

STATEMENT OF THE HONORABLE CHARLES J. HYNES,  
DISTRICT ATTORNEY OF KINGS COUNTY, NEW YORK,  
TO THE GENERAL OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE  
OF THE HOUSE COMMITTEE ON BANKING AND FINANCIAL SERVICES  
MAY 3, 1999

Good Morning:

I am Charles J. Hynes, District Attorney of Kings County, New York. To begin, I wish to thank Congressman Peter King for arranging this Field Hearing of the Sub-Committee in New York City and for giving me the opportunity to address one of our growing social problems, namely the financial victimization of the elderly through the use, or perhaps the misuse, of joint bank accounts.

More than twenty years ago, as the first New York State Special Prosecutor for Nursing Homes and Medicaid Fraud, I addressed Congress on the need to take action against the abuse of the elderly by unscrupulous health care providers. Today, I have the sad duty to warn you about the abuse of the elderly by their family members and so-called friends and advisors.

Kings County is home to about 400,000 senior citizens or roughly 30% of the 1.3 million seniors who reside in the City of New York. As our population continues to age, the number of seniors dependent upon family members and others for support of all types is increasing dramatically.

Undeniably and unfortunately, there are too many people within our society who would take advantage of and abuse these older and susceptible persons. Financial exploitation of the vulnerable elderly or disabled is a growing problem not only in New York, but across the country. Reported cases of elder abuse are on the rise.

In a 1996 Report, the National Center on Elder Abuse reported that between 1986 and 1996, there was an increase of 150.4 percent in reported cases of elder abuse.

Perhaps the most troubling aspect of elder abuse is that the majority of cases are perpetrated by family members. One method of financially exploiting the elderly is through a joint bank account.

By way of background, in New York State, when a joint bank account is opened, two presumptions of law arise:

- 1) that the owner of the funds intended to make an immediate gift of one-half of the monies deposited to the other joint holder, and,
- 2) that the survivor is entitled to all the remaining funds upon the death of either of the parties.

As we all know, some joint bank accounts are opened simply to serve as a means of aiding elderly or infirm depositors in conducting their daily financial affairs. Many of these depositors do not comprehend the true implications of a joint account and at the time that they opened the account, never intended to make a gift of one-half the deposit or create a right of survivorship in the other party.

Recognizing that joint bank accounts do not always serve the needs of many individuals requiring assistance in managing their monies on deposit, the New York State Legislature amended the Banking Law in 1990 to create "Accounts for Convenience Only," also known as "convenience accounts."

Section 678 of the Banking Law now allows for the establishment of an account from which both parties can draw, but the depositor (owner) always retains ownership of the funds in the account. The other party, called the "convenience signor", can access the account, but every withdrawal of funds must be for the convenience of the owner. The convenience signor does not have a right of survivorship in the account.

Under the larceny statutes in New York State, it is virtually impossible to criminally prosecute individuals who make unauthorized withdrawals from joint bank accounts because they are co-owners of the account. This has resulted in many sad cases in which unscrupulous individuals have stolen money from seniors without facing any consequences.

However, in the case of unauthorized withdrawals from a convenience account, since title to the funds on deposit always remains with the owner of the account, a criminal prosecution may be possible against the convenience signor if he makes a withdrawal which is solely for his own benefit, and has no value or benefit to the owner.

In addition, should the owner die, the funds on deposit do not become the property of the convenience signor but revert to the owner's estate.

The problem that we are facing is that most New York banks do not offer Convenience Accounts. In a survey conducted in 1997 only

two banking institutions (out of 36 surveyed) in the New York City area offered this type of Account. The situation has not improved since that time.

Members of my staff and I have discussed this issue with members of the Banking community. I understand the position of the Banks to be that "there is no demand" for this type of account. But how there can be a "demand" when the account is not being offered to the public or even advertised as being available?

Today you will hear from a number of witnesses who will each relate the experiences of a family member who became a victim of theft accomplished through the use of the joint bank account.

You will hear how a son stole \$ 50,000. from his mother. In another case, you will hear how a son depleted his mother's life savings.

You will also hear how a niece raided her aunt's bank accounts.

These cases are just a sample of what is happening to the seniors of our communities.

In order to address this situation I believe that this Subcommittee should begin with a thorough examination of the rules and regulations that govern federally chartered banks. As a State Prosecutor, I do not prosecute cases under the federal banking laws, but I am aware that there are many different types of administrative regulations that govern federally chartered institutions, and that these regulations are promulgated by a number of different federal agencies.

I believe that this Sub-committee should inquire of these agencies and of the banking industry whether these agencies can use their rule making authority to authorize accounts for convenience at federally chartered banks, or whether there is a need for Congress to pass legislation for all federal banks similar to Section 678 of the New York State Banking Law.

In addition, the Sub-committee should explore the need for a mandate that each Bank must offer a convenience account and must make its existence known to the depositor. Only then can we be sure that vulnerable elderly and/or disabled persons will have at least one avenue available to them to help protect their life savings from theft by those in whom they place their trust.

My staff has worked on this issue for a number of years and we stand ready to help the Sub-committee and its staff in compiling information and proposing legislation to Congress, if the need arises.

Protection of seniors from financial exploitation is a very urgent matter that Congress should consider, along with any changes proposed changes in Social Security, Medicare and other programs that affect the elderly.

Thank you for giving me this opportunity to bring this to your attention today.