



Opening Argument



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Identity Theft: A Growing Problem

Identity theft is a serious and growing problem.

New York ranks third in the nation in the number of ID theft complaints and seventh in the nation in per capita ID theft reports. It causes annual business losses of almost \$50 billion. Consumers sustain out of pocket costs of another \$5 billion. Over 27 million Americans have been ID theft victims in the last five years.

I recently testified before a joint hearing of the Assembly Banks, Codes and Consumer Affairs Committees to urge adoption of additional measures to combat ID theft. I told our lawmakers that ID theft victims not only suffer monetary loss but also face a tangle of red tape attempting to clear their names and restore their credit. I said that we have done much but need to do more to better protect victims.

I said an ID thief need not hit you over the head, break into your house or pick your pocket. He just needs to get your personal identifying information -- be it a bank or credit card account number, a Social Security number, your mother's maiden name, a password, a code or other information -- to commit his crime and wreak havoc on your life.

Let Me Give You Some Examples

- We prosecuted an alleged grifter who used numerous fraudulently obtained credit card numbers to place bets at a racetrack over the telephone. The defendant was charged with having opened betting accounts in the names of the individuals whose identities he had stolen. After placing bets by telephone using the stolen credit card information, the defendant allegedly showed up at the track and withdrew his "winnings" in cash. One victim received a delinquency notice from the IRS for failing to pay taxes on "his" racetrack winnings.

- We have repeatedly prosecuted a youth for phishing. He had purchased a list of AOL subscribers and using his home computer sent them a fake e-mail purporting to be from AOL informing them their personal information had been lost and that if they wanted to continue their AOL subscription they needed to provide by return e-mail their personal information. Over 100 individuals responded and he used their information to buy tens of thousands of dollars worth of electronic equipment and other items over the Internet.

- We have prosecuted criminals who used stolen identities to facilitate mortgage fraud or to sell houses they did not own. They used stolen personal information to take out mortgages on properties and receive money from lenders.

They then disappeared and left the ID theft victim as the debtor on the loan. Or, they set up sham real estate closings, assumed the identity of homeowners, sold houses they did not own and left victims homeless.

- We are investigating a mounting number of cases involving counterfeit corporate checks. A criminal steals or borrows a legitimate payroll or other check from a business, copies it on a scanner and returns the original. With access to bank account and routing numbers, additional fraudulent checks are created using a computerized check-writing software program. The fakes are passed to confederates who fraudulently negotiate them for a cut of the illegal proceeds.

Recommendations For Change

I believe that we should stop using Social Security numbers as identifiers and substitute random account numbers. We should amend the definition of personal identifying information to include Social Security numbers.

We should create higher levels of felonies for identity theft crimes involving large numbers of victims and substantial amounts of money as we do with other financial crimes so that offenders can be sanctioned proportionately to the harm they have caused.

We should permit introduction of business records in the Grand Jury by affidavit and end the requirement for obtaining such evidence from testimony by a custodian of records who usually has to come to New York from out of state, an onerous and costly burden.

We should allow credit card victims to submit an affidavit attesting to the fact that the criminal did not have permission or authority to use his or her credit card and spare them the burden of having to take time off from work to testify before the Grand Jury.

Under current law it is a felony (grand larceny) to steal a credit card. But, it is not a larceny at all to steal a credit card account number because an account number is not considered property. We should amend the law to better reflect the way ID theft is being committed.

ID theft is complex. Prosecutors need more funding for specially trained attorneys, detectives and forensic accountants. ID theft investigations and prosecutions are labor intensive and time consuming and they can involve hundreds of victims and paper trails stretching across the country or around the world.