

LAW ENFORCEMENT MANAGEMENT INSTITUTE

FRAUD, DECEPTION AND SCAMS:
FOLLOWING THE TRAVELING CON ARTISTS

A RESEARCH PAPER
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I. INTRODUCTION: BRIEF HISTORY OF CON GAMES

In the beginning there were peddlers, magicians and medicine men all playing their clever games to sell their audience. The history book of con men dates back to ancient times, but settlers in America first saw confidence games played by Spanish hustlers who made their way into United States territories by way of Mexico. With the post Civil War Carpetbaggers who rode the first rails West "fleecing his fellow passengers with a smile",¹ and the travelers attracted by the promise of wealth during California's "Gold Rush Days" of early 1848, the con games became more sophisticated. They also became common occurrence and generally appealed to the basic emotion, greed. Jay Robert Nash describes this aptly with his quote "all that glitters dangles the fortune and lets greed take the bait."²

P.T. Barnum is also known for another more widely quoted remark, "There's a sucker born every minute." But if a sucker is born every minute, so is a new scam. Each year millions of consumers are bilked. No sooner do authorities catch up with one kind of con, then there's another to take its place. The industry of fraud seems to have taken a stronghold in all socio-economic levels. At any unguarded moment, any one of us can be taken in by a fraudulent scheme: from a multi-million dollar investment fraud to a simple gimmick like three-card monte.

This classic American confidence game involves three cards, usually two aces and a queen. The victim must pick out the "lady"

after the dealer quickly rotates the cards face down with two hands. Con men first "accidentally" bend up the corner of the queen and allow a roper who has befriended the victim or the victim to win a few rounds before deftly bending back the corner of the queen and bending up the corner of one of the aces to mislead the victim into selecting the wrong card.

One veteran New York police officer estimates that street con artists annually steal more money than bank robbers. One authority estimates that, in New York City alone, \$3.5 million is bilked by street sharpies each year.³ Taking a sucker's money without elaborate build-up and time consuming stings is seen as the short con. The game is usually completed in a single day, with no more than a few meets between bunco man and the mark. It is the tactic of a hit and run. Usually the hustler will settle for what the victim has in his pockets.

In the following pages, several of the more common rip offs will be examined as scams are described, victims are identified and methods of operation employed by the con artists are studied.

COMMON RIPOFFS

There is almost no facet of life in America which doesn't provide an angle for the schemer. It is estimated there are more than 800 different ploys to defraud unsuspecting consumers. Often, successful scams are based on real news, such as the latest breakthroughs in medicine or innovative products that everybody wants to try. Some medical quacks use the mail to promote "cures" for ailments from arthritis to cancer. A lot of the telemarketing con artists sit in front of computer screens filled with cross referenced data of their targets; such as amounts lifted from them in previous scams. This information is then used to locate an easy mark who will be thoroughly taken in by a sharp con artist.

These traveling con artist especially like to play the home improvement rip offs, car repair gyps and schemes like the pigeon drop.

CBS News "48 Hours" recently reported on the story of a clan of con artists in Columbia, South Carolina who called themselves the "Irish Travelers."⁴ They roam the countryside selling home repairs. Lt. Joe Livingston of the Columbia Police Department said he has gotten reports the family had been as far west as California, and as far north as Michigan and possibly into Canada.⁵

Home Improvement Schemes

The home improvement field is a favorite area for these traveling clansmen. A favorite approach is the "model home" gimmick which is played like this: Your home has been selected as

a display house in this neighborhood for their siding. The completed job will be good advertising of their work and their product and will not cost a cent. The prospect of getting an expensive home improvement at a fantastic bargain price is admittedly attractive. However, inevitably, the homeowner will wind up owing large bills for most likely inferior workmanship and materials for areas that were not originally quoted for such things as eaves, gutters and window moldings.

Similar methods of operation may also apply to itinerant salesmen offering other kinds of home repairs. A homeowner with a minor roof leak arranges to have broken shingles replaced. Upon inspection, the contractor announces the board base that the roofing is nailed to is rotted and has to be replaced. Instead of hundreds of dollars, the job will cost thousands and the roof will probably still leak like a sieve with the next rain.

Another homeowner remodeling his home contracts with a person who will put drywall on the interior walls. The "contractor" installs dry wall that is not as thick as the contract specifies. The thinner material looks the same and is cheaper; but, it provides less insulation and is more susceptible to damage.

Traveling con artists also take advantage of the real perils of neglecting a chimney by offering to clean your chimney "before it's too late." They do a superficial job and it's very difficult to tell if a chimney has been cleaned properly.

One of the most notorious chimney sweep fakes in Connecticut history was Frank Watson.⁶ His story was reported by consumer

advocate and journalist Hattie Kaufman of CBS News "Good Morning America." The ripoff began with a telemarketer advertising a special price of \$50.00 for cleaning your home's chimney. Once the chimney sweep began the cleaning, the scare tactics begin because he tells the homeowner the chimney needs to be reconstructed to prevent real danger in a backup of dangerous gases or creosote buildup. The salesperson may even secretly pour lighter fluid into the chimney and warn the homeowner about a dangerous gas leak, then "prove" it by lighting a match near where he had poured the lighter fluid.⁷ In the Frank Watson news story, hidden video cameras captured the thief actually knocking brick off the chimney, then showing the homeowner all the broken brick. These customers knew they needed their chimneys cleaned; but, within a few hours, the chimney cheat was claiming the job required extensive reconstruction and was demanding payment of a much larger than expected bill.

Another favorite racket is the driveway scam that involves what the Missouri Attorney General William L. Webster calls "asphalt gypsies."⁸ The approach is for a con artist to go into an area, driving new trucks, usually with out-of-state license plates and often wearing uniforms. The workers will knock on doors and say they are in the neighborhood doing some work down the street and have some materials left over, and therefore can give the home-owner a really good deal on driveway repairs. An exact cost is not usually quoted and there isn't any written contract. The work is done quickly and usually poorly. The final price then

turns out to be far higher than the original verbal estimate. If the homeowner protests, the workers become threatening and usually frighten the person into payment. He prefers not to take a check and usually insists on accompanying the homeowner to the bank. If the homeowner agrees, the con artist's confederate men may rob the house while the owner is with one of the con men at the bank. Not only does the homeowner get a low-quality paving job, his home is burglarized, making him the victim twice.

Crew switching is another ruse of the home repair cons. A group of salesmen go into an area offering home improvements at inflated prices, rarely making a sale. A second crew hits another area with the same proposition. Then they pull the switch. They trade areas, offer the same service at an inflated price, but which is well below the first price. Each salesman ridicules the "other company" for its high prices. What the homeowner doesn't know is that the two outfits are working together. Other common home repair rip-off schemes include furnace cleaning rackets, fire alarm systems, septic tank cleaning, water conditioner systems and landscaping frauds. The product or service may be different, but the racket is always the same. It is easy enough for a schemer to apply a method of operation common to one scheme to make another deal work.

Another lucrative field for itinerant salesmen is the lightning rod business. Victims have paid high prices for lightning rod installations that are inadequate and possibly dangerous.

Repair Schemes

Gyp mechanics and technicians also take a chunk of the millions of dollars bilked from consumers who have little knowledge of their appliances or automobiles' inner workings.

Dishonest repairmen make repairs not authorized, charge for parts they didn't install, pad bills or charge for work they didn't do. According to a newsstory on NBC's "Prime Time Live", fake car repair is the biggest consumer rip-off in the United States.⁹ The news feature exposed several rip-offs in which the crooked car mechanic squeezed small bottles of fluids while inspecting under the hood to indicate "leaking" hoses that needed to be replaced. They were also observed during undercover surveillance pricking holes in hoses with a very small screwdriver.

The Pigeon

CBS "48 Hours" news correspondent Bernard Goldberg describes one of the oldest scams in the world called the pigeon drop.

"You're just walking along, minding your business, when a stranger who looks worried walks up to you and says he just found a wallet, and it just happens to be filled with money. He acts like he doesn't know what to do with it, thinks for awhile, and then he says maybe the two of you can share it. If you think this is your lucky day, you're wrong."¹⁰

The pigeon drop is usually worked after a person has made a deposit into a savings account and is leaving the bank with passbook in hand. A "passerby" (who is actually another confidence crook) says a friend at a nearby bank would know what to do and

phones the banker. Upon returning, the group is informed that the money should be split among all of them, providing that it isn't claimed by the real owner by the end of the day. The problem, however, is that a fidelity bond is required to "protect the bank" and prove good faith. The pigeon withdraws money from his account and brings it to a meeting place and hands the money to the first stranger. The man with the wallet doesn't show up at the meeting place, so the other stranger goes to look for him. You have seen the last of the two men - and your money.

Work at Home Schemes

The classified ads of newspapers are full of notices promising a chance to make thousands of dollars "in the comfort of your home" stuffing envelopes or making craft items. The con involves sending money for materials and samples that rarely arrive, while the victim's check is always cashed. Postal Inspectors report that a fake laboratory induced 15,000 persons to send \$10.00 by mail for a phony cancer test. In response to another ad, more than 200,000 women who wanted to work at home mailed a registration fee and a sample of their sewing to demonstrate their skill.¹¹ Needless to say, no one qualified and no money was returned.

Many people who need extra money are attracted to want ads in newspapers, magazines or direct mail solicitations which offer them a chance to "get rich." Most of these "work at home opportunities" are nothing more than schemes which take advantage of low income, disabled or temporarily unemployed individuals.

One mail fraud promises the secret of making money in return for

a \$25.00 fee. The person then receives instructions on how he can place his own ad, and thus earn money by collecting a charge from others who want the secret of money-making at home. One victim is encouraged to victimize others to make money.

II. CON ARTISTS: BEHAVIORS AND HABITS

Most hustlers never go out to physically hurt people. The main thing is to find an easy mark, set up the bunco, dupe the victim and get away quickly. The con artist is sometimes glorified in movies and literature, presented as a cross between W.C. Fields and Robin Hood. In the real world, the con artist is a despicable criminal. Not only does he rob the victim of their money, he also robs them of their self-respect.

Some of the larger fraud schemes involve very sophisticated angles, complicated set ups, require large fronts of money and involve several confidence men; however, most of the gyp market is controlled by the small time con artist.

Almost anyone can be taken in by a clever confidence man, if he gets a chance to tell his story. There is a genuine trust in most people, as well as egotism and a certain amount of gullibility. These human traits are cleverly used by the con man. He gives the customers trust; then betrays it after he has left town. Often the schemer's high-pressure sales talks hypnotize a weak victim into consent for a deal. Beware of the salesman who objects to you doing some checking and who tries to hurry up the sale because the offer is for a limited time only. The rip-off

artist imparts a sense of urgency to the deal, creating a fear that if you don't move quickly, you'll lose a golden opportunity. The confidence man will also request secrecy to give the victim the impression he is being favored with an exclusive opportunity. Of course, that is to prevent him from seeking outside advice. Watch out for the smooth talker. The persuasiveness of confidence men, and even more so of confidence women, often overcomes the flaws in their stories. Con artists are skilled at playing upon the customer's ego. Their strategy is to talk consumers out of their money as quickly as possible, before common sense prevails. The huckster's greatest ally often is his victim who is too ashamed to report the scheme. This is especially true of the banker or the professional man who is swindled.

The con artists are usually expert salespersons, manipulative, angry beneath their controlled exteriors, charismatic, adaptable to all situations, intuitive, obsessive, greedy and amoral. The most surprising characteristic is they usually appear to be respectable citizens.

III. DESCRIPTION OF THE VICTIMS: TARGETS AND EASY MARKETS

A victim of a scheme is one who wants to get in on a "sure thing." He/She is a person with a warm personality who is easily manipulated by flattery.

Lonely older people are particularly susceptible to con men because they are pleased that someone has come to call on them, or that they are getting some mail. Because of their loneliness,

these folks are the most likely to respond.

The elderly have a particular physical, psychological and financial vulnerability. A recent poll revealed that the elderly are more concerned about crime than about their health or economic security.¹² So why do they allow themselves to become victims so frequently?

The elderly become an attractive target because senior citizens are often better off financially. They are less able to run from danger or defend against attack, can afford the loss of assets, and can not resist the lure of a con game. An especially prime target for swindlers are older women because many live alone, have accumulated some savings and are swayed by glib promises of a stranger who pretends to be acting in their best interest.

People over the age of 65 represent about 12% of the United States population, but are estimated to make up roughly 30% of scam victims, according to the House Subcommittee on Health and Long-Term care.¹³ One of the easiest ways to avoid losing money to con artists is by using direct deposit at the bank, in which monthly annuities are transferred directly for deposit. Yet many older citizens continue to make the regular "payday" trip to cash their check, and all too often, provide a payday for someone else.

Confidence men prey primarily on elderly people, but they can also be quite successful with the average citizen who has a passion for the fast buck and a taker for the too-good-to-be-true price.

Another target of confidence men is people who are traveling. Unlike the con man who uses his itinerant lifestyle to make quick getaways, traveling victims can be easy targets and tricked easily because they are in unfamiliar surroundings, are unsure of themselves and usually have time to listen to a promotion. At the least the victims may be fooled into believing they can get something for nothing. The common law of business balance prohibits paying a little and getting a lot. "It can't be done," wrote John Ruskin, a nineteenth century English author and early consumer advocate.¹⁴

IV. SHODDY WORK, SLOPPY DEALS...OR CRIMINAL FRAUD?

Some entire industries appear riddled with fraud: especially in the area of home improvements and service repair of cars and appliances. Most of these contractors are honest professionals. But legitimate contractors will say that phonies are out there.

The fly-by-night operators rely on the hard sell approach. They hope you'll impulsively buy their services without doing any checking of the business. On the other hand, homeowners who are overzealous about the legalities, especially on a small job, will scare away many good contractors who don't want to deal with a problem customer. Caution should be tempered with the assumption the contractor is honest and knowledgeable - and back up that assumption by doing the proper research. Finding the right contractor is worth taking time because this will eliminate the possibility of getting ripped off. Get names from neighbors,

relatives and friends who have had similar work done. Firms that have been in business for a long time and are members of professional associations are the ones to talk to first. Make a list of exactly what work you want done. Always get at least three bids and never automatically accept the lowest bid. It's better to pay a little more if you want quality.

Author Harry Scherman once wrote an economics book entitled The Promises Men live By. He observed in his book the extraordinary number of times we do things or fail to do things simply because we count on someone else to do something or not to do something.¹⁵ Many of these expectations are never put in writing. We make implied promises everyday to pay for the meal we ordered at the restaurant, the gas and motel expenses charged on an oil company card, and the lawnwork we requested from the yardman. These examples are covered by the law of contracts, an area of the law that most closely touches our everyday lives and that we largely take for granted. For this reason, some of the kinds of contracts that control our business affairs (especially with contractors where fraud could be exercised) will be discussed to give some idea of the principles involved when we enter into these business agreements with salesmen. These laws of contracts give us the legal weapons to fight those who fail to honor their agreements, such as the home repair schemers.

There are both oral and written contracts. A tremendous amount of business is conducted by means of oral contracts, which though never reduced to writing, create legally binding obligations

the courts will enforce.

In **express** contracts, the terms have been agreed upon by both parties, whether verbally or in writing makes no difference. An unwritten agreement to hire a plumber to install new faucets in the kitchen at a stated price that includes materials and labor is a binding express contract. Once the plumber installs the faucets, we have a legal obligation to pay him the amount that was agreed upon. The courts (Small Claims) will enforce that obligation. Implied contracts, on the other hand, are the contractual obligations we undertake without ever mentioning the word contract or agreement. When we entered the restaurant and were served a meal, we became legally obligated to pay the management.

Written contracts, especially ones that involve a substantial financial payment are preferable to oral ones, whether express or implied. The reason, obviously, is the difficulty of establishing the terms of an oral contract; the problem of persuading a court when you sue on the oral contract that your version of the facts is the right one. It was this very difficulty that prompted the British Parliament in 1677 to adopt an act known as the "statute of frauds." Practically every state in the United States has adopted most of its provisions which are very lengthy and complicated. In addition, all the states except Louisiana, have adopted a further provision of the old statute of frauds as part of the Uniform Commercial Code. This law says an oral contract for the sale of goods or services rendered worth \$500.00 or more can not be enforced unless 1.) the buyer accepts part of the goods or services

and actually receives them or 2.) the buyer gives something in part payment. Otherwise, some written memo for the contract must be signed by the party to be charged. A written contract is protected by the parol evidence rule which makes it extremely difficult to challenge the language of a written contract by "parol" or oral testimony. In a way the parol evidence rule backs up and gives strength to the statute of frauds. It makes no sense to put certain contracts in writing if you or the other party may go into court and complain you didn't intend to enter into the contract or that it doesn't mean what it says. A written contract, in brief, may not be altered by oral testimony or evidence.

Of course, one exception is oral evidence offered to prove that no contract was actually entered into or that the contract that was admittedly entered into resulted from fraud, mistake or duress.

If your contract is the result of fraud, it is unenforceable. However, you should be wary when buying something because courts recognize the right of salesmen to "puff" or exaggerate, within reason, the merits of his product or service. It might be difficult to prove his exaggeration amounted to fraud or misrepresentation.

We all have the right to freedom from being improperly induced or persuaded to do something (or not to do something) by someone's trickery. This tort involves several issues:

- 1.) a conscious or known false statement is made
- 2.) by someone who knew the statement was false
- 3.) with the intention you would rely on it and
- 5.) your suffering (financial, mental or physical)

as a result.¹⁶

Law enforcement managers base their investigations of the activities of traveling swindlers on these laws. The primary enforcement statutes are written in a collection of state laws called The Texas Penal Code. Section 32.46 is "Securing Execution of Document by Deception." This law passed by the 63rd Texas Legislature in 1973 has been in effect since January 1, 1974 and is often used to charge a perpetrator of a fraudulent business deal. The statute says "a person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person."¹⁷

The document in many fraud cases can be the check written by the victim to the alleged fraudster to pay for goods or services.

V. MANAGERS: INVESTIGATING AND ENFORCING FRAUD

Investigation of crimes and other serious incidents are a concern to all law enforcement managers - from the preliminary activity of the investigation by the patrol division to the follow-up of the investigators. The nature of crime-investigative duties emphasizes the need for close and continuous supervision of investigations, if satisfactory results are to be obtained. The police executive must be certain that rights of citizens are not abridged and that criminal cases are not lost through improper handling of persons or evidence.

As simple as it may seem, many of the difficulties which arise

in criminal investigations of traveling con artists are caused by inattention to the element of the criminal offense, and the failure to realize that each of the elements must be established and proved before a conviction can take place. Part of the solution, of course, is in proper training of investigators so that they are aware of the legal requirement for proof. This must be coupled with sufficient instruction on operations procedure. A personal conversation with local law enforcement directors, Lampasas County Sheriff Gordon Morris, Lampasas, Texas; Texas Ranger Fred Cummings Lampasas, Texas; and Bell County Assistant District Attorney Rusty Carroll, Belton, Texas, resulted in consensus agreement that charging a suspect with the offense of securing execution of document by deception helps ensure a conviction of the fraud artist. The offense under this section is a felony of the third degree.

Police can counter con games and schemes by compiling profiles of con artists working in their jurisdiction to aid in identifications, arrest and prosecution. Information exchange across jurisdictions is also helpful.

Educating the public about the various games and schemes is an important preventative activity. Crime prevention is one of the best defenses of fraudulent activity, and police have an obligation to become involved in these types of activities. The police have the capability and competence in sponsoring educational programs about fraud prevention. Public awareness programs should describe the profiles of con artists and note that these typical criminals

are looking for easy opportunities to obtain something of value in an easy way. The education should also include the appropriate response when a potential victim is confronted with a suspicious scheme.

The media can also be a tremendous asset in the dissemination of crime prevention and safety education articles and features, preferably authored by police personnel.

One of the great benefits of developing good community relations is that the dialogue that results from police-citizen contact can be very helpful in a police department's efforts to educate the public about certain scams that may be circulating in the area. The trust and confidence in a community's law enforcement office may encourage victims to report he's been hoodwinked. Victims should be encouraged to call the police, district attorney or the local consumer protection office. More than likely, a crook who victimizes once has victimized before and will victimize again. Their identification could be the piece of evidence that would bring an end to their fraudulent games. Failure to report these cons, as embarrassing as the victim feels after being taken, have far reaching effects.

- 1.) There is no way the criminal can be arrested unless the police know that a crime has been committed.
- 2.) Money is tight, and police departments must allocate their resources as wisely as possible.
- 3.) Failure to report a crime can mean not getting your fair share of police protection.

- 4.) Unless a crime is reported, a victim can not usually get reimbursement for losses from insurance companies.
- 5.) Many states have victim compensation programs, and of course, this requires a police report. And, last of all,
- 6.) It is your duty. Everyone has an obligation to do what he or she can to protect not only themselves, but everybody from crime and criminals.¹⁸

VI. PUBLIC AWARENESS: RECOGNIZING DECEPTIVE TRADE PRACTICES

For the past couple of years, the Federal Trade Commission, Federal Communications Commission, U.S. Postal Service, Internal Revenue Service and numerous committees and subcommittees in the House of Representatives and Senate have worked with varying degrees of commitment to devise regulations that will protect the public.

Wayne Gray, a chief postal inspector for the western region of the Postal Service, says that in his thirty years on the job, he's never seen it so bad. "As soon as we put out one bunch over here, another one crops up over there."¹⁹

Cracking down on such scams as described requires several countermeasures on the part of law enforcement agencies, their managers, but mostly the citizen themselves.

The first general objective of a crime prevention program is to increase public awareness of the conditions and circumstances that lead to vulnerability. Following a few simple rules should keep citizens safe from the smooth-talking con artist.

- Never hire anyone who comes unbidden to your door or who telephones.
- Always get a second opinion if something seems amiss or too good to be true.
- Don't give "good faith money" for any investment that has not been thoroughly checked by someone you know and trust. Never be rushed into an investment. If it is worthy of merit, it will stand an investigation and will not go away. If a business transaction does require your immediate attention, let it go.
- Do not pay in advance for any significant purchase unless you are buying from a reputable merchant with whom you have traded before.²⁰

Texas Attorney General Dan Morales reports that his office receives many complaints about home improvement scams during the spring and summer. His investigators give these tips when someone offers to make home improvements to your home, in addition to the suggestions previously listed:

- If a contractor asks you to sign a credit check application, read the form carefully and make sure it does not commit you to anything. Make sure it really is a credit check and not a contract.
- Do not rush into signing a contract, especially in your home. Take time to read the contract after the salesperson has left. Check first with friends, an attorney or the Better Business Bureau. Even if a contract has been signed, you have three days to change your mind. Just make certain the correct date

appears on anything you sign. Read carefully and understand the contract terms. Get a copy of anything you sign and keep it. Take time to compare prices by shopping around - a good bargain today will still be a good bargain tomorrow.

- Ask for references. If the company is unwilling to give references, it must have something to hide.

- Do not sign a contract that has blank spaces on it. Unscrupulous salespeople sometimes fill in numbers that are different from what you agreed to verbally.

- Check to see if there will be a lien on your house if you sign a contract. Do not accept a salesman's oral assurances that there will be no lien. A lien may also be called a "security interest" or "mortgage." Having a lien means if payments are not made on the contract, the company can take away your house.

- If there will be a lien on your home, a notary public (other than the salesperson) must witness you sign the document creating the lien. Do not allow the salesperson to take care of the notarization later.

- Do not sign a completion certificate until the work is complete. Be wary of salespeople who say they need money before the job is finished.²¹

VII. CONSUMERS: WHERE TO TURN FOR HELP

Although not a law enforcement agency, the Better Business Bureau is the most active in the field of protecting consumers from unscrupulous and deceptive business people. The BBB forms a network

supported by over 150,000 concerned businesses of all kinds and handle over 2,600,000 public contacts each year, about 90% of them for information and help about the reliability of companies and persons.²² There are about 115 active bureaus in the United States and fourteen in other countries. If an area is not served by a BBB, the local Chamber of Commerce will have access to some of the same information the BBB has available. Citizens can call the independent non-profit agency to report fraud operations or to make an inquiry of a suspect fraudulent activity or business.

The Federal Trade Commission is the main federal government agency concerned with regulating advertising and selling. If a complaint is filed with FTC, all facts must be sent in connection with the alleged deception. If the commission finds from a preliminary investigation that fraud is present, it may issue a complaint against the offender, who has a chance to reply. Then a hearing is held where a hearing examiner may make a decision to cease and desist order, or advise the complaint be dropped. Then the entire commission makes a decision. If the offender continues in spite of an order to stop, he is subject to severe fines in a civil penalty action brought by the U.S. Attorney.

The U.S. Post Office combats mail fraud. If a schemer is trying to get money through the mails by means of false or fraudulent claims, the Post Office will stamp any mail addressed to the offender "fraudulent" and return it to the sender. The intent to defraud through the mail must be established with a large amount of evidence, and this is harder to do than under the FTC "tendency

and capacity to deceive" basis. In prosecuting criminal fraud, intent must be established beyond a reasonable doubt.

The fraud order is more for prevention than punishment even though this kind of order will ruin a business whose operation depends on use of the mail system. The U.S. Attorney's Office prosecutes mail fraud.

The Food and Drug Administration protects the public's health against all manner of frauds in foods and drugs. The FDA is required to publicize any charges against manufacturers or dealers whose product quality is inferior. This is effective in enforcing compliance, as well as protecting law-abiding businesses against unfair competitors who dishonestly label their goods.

The Federal Communications Commission defines proper standards for radio, television and cable transmission. The possibility of having its license revoked keeps reputable stations from carrying advertising unacceptable to FCC. The FCC interprets unacceptable advertising to be any that is unethical, immoral, or false and misleading. In addition to these main federal agencies concerned with consumer protection, there are an increasing number of state attorney generals who have opened consumer fraud protection bureaus. Texas is one of them.

The following contacts are listed for more specific information on consumer affairs and their protection from dishonest businessmen.

The Office of the Attorney General
PO Box 12548
Austin, Texas 78711-2548
1-512-463-2070

Federal Trade Commission
Public Reference Room
130 Pennsylvania Ave.
Washington, D.C. 20580
1-202-326-2222

Better Business Bureau
2101 S. IH 35 Suite 302
Austin, Texas 78741
1-512-445-2911

VIII. MAKING THE CRIMINAL JUSTICE SYSTEM WORK FOR CONSUMERS

Criminal justice systems have long sought to educate consumers to beware of criminal fraud. But law enforcement officers say fraud is one of the most underreported of all crimes and courts tend to ignore small-time swindlers because they do not fit most preconceptions about the kinds of people who break the law. They have "bigger fish to fry," as suggested by consumer reporter Hattie Kaufman for CBS News.²³ Often the victims are too embarrassed to admit they have been scammed and some may not even realize they were swindled.

The law enforcement managers must take a proactive stance on con games played in their town, waging war on this type of crime which can be as costly to an individual as a burglary. The Justice Department and most law enforcement agencies continue to focus its efforts on drugs and street crimes. However, con artists steal far larger sums than those lost through street crimes.²⁴ It is just that because the fraud industry is so unreported and because the crime is so itinerant, an accurate measurement of actual dollar costs of confidence games has never been made; but experts estimate it is a billion dollar industry.

Police chiefs say these scams are more expensive to investigate because the long arm of the law is not long enough to find these con artists who disappear in the population. These fraud crimes are more difficult to prove because the suspects move around the country and rarely stay in one place more than a few days. If confronted by law enforcement officers, these subjects will make amends to the victim and will leave the area without any trouble, only to set up their operation somewhere else. One of the most difficult problems involving these subjects is attempting to identify them.²⁵ Many may not have a criminal record. They may have valid driver's licenses from several states, may exchange identification with each other or just not bother to carry any identification at all. In most cases, any address on driver's licenses or vehicle registrations will check out to be a travel trailer or mobile home park, business complex, private post office box, the address of an answering service, a motel, apartment complex or even a non-existent address.

The police officer is very often not an authority to distinguish shoddy work from fraud and often will recommend the victim pursue a civil complaint rather than a criminal complaint.

Another reason that the justice system has not been working as effectively for the consumer has been a poor working relationship between police and the courts in many jurisdictions. The police chief who admits he is satisfied 100% with the court in his jurisdiction is rarely found.²⁶

Police criticism of the court functions usually falls into

three categories: 1.) deficiencies in the administration of the court system, 2.) leniency and inconsistency in sentencing and 3.) overzealous or improper rulings affecting admissability of evidence.

Theoritically, the police are not supposed to be unduly concerned with the status of a person who is arrested once the subject leaves police custody. Practically, the police should be expected to express concern over situations which unnecessarily reduce police capability to cope with crime.

The courts have adopted certain laws which give permanence to oral and written contracts, implied or express, and which protect citizens' rights from fraudulent attempts to upset those rights. These rights should be enforced by local police agencies.

Expanding these rights to protect the fragile senior citizen population should be considered. There are currently felony laws which protect the elderly from abuse and injury. Laws should also be enacted to protect the frequently targeted elderly people from getting duped.

Most police departments have officers who specialize in the protection of and prevention of crime against juveniles. Since the elderly population is increasing each year as life expectancy grows longer, law enforcement managers will have to take a serious look at adult protective services as part of their departmental operations.

It can be debated whether the police should become social activists; however, it can not be argued that the future of crime

prevention work must involve a liason with the elderly population.

IX. A CASE STUDY TAKEN FROM THE LAMPASAS POLICE DEPARTMENT FILES

No experience is better than an actual investigation to study the modus operandi of a traveling con artist. A recent investigation within the city limits of Lampasas matched the profile of an itinerant swindler almost perfectly when department personnel encountered some asphalt gypsies August 24, 1993.

Police investigators assisting with patrol observed two dump trucks, one a 1993 Ford dump truck pulling a trailer loaded with a tractor, and another dump truck, about a 1980 Chevrolet model with a tarp over the bed and hauling a small street roller on a trailer. The investigators did not notice any company names, logos or phone numbers on their equipment. The officers decided to set up surveillance on the two dump trucks. The drivers of the two trucks stopped at several businesses telling shop owners they had been doing a paving job in town and had leftover asphalt they would sell for a good price if they needed a parking lot or driveway paved. One businessman confronted by the apparent crew leader and his young assistant driving a 1989 Chevrolet dually pickup said he was told the asphalt would cost him \$1.00 per square foot; this businessman did not need their services.

A victim was finally located by the workers about 4:30 p.m., the same afternoon they arrived in town. The officers continued their surveillance. About 9:00 p.m. the pavers completed their job, loaded their equipment and left the job site. At this point,

police stopped the drivers of the two dump trucks and the dually pickup and escorted them to the police department for questioning. They also called the residents of the house where the subjects did the paving job.

The apparent "boss man" said the resident had called him for his services. The victim said he did not solicit the suspect; that he came to his house like a door to door salesman three months ago and told him his paving crew was doing a big job in Austin and would be through in a couple of weeks with enough asphalt left over to do 1200 square foot for \$1200.00. He also said the man told him the asphalt thickness would be four inches thick.

The first afternoon the crew was in Lampasas, the leader visited the victim's wife to tell her a deal had already been made by her husband to pave their driveway three months ago for \$1200.00. The man kept telling her what a good deal they were getting if she would allow his crew to get started on the job right now. She said the men's story was quite convincing and allowed them to begin. The victim arrived home from work when the crew was about halfway through the job. The victim said the crew leader showed him a contract which was not filled out and pointed to the price per square foot which was \$1.80 for 1200 feet of four inch thick asphalt. The victim said he kept telling the crew to stop laying the asphalt as he was not sure he had enough money to pay for it. He said they kept laying the asphalt despite his pleas to stop. He said they didn't stop until the dump truck was empty. When the bill was handed to the victim, it was no surprise the

victim was upset, because the bill was for \$2200.00 instead of \$1200.00 as originally quoted. He refused to pay \$2200.00, but finally wrote a check for \$1500.00 and still was asked for a postdated check for \$200.00 more. The victim absolutely refused to pay anymore, but the asphalters told him they would return in about two weeks to collect the balance he owed.

The next morning, police investigators had an experienced asphalt man recently retired from the Texas Highway Department after 35 years to inspect the crew's work. Upon examination of the driveway, he stated it was very poor quality for two very important reasons. The preparation of the dirt work was not properly done before the asphalt was laid. He also checked the depth of the asphalt by digging with a pocketknife and found in most places the asphalt was less than 1/2 inch thick! The asphalt expert noted that when (not if) the driveway starts falling apart, the victim will have a bigger mess than if the job had not been done at all.

With the expert's statement and the victim's statement, the investigators prepared a probable cause affidavit and complaint for the crew leader for the offense of securing execution of document by deception. The city judge then issued an arrest warrant. The subjects were subsequently arrested and their equipment used in the job seized. The victim's check was recovered uncashed.

These subjects' modus operandi was very similar to those profiles published by other jurisdictions.

- no company signs or phone numbers on their equipment to advertise their business.

- vehicles used in the scheme were late models.
- the subjects were from out of town and approach home and business owners with the story they just completed a large paving job and had leftover asphalt. They had not done any other jobs in town.
- Subjects solicited their business door to door.
- Subjects stated one price and billed the victim with a much higher charge.
- Subjects intimidated the victim.
- Subjects showed a contract (often blank) insinuating the victim is bound by contract.
- The crew tried to cash the check at a local grocery store. Subjects do not want to be caught with a traceable document.
- The crew's equipment and vehicles are paid for with cash.
- The victims were mid-fifties; the victims of most scams are at least 55.
- Subjects work mostly where there is a larger concentration of elderly people, which is usually the more rural areas or small towns. Elderly people are most commonly targeted according to Ft. Worth Police Detective Chuck King because they often have access to cash savings, trust others more, and typically have poorer eyesight and memories that make them poor witnesses.²⁷
- The subjects are usually related. The group arrested in Lampasas included a father and son. The other two men were related to the father and son by marriage. Kinship relationships are critically important for the traveling con

artists. They are a very closed society, more closed than the Mafia, according to Lt. Joe Livingston of the Columbia, South Carolina Police Department.²⁸

X. CONCLUSION

This research focused on the more common ripoffs and examined some of the reasons why people become involved in confidence schemes. People are naturally attracted by the lure of winning big with little risk or getting something for nothing. Many get involved through the psychology the con artists use to trap prospective victims. Once they are duped, victims usually do not report swindles to avoid notoriety, shame or guilt feelings. Sometimes the victims are even unaware they were victims. A description of who the con man is, what games he plays and how he plays them, as well as specific countermeasures to avoid becoming the victim has been discussed to create a public awareness of the tricks involved in the confidence games and our susceptibility to them.

The public must let common sense prevail and caution exercised when approached with a bargain "too good to be true." All the consumer protection laws and law enforcement efforts will not prevent someone from getting scammed. Prevention begins with the citizen. Advice on the subject is easy; but implementing is much more difficult. The simplest rule to remember is to keep your hands in your pockets or someone else will!

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