in as little as $5 or $10 in response to mail solicitations, but later agreed, after calls from a telemarketer with the scheme, to send money in dramatically increasing amounts -- hundreds, then thousands, and then tens of thousands of dollars at a time.[25] One woman, for example, engaged in the following transactions after her initial "plays" of $5:

Dates for Lottery Purchases[26]	**Form of Payment**	**Amount**
September 15, 1994 (R)	Credit card	$ 199
November 17, 1994 (R)	Credit card	699
November 30, 1994 (R)	Credit card	4,999
January 11, 1995 (C)	Cashier's check	25,000
January 17, 1995 (R)	Cashier's check	5,000
January 26, 1995 (C)	Cashier's check	40,000
February 14, 1995 (C)	Cashier's check	50,000
February 25, 1995 (C)	Cashier's check	50,000
March 6, 1995 (C)	Cashier's check	50,000
TOTAL		**$225,997**[27]

25 *See* Pulling Affidavit, *supra* note 14, at 46-57.

26 Note: (R) stands for the date the lottery package was received; (C) stands for the date of the check.

27 *Id.* at 47.