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FEDERAL TRADE COMMISSION

IDENTITY THEFT VICTIM ASSISTANCE WORKSHOP

OCTOBER 24, 2000

FTC HEADQUARTERS BUILDING

ROOM 432

WASHINGTON, D.C.

P R O C E E D I N G S

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3 MS. CRANE: Good morning, welcome back to
4 the Federal Trade Commission's Workshop on Victim
5 Assistance for Victims of Identity Theft. If we
6 could keep our phones and other paging devices
7 turned off today, that would be greatly
8 appreciated.

9 I just wanted to do a few housekeeping
10 items before we got started today. Again today
11 we're going to have roving mikes available for
12 audience participation. We found that our mikes
13 yesterday worked much, much better if you held it
14 right up to your mouth and spoke right into it.
15 That's also very helpful to the court reporters and
16 to the folks who are taping the session. So, hold
17 that mike right up and speak right into it. It
18 will work much better.

19 Secondly, we've had a lot of requests from
20 participants for copies of our booklets, and of
21 course they're available from our consumer and
22 business education branch, but to make it easier
23 for you, if you would leave your business card or
24 your name and contact information with Kathleen
25 Lund, who is standing at the back there and who

1 will be at the back table later today, with an
2 indication of how many copies you would like sent
3 to you, we can just ship them out to you after the
4 session.

5 If you're wanting more than 150 copies, we
6 would prefer to shift you a zip disk so you can
7 print it on your own and that way you can put your
8 own logo on the back or the front as well. But
9 those are available and if you want to order copies
10 today, see Kathleen.

11 The first session today, we're delighted to
12 have John Arterberry, the Deputy Chief of the Fraud
13 Section, Criminal Division From the Department of
14 Justice as moderator and he will introduce his
15 panel and we're going to be talking about the very
16 difficult issue of clearing fraudulent criminal
17 records from the victim's name. Thank you, John.

18 MR. ARTERBERRY: Thanks, Joanna.

19 We do have a panel of experts, they are
20 experts from a number of different ways, either
21 through profession or through experience. I think
22 they have a lot of useful information to share with
23 you this morning. I'm going to introduce them
24 briefly, and then we'll begin quickly our
25 discussion.

1 On my right, far right, your left, Sylvia
2 Antalis, who is an attorney in private practice in
3 California. Next to her is Beth Givens, who is
4 director of the Privacy Rights Clearinghouse. To
5 my immediate right, Jack Jordan, who is a
6 lieutenant with the Los Angeles County Sheriff's
7 Department. To my left, Joan Logan, who is a
8 community services officer with the Montgomery
9 County Police Department. To her left, Shane
10 McLaughlin, who is an attorney in private practice
11 in New Hampshire. To his left, Robert Greer, who
12 is a New Hampshire resident. And to my far left,
13 Werner Raes, who is a detective with the Anaheim
14 Police Department.

15 MS. CRANE: John, can I interject with one
16 more housekeeping item? I'm sorry. You won't be
17 getting your break today, we have to run the two
18 panels back to back with just enough time to change
19 the panels, the name tags, because we're going to
20 need at least, I'm sure, an hour and 15 minutes to
21 get through John's panel. So, we'll take a really
22 shortened break between the two different panels
23 this morning. Thanks.

24 MR. ARTERBERRY: Thanks, Joanna.

25 The workshop has explored some of the

1 impact of identity theft, but it has economic
2 impact on an individual or group of individuals.
3 There are other ways that identity theft, however,
4 can affect individuals, and these ways are either
5 can be subtle or they can be not so subtle,
6 extremely disruptive.

7 What we're talking about this morning is
8 identity theft that either steals one's good name
9 or in other ways interferes with one's reputation.

10 Many books, many stories, much literature
11 about reputation, and what it means to people, how
12 one builds a good name, how easy it is to lose.
13 But it's especially I think disruptive, and in many
14 ways I think troubling to an individual to have
15 that reputation taken completely in ways that are
16 completely outside the control of that individual.

17 And we have a panel, one of or panelists
18 this morning, who speaks from experience about how
19 that can happen, and what that means in terms of
20 his personal life. Robert Greer, I think that in
21 just the past few months, you've had the experience
22 of dealing with identity theft, not in a situation
23 in which someone was trying to take your property,
24 but in which someone was trying to take your good
25 name. From that, I guess you're still -- you're

1 still working to recover.

2 MR. GREER: Most definitely. My case did
3 start off in the civil credit end of things and I
4 was able to clear that up right away. In January
5 of this year, I got a suspension notice and my
6 license had been suspended for a speeding ticket
7 and a missed penalty that I had never been to. And
8 if anybody here has tried to prove that they have
9 never been somewhere, it can be a little
10 challenging.

11 And most recently, I purchased a firearm,
12 about a month ago, and the background check came
13 back delayed, and two days later I was notified
14 that I was denied. So, I went up to the court
15 house to find out exactly why I was denied, and I
16 brought my whole thick file of identity theft with
17 me, they said well, Mr. Greer, you have three
18 warrants for your arrest in Massachusetts, which is
19 20 minutes away from me.

20 And two weeks prior to this date, I came
21 back in from London, and went through Customs, and
22 it was very likely that I could have been arrested
23 right there, and detained.

24 Now, the arrest charges, or the warrants
25 rather, were as a result of credit card fraud,

1 somebody stole a credit card and used it, and it
2 all -- all the fingers started pointing to my name
3 and identity, through a false ID that was used at a
4 gym.

5 It's kind of a long story, but his face was
6 on this ID card with my identity. They came back
7 and said this is the guy. So, I had three bench
8 warrants for my arrest for nonappearance. When you
9 have a nonappearance history, when you are
10 detained, you are not released on bail, because you
11 didn't appear the first time, why are you going to
12 appear the second time.

13 So, if I was detained, I was detained until
14 I could see a judge essentially. And thankfully at
15 this point, up until this point, I had taken care
16 of all of my own investigation and taken care of
17 all the accounts on my own, because I knew how
18 things were going, I didn't have to guess, and I
19 was able to maintain my own pace on it, which was
20 rather quick.

21 As soon as I learned I had a warrant, I
22 knew I was over my head. And that's when I turned
23 to attorney McLaughlin here to help me out. And at
24 this point in time, I don't think he had had any
25 identity theft cases at all, and it was unchartered

1 territory for Shane.

2 And from the time Shane took the case,
3 until the end, I was almost afraid to leave the
4 house. If I was pulled over for anything, any
5 traffic infraction at all, if somebody ran into me,
6 if I ran into anybody. I ride a motorcycle, if I
7 got pulled over. I mean, motorcycles, let's just
8 say when you're riding on a motorcycle, you're
9 throwing fingers at yourself saying look at me, I'm
10 here.

11 And I couldn't partake my typical
12 activities, and I ended up essentially staying home
13 most of the weekends, not being able to even go
14 out. But Shane can handle the reaction and the
15 interactions with law enforcement. My information
16 is through Shane regarding the hurdles that we
17 encountered.

18 MR. ARTERBERRY: Shane, I'm sure you've had
19 clients bring you a number of different problems,
20 but the one that Robert brings you, a person who,
21 as Robert describes, that really feels that he's
22 become a prisoner in his own country, probably the
23 first time you've had to deal with something like
24 that.

25 MR. McLAUGHLIN: It is, John. This is a

1 case of first impression to me, and I suspect that
2 due to the way that these matters tend to present
3 themselves, often in small communities, that they
4 will be matters of first impression for the
5 attorney that they bring their case to.

6 Often a person who is presented with an
7 issue of identity theft, unfortunately for Robert,
8 and unfortunately perhaps for others, it will be in
9 the context of an arrest on an outstanding bench
10 warrant. Robert was fortunate in many ways, that
11 did not occur to him, however I'm sure that it's
12 likely that the person is presented with that type
13 of a dilemma will contact his closest advisor,
14 which will most likely be his family attorney, if
15 he does have one. If not, it's going to be a
16 public defender, and he's going to be in a little
17 bit -- he's going to be in a different position
18 because he's going to have to convince that person
19 as to the bona fides of his own identity.

20 In Robert's case, I think he has been very
21 fortunate in many ways. First, he wasn't arrested
22 on any complaints. When he learned of the charges
23 in the first instance, which was the consequence as
24 an attempt to purchase a firearm. He had purchased
25 firearms over the years in New Hampshire. Many of

1 us up there do collect firearms.

2 The firearms ATF check came back denied, he
3 went to the local law enforcement authorities, and
4 he was fortunate because he had the presence of
5 mind to bring his entire file, he had done a
6 tremendous amount of footwork, as so many of the
7 victims who testified yesterday had, on their own.
8 He had his file, he had his materials. He could
9 make at least a prima facie showing, if you will,
10 to the people at records, which is right at the
11 state police headquarters, that I am not the person
12 here, please don't arrest me, and they didn't.

13 We have a very close extradition and
14 transport agreement with the state of
15 Massachusetts, our sister state, which is right to
16 the south of us. Robert lives probably ten or 12
17 miles from Mass, so it would be an easy matter for
18 his or the Concord State Police just a half an hour
19 from the border to have held him, held him
20 overnight, arranged for someone in our sheriffs
21 office in Massachusetts, Salem, Mass, which is not
22 far, to arrange for a pick-up and transport him
23 down.

24 So, that was the first instance that he was
25 very fortunate in this matter. I received my first

1 inclination that he had had a problem when he
2 called me by leaving me a message that to say the
3 least was almost frantic on the phone on a Saturday
4 evening. I had been out of the office that Friday
5 afternoon, he wasn't able to reach me. I had seen
6 Rob as recently as a week ago, and we attended or
7 our families attended together a fireworks
8 festival, end of summer festival at a small town in
9 New Hampshire. I have known Robert Greer for
10 perhaps ten years. We are both pilots, we fly
11 together, we share a lot of common interests. He's
12 a good friend, but not somebody that I spent a lot
13 of time with, but nevertheless, when he called and
14 said Shane, I don't believe this, you won't, I have
15 three outstanding bench warrants against my name,
16 what am I going to do. Am I going to get arrested
17 tonight? And when I received that phone message, I
18 didn't have an answer for him either, because the
19 likelihood did exist.

20 I called him right back. We had a brief
21 discussion on the phone that evening, and I learned
22 a few of the facts, and what he had done so far.
23 So, it became apparent that this is something that
24 probably could wait until Monday morning, and that
25 someone from Massachusetts was not going to seek to

1 extradite him to Mass. But that was the first --
2 the first emphasis.

3 The second was to meet with Robert, which I
4 did, sat down, get a picture of the problem that he
5 presented and the unique context of his case,
6 learned a little bit about what he had discovered
7 by nature of the complaints that were pending
8 against him, and then to formulate a strategy and a
9 game plan to address those pending criminal
10 complaints.

11 Just a couple of final points, John, if I
12 may, on this. In Robert's case, and I think this
13 may be true in other cases, if you're on a -- if
14 you live in a jurisdiction town to a sister state
15 in which a perpetrator may have obtained your
16 identification information, Robert is part owner of
17 a company in Massachusetts, and by nature had or by
18 work, has to travel there regularly.

19 He's almost prevented for practical reasons
20 from traveling to Massachusetts, which is only a
21 mile and a half from my home town, because of the
22 tremendous risk that if he travels over the border.
23 And God forbid he is involved in a minor motor
24 vehicle accident, he may be a passenger, but once
25 his name is taken, it's going to go into the

1 computer, it's going to be called in to the
2 station.

3 He could be stopped for something as minor
4 as a defective taillight, while in Massachusetts,
5 for example, but that stop would be enough to
6 trigger the inquiry to the Massachusetts State
7 Police Warrant Information Center and to generate a
8 response that he's under a warrant, and he would
9 have been arrested on the spot, placed in cuffs,
10 possibly shackles, which is what we do in New
11 Hampshire, transferred and held.

12 And because it's a fugitive warrant,
13 failure to appear warrant, he would have been
14 denied bail. And if this had happened on a Friday
15 evening, he would have had to have waited until
16 Monday morning to get out. And there's probably no
17 consul that would have had the ability within the
18 mechanism that the system has in place to do
19 anything else. He would have probably sat in jail
20 until Monday morning.

21 One more point. Rob travels overseas. And
22 this is something that impressed me when he came in
23 the office. I don't know, and there are probably
24 many practitioners, members of the bar who handle
25 these matters, that don't know the extent on which

1 data is maintained where criminal records or
2 warrants are concerned.

3 Now, he had no convictions, but he had
4 outstanding warrants, fugitive warrants. He -- as
5 I indicated to him, I said you have to be cautious
6 about traveling out overseas until this is resolved
7 insofar as the warrants being removed, because
8 until I can determine whether Customs computer has
9 the warrant information in their file, you run a
10 substantial risk upon entering the country of
11 arrest at your point of entry.

12 Now, I don't -- I still don't have the
13 answer to that, and I think that's one of the
14 issues perhaps the panel could address this morning
15 later in terms of what information was out there
16 and how we can get information to the victims of
17 wrongful criminal records about what type of
18 information is out there in what databases that
19 place them at risk for wrongful arrest.

20 MR. ARTERBERRY: Beth, I think it's safe to
21 say that what Robert and Shane have described would
22 for most of us be just about our worst nightmare.
23 But I would hope that you can tell us that these
24 are fairly rare occurrences. Can you?

25 MS. GIVENS: There are no hard numbers. We

1 -- just a little background, the Privacy Rights
2 Clearinghouse is a non-profit consumer advocacy
3 organization in San Diego, and we take calls and
4 emails from people who have privacy questions and
5 privacy problems. And we've dealt with credit
6 related or finance related identity theft since
7 about 1993, and we get -- we've gotten thousands
8 and thousands of calls on that. What we've been
9 seeing in the last few years is an increasing
10 number of individuals who are dealing with a
11 wrongful criminal record. And I found it very
12 interesting, yesterday the Federal Trade Commission
13 in its slide presentation and report on the
14 statistics said that they found that 11 percent of
15 their callers who are dealing with finance-related
16 credit -- identity theft, are also dealing with
17 wrongful criminal records.

18 Interestingly, we did a survey in March,
19 and we found the same thing, although our sample
20 was much smaller than what the Federal Trade
21 Commission, we found 12 percent are dealing with
22 criminal records. Well, if you look at perhaps
23 between 700,000 and 800,000 victims of
24 credit-related identity theft this year, do a
25 little math, we're dealing with over 80,000. And

1 that's those who are dealing with two kinds of ID
2 theft, criminal and credit.

3 There are individuals who don't have
4 credit-related identity theft and they're dealing
5 just with the criminal record. Another interesting
6 statistic that I read in a California newspaper was
7 that in San Jose, which is a city up by the Bay
8 Area, they last year arrested more than 400
9 individuals wrongfully, primarily on citations, DMV
10 citations, and then failure to appear. I got a
11 call from a police department records specialist
12 from a -- from Albuquerque, New Mexico. She said
13 that they're putting a handful of many individuals
14 wrongly in jail every month, and, you know, she was
15 quite troubled about the growing problem of getting
16 erroneous information because of identity theft.

17 So, I think this is on the increase, and I
18 think primarily because of the fact that there is
19 erroneous information in databases which is
20 obtained because of somebody using somebody else's
21 identity.

22 We call this the worst case scenario of
23 identity theft, and the reason we call it the worst
24 case scenario, actually three reasons. One is that
25 there are no established guidelines. I think Rob

1 and Shane are finding this out, no established
2 guidelines for regaining your good name. At least
3 for credit, yes, you are -- you are -- you have a
4 terrible life for two, three, maybe four years.
5 With criminal-related identity theft, you're
6 potentially dealing with this for the rest of your
7 life.

8 Just like Rob is afraid to go out of the
9 house. I've talked to many individuals who won't
10 drive a car anymore, they will have someone else
11 drive for them. With credit guidelines, we've
12 worked out the steps, at least most of us who work
13 in credit-related identity theft, one, two, three,
14 four, five, this is what you have to do, and if you
15 do all these things, in a couple of years, you
16 should be clear.

17 No such thing. The individual who's a
18 victim of criminal records identity theft may not
19 even know it for a very long time, it could go on
20 for years and years, and then a taillight stop, and
21 they find out that they're arrested. There was a
22 young woman in San Diego, fresh out of law school,
23 went to her first day on the job, was met with --
24 by law enforcement, was handcuffed and taken away
25 in front of all of her soon-to-be colleagues, and

1 this was the district attorney's office, she was
2 going to be working in the DA's office. Wrongful
3 arrest, marijuana possession, somebody who had
4 stolen her wallet.

5 Anyway, there are no guidelines to clear it
6 up, the guidelines are different from jurisdiction
7 to jurisdiction. So, if you're in San Diego
8 County, you're going to clear your name differently
9 than if you're in Santa Clara County, and then many
10 of these cases are multijurisdictional, so like Rob
11 is dealing with an arrest record somewhere else and
12 he is going to have to go back and forth between
13 more than one jurisdiction and more than one state.

14 And also there is no way of figuring out
15 that you've got a criminal record except by doing
16 your own background check, and most people don't
17 know that this is something that you can do by
18 using some of these databases or hiring a licensed
19 investigator to do one for you, but you're going to
20 be spending a bit of money. It's not an \$8 credit
21 check. And you may not get all of the databases
22 where your records might be.

23 So, those are some of the reasons why we
24 call it the worst case scenario and we definitely
25 think it's on the rise.

1 MR. ARTERBERRY: Jack, you're from a
2 jurisdiction that has been very aggressive in
3 pursuing identity theft. Beth describes for us, I
4 think, some numbers that suggest that we can't take
5 much comfort in the fact that most of these ID
6 theft cases involve some credit-related problems.
7 Are you seeing a mix that is the criminal record
8 versus credit ID theft targeted case for your
9 jurisdiction?

10 MR. JORDAN: Yes, I do, John. However, it
11 is very small. Very small. Unfortunately, for
12 people like Robert Greer, that is not any
13 consolation at all. In Los Angeles County Sheriffs
14 Department, we make approximately five million
15 traffic stops a year, as our patrol division, we
16 have about 2,000 people every night out there
17 looking for people to stop.

18 The thing that I think happens with
19 criminal identity theft is like Beth said, you
20 don't find out about it until the worst case
21 scenario, and that is Saturday night you're out
22 with your family and you get stopped for a traffic
23 ticket, somebody runs your name and you come out
24 with a warrant out for you.

25 The solutions, like we said yesterday, what

1 we're trying to find is number one, when you take
2 an oath as a law enforcement officer to support the
3 constitution of the United States, we have
4 tremendous power to take someone's freedom away.
5 But if you look at the Iwo Jima Memorial, the Viet
6 Nam Memorial, a lot of people died for this country
7 to give us those rights.

8 I take it very personally and the people we
9 work with do, also. We do not want to put the
10 wrong person in jail. Number one, because we would
11 not want to be in that position ourselves. Number
12 two, because it's a waste of our time, we want to
13 get the guilty people out there.

14 Having said that, one of the things, if I
15 were stopped, and somebody accused me of having a
16 warrant that was -- I knew was not mine, the first
17 thing I would ask the officers, and hopefully
18 you're dealing with somebody with some compassion
19 and some sense of reason, compare the description
20 on the warrant to me. A lot of times the people
21 that steal the identity don't go out solely looking
22 for somebody that looks like John Arterberry, they
23 happen to do it by happenstance and take that
24 identity.

25 Unless like we heard from Beth yesterday, a

1 lot of times it's family members. If they're your
2 family, then they know what you look like and
3 there's a chance that they might have a similar
4 resemblance.

5 MR. ARTERBERRY: Sylvia, from the private
6 law side, like Shane, I think you've had experience
7 in seeing what can happen to people when either
8 because these steps that Jack has just described
9 weren't taken, that the victim of the criminal
10 identity theft either didn't have the presence of
11 mind or just didn't have the opportunity to say
12 what can I do? What's been your experience in how
13 victims have reacted in that first instance, this
14 is when they're first confronted with it?

15 MS. ANTALIS: My experience tends to be a
16 little bit different than Shane's and Rob's. I
17 think that often times theft of identity in the
18 criminal arena can take two forms. You can have a
19 situation where you actually have a criminal who
20 targets a particular person and says I'm going to
21 pretend that I'm Robert Greer when I get arrested,
22 and assume his identity.

23 I think the other situation is perhaps what
24 I would call an inadvertent theft when the personal
25 identifying information is entered incorrectly. I

1 have a client named Scott Lewis who that's exactly
2 what happened. Somebody else was arrested, did not
3 pretend to be Scott Lewis, didn't have a name
4 anything similar to Scott Lewis, but when the
5 arresting officer went to put in the identifying
6 information, he looked over to type in the
7 wrong-doer's social security number and actually
8 typed in the last four digits of his telephone
9 number. And the resulting social security number
10 was actually my client's social security number.

11 That's a very different situation.
12 Typically, you know, Scott doesn't have any
13 outstanding warrants or anything like that, but the
14 damage can come in two forms as well. Besides
15 outstanding warrants, Beth suggested background
16 checks, and that's a situation where now all of the
17 sudden, Scott Lewis goes to get a job, and the
18 potential employer runs a background check and
19 finds the arrest record and in fact several felony
20 convictions and things like that from the
21 wrong-doer's background. So, that's a completely
22 different situation.

23 The solution, which I don't know that we're
24 going to get into solutions just yet, is a very
25 different situation. At that point, Scott is in a

1 position where all he can do is clean up more in
2 the sense of a credit reporting clean-up, as
3 opposed to hoping that he doesn't end up in jail.

4 MR. ARTERBERRY: Werner, Sylvia describes,
5 I think, one, just the threshold problem that
6 police officers have, and that is at that moment,
7 when they're confronted with a possible arrest
8 situation, or at least they have a traffic stop,
9 some incident that requires that they identify an
10 individual. Today, and we're not going to ask you
11 to take us five years from now, but today, what
12 does the -- what does the officer have that he or
13 she can use to try to ensure that we have good
14 identification of the individual who is the subject
15 of that stop or arrest?

16 MR. RAES: Well, first of all, I can say
17 that I can greatly identify with victims,
18 especially this gentlemen. And I, Jack, at LA, we
19 at law enforcement like to put a high integrity on
20 our jobs and on our oaths, and even one arrest of
21 false circumstances is inappropriate, but I do want
22 to say that in -- with Beth Givens and her surveys
23 and some of the other organizations, you know, I've
24 done some informal surveys, I don't have any, you
25 know, statistics like a lot of them, but through

1 the International Association of Financial Crimes
2 Investigators, which is a world-wide organization,
3 I've done sort of an informal survey as I'm on
4 their executive board and kind of asked how great
5 is the scope of this problem.

6 And what I've learned, again, very
7 informally, is that this is a very minimal, now
8 again, that's not to discredit or to minimize the
9 fact that it happened to one individual, that one
10 is too many.

11 I will agree with Beth that the problem is
12 slightly on the increase. I think getting more
13 directly to answer your question, one of the things
14 that the investigator -- I'm sorry, the officer at
15 the time of the stop or the contact has is what we
16 perceived to be identification in this country,
17 which is the element driver's license. And
18 unfortunately, the driver's license has nothing to
19 do with identification in the United States of
20 America.

21 That's a very bold statement, but in all 50
22 states, that driver's license that we just
23 automatically reach for when people ask for
24 identification, is a certificate that guarantees
25 that you're certified, capable of operating a motor

1 vehicle. And that's the only thing that that
2 document, in all 50 states and Puerto Rico,
3 signifies.

4 The driver's license has very little, if
5 any, validity as a form of identification, due to
6 the fact that when you apply for that document in
7 all states, that driver's license is never -- I'm
8 sorry, the human being is never linked to anything
9 prior to it being issued. So, what happens is,
10 your driver's license is issued based on primarily
11 a birth certificate, which I could sit here and
12 give you a seminar of 200 ways to get a birth
13 certificate with signed seals, et cetera, they're
14 embossed.

15 So, there's a complete breakdown at the
16 state level with what the officer is being
17 presented, and this goes directly to answering your
18 question. He's presented with this document, the
19 element driver's license. We've all been imprinted
20 like ducks since birth that this is valid ID.

21 Well, the police officer is just like a
22 human being, he's like your eye, and he's been
23 given this document and he's been trained since the
24 academy to rely on this thing. So, he's looked at
25 it, hopefully he's conscientious and does a

1 descriptor comparison. Hopefully if there's a
2 warrant, he is going to check routine numbers,
3 perhaps a social, perhaps a driver's license
4 number, it could be a criminal history rap sheet
5 number.

6 There's a lot of things that law
7 enforcement officers can check, but the heart and
8 soul of this whole discussion and to answer your
9 question very directly, back at the initial point
10 of transaction, what has to happen is a person has
11 to be identified properly. And what we have to get
12 to and aspire to is some form of biometric
13 identifier. At that car stop for its citation, or
14 in this case where the gentleman had to try to go
15 to the court house and explain himself.

16 You know what, if someone had taken a
17 fingerprint as a form of biometrics or, you know,
18 there are some futuristic things like retinal
19 scans, I mean we can get way out there for the
20 future, but right now the fingerprint is the best
21 form of identity. I mean, if they had checked our
22 fingerprints when we walked in this building, we
23 could have easily been identified.

24 At the traffic stop, to answer your
25 question directly, take a fingerprint, we can

1 compare that. That's the best form of human
2 identifiers that are possible, and it makes this
3 workshop go away, and it makes a lot of other
4 problems in identity theft go away, if we properly
5 identify people at the initial point of
6 transaction.

7 MR. ARTERBERRY: Well, Joan, we have one
8 suggested remedy here, but before we get into the
9 remedies, let me ask you, you are in a department
10 that is responsible for jurisdiction that is
11 probably one of the more complicated ones,
12 complicated multijurisdictions, because you have
13 Virginia, Maryland and the District of Columbia,
14 all in one relatively small area, which means that
15 -- and you have a lot of international traffic in
16 and out of the Washington, D.C. area. So, I would
17 imagine that your officers are confronted with
18 perhaps some special problems in trying to make
19 positive identifications.

20 MS. LOGAN: It is complicated because we
21 have multijurisdictions. The plus is, we also have
22 good communication between jurisdictions, because
23 we are relatively close. We're not a rural
24 department. So, that is actually to our advantage,
25 because we send information, teletypes to each

1 other, daily, which is read on roll call.

2 What would be of assistance is if we shared
3 the information through roll call education,
4 through interdepartmental notifications if we
5 identify that someone has been a victim, and we can
6 share that. We share information literally on just
7 about any subject you can imagine, criminal
8 subject, and traffic. So, we do have a good
9 communication flow and that does help us.

10 The problem you have, this is not a new
11 thing. People have used other people's names and
12 dates of birth when they have been stopped for many
13 years, it just wasn't called identity theft, it was
14 your brother, it was your sister, it was your
15 cousin that knew your address. This is not an
16 unusual thing. This is unfortunately now a growing
17 problem, but there are many things we need to do.

18 MVA, motor vehicles, sells your
19 information. We need to -- we need to do
20 biometrical would be great, but we also need to
21 limit the information flow down to those
22 individuals who are trying to obtain your identity.

23 There are easy steps, if we go in that
24 direction, that would assist us, and I agree, as
25 far as the warrant goes, we have an obligation, and

1 we have the ability to contact D.C., Virginia. If
2 we stop someone, and we have a warrant, it comes
3 out that there's a warrant, we go many steps
4 deeper. If things aren't matching where they were
5 allegedly committed the offense, the physical
6 descriptors, things like that.

7 So, we have to dig deeper. And we have to
8 educate ourselves and the citizens, the victims, to
9 force that officer to dig a little deeper, to ask
10 those questions, especially when they make a
11 traffic stop and the person doesn't have ID,
12 because that's a big red flag. That means they're
13 already either they just left a home, which does
14 happen, or they're already planning to give you
15 false information.

16 You've got to dig deeper before you start
17 writing that citation, then you become a failure to
18 appear, and an innocent person is victimized. So,
19 there is many steps to this, but not very
20 difficult, some of them.

21 MR. ARTERBERRY: We've heard from our
22 panel, I think some of the dimensions of what
23 happens when we get this misidentification, and
24 it's intentional, and when it begins to interfere
25 with someone's life and reputation. The main

1 thrust of this panel, however, is not just focusing
2 on the problem, but how do we clear that record,
3 what steps could be taken by the individual or by
4 people, by governments, by other -- by officials
5 who can help that individual restore his or her
6 good name, and eliminate what can be, I think, we
7 would all agree, a huge -- not just an impediment,
8 but a huge handicap in trying to pursue careers, if
9 we know that there's always the possibility that
10 one of these arrests or some report of an arrest or
11 conviction can pop up in a background
12 investigation.

13 Let's look at that now. What can we do, we
14 understand that there is this problem, what can we
15 do to begin to take steps to clear it. I'm going
16 to return to Robert. He's the person who certainly
17 has the first-hand experience. Robert, what's your
18 view on, as you began this process, you've done a
19 good job of, I think, as best you can, of trying to
20 find out what the dimensions of your problem are,
21 and you may not ever be able to get the full feel
22 of that, because some surprise may be lurking out
23 there, but what did -- what do you think is the
24 most important thing you can do, at least
25 initially, to begin to contain that problem and get

1 your good name back?

2 MR. GREER: Initially, I know the law
3 enforcement is too strung out, they've got limited
4 resources, and growing crime. So, law of averages
5 says that they're going to be spending less time on
6 some cases and more time on the more important
7 cases to correct those. And my case has been seen
8 as a very low priority case. The dollar volume is
9 very minimal.

10 The speeding ticket, oh, well, we'll just
11 drop that and make that go away. The warrants
12 we're still working through, but two points -- one
13 point definitely that I need to make, is this
14 person, this perpetrator was arrested the day
15 before I learned my identity had been stolen. He
16 was arrested for opening an account with my name,
17 my social, my date of birth, at a furniture store.
18 They arrested him on charges that I still don't
19 know what they are.

20 If that officer, that detective, who
21 arrested this gentleman, using the term very
22 lightly, he knew my identity, but he didn't chase
23 me down. He didn't ask the question where is he,
24 does he exist. He just made a very brash
25 assumption that I was a total fake identity.

1 And that one act alone could have changed
2 the whole story. If that officer had chased me
3 down, and given me documentation as such, I would
4 have been more than willing to help prosecute him.
5 And I'm still trying to find a way to prosecute him
6 again on this other stuff.

7 MR. ARTERBERRY: Well, I think you've given
8 the -- particularly the law enforcement members of
9 this panel something to think about. Let me invite
10 any of them, do you see something that either is
11 built into the process, the arrest and reporting of
12 an arrest, and in a records check that should you
13 face, and should, I think, trigger on the part of
14 the booking officials, some other step, some other
15 action to take to ensure that they have the right
16 person, or that some misidentification may have
17 brought another person into it indirectly.

18 MS. LOGAN: If I could just make a comment.
19 Defendants have given aliases, false dates of
20 birth, false social security numbers for years, and
21 unfortunately we've gotten so used to that, I think
22 we don't take that extra step and see if there's a
23 real victim. When it all matches, a name, a date
24 of birth, a social security number, the officer
25 should dig a little deeper and contact that victim.

1 It's something that we can educate the
2 officers so they understand that aliases, yes, we
3 have to record those, but there's more to it.
4 There's a person that's attached to that alias,
5 it's another person who has been victimized.
6 Luckily now with identity theft laws, that is going
7 to help us tremendously. We have a tool now.

8 In Maryland, we do have that tool, but
9 we've got to educate our officers to make that
10 extra step, because there is a person attached to
11 that information that that person has given us
12 that's false information.

13 MR. RAES: If I could. In Anaheim, and
14 most of California, what we're ascribing to do is
15 to run everything everybody that is booked through
16 what we call the Cal ID system, it's a fingerprint
17 system. So, we're not quite there yet, but
18 everybody that would be picked up from shoplifting
19 to homicide would have their fingerprints input and
20 it would match in most cases, because we have not
21 only criminals in our databases, we also have
22 taxicab drivers, attorneys, et cetera, et cetera.
23 There's a large segment of the population that have
24 their fingerprints on file. A lot of good citizens
25 for legitimate purposes have to be fingerprinted in

1 professional capacities.

2 So, we would search the files forensically
3 and try to make matches in most cases. And that's
4 what we're ascribing to. We're not there 100
5 percent yet, but that is the goal, so that
6 everybody booked would at least be checked that
7 way.

8 MR. GREER: What would happen if the person
9 being booked was using an identity fraudulently,
10 would that identity be checked out?

11 MR. RAES: Well, for instance, let's just
12 take an example, let's just say you're an attorney,
13 so you're a good citizen and your fingerprint is on
14 our files as an attorney. So the person who is now
15 impersonating you is picked up for something minor
16 and he tries to use your name. He goes through the
17 system with your name, et cetera, et cetera, when
18 he's fingerprinted, it is going to red flag and say
19 wait a minute, it's not matching up biometrically.

20 MR. GREER: When my person was arrested,
21 they knew he was using a fraudulent identity and he
22 was booked under his own name.

23 MR. RAES: Under his own name?

24 MR. GREER: Under his own name.

25 MR. RAES: Well, it seems evident that they

1 should have done a little follow-up investigation.
2 It seems evident that they should do that. That's
3 all I can say.

4 MR. GREER: I was just curious.

5 MR. ARTERBERRY: I think we need to
6 understand why you have instances where you have an
7 individual that is arrested, that individual may
8 use a false or try to use a false identification,
9 and then be caught in a lie, and yet not have
10 follow-up on the person's name who has been -- who
11 was the subject of the attempt.

12 Until recently, and I say the past two to
13 three years, most states did not have an identity
14 theft statute. There were various laws that dealt
15 with false identification in some ways, but what we
16 can call the modern ID theft statute, really is
17 something that has occurred over the past two to
18 three years in most states. The federal law is not
19 yet two years old.

20 So, I think several members of this panel
21 have talked about education. There certainly is
22 need for education on the part of the public, for
23 the public to be aware that these things can
24 happen, and perhaps to take steps just as we do
25 credit checks, maybe we should do background checks

1 from time to time.

2 But I think there also has to be awareness
3 for those of us in the law enforcement community,
4 that because we do live in society that is more
5 complex, where identification, our face-to-face
6 dealings are becoming less and less frequent and
7 we're becoming much more comfortable with casual
8 identification. We are not really careful on that.

9 And I think when that enters the law
10 enforcement realm, we see that the possibilities
11 multiply for misidentification, especially where
12 someone is doing it intentionally. But, Jack, I
13 think let's take it back to the Los Angeles area,
14 because you have, I think, perhaps in terms of just
15 raw numbers of cases, you probably have the largest
16 inventory of identity theft cases in the country,
17 of any one jurisdiction.

18 MR. JORDAN: Yes.

19 MR. ARTERBERRY: Do you think it would
20 hamstring the efforts of your investigators if in
21 each instance when you find that someone is using
22 false identification, you try to track down that
23 individual whose name was used wrongly, and tell
24 them, by the way, someone tried to use your
25 identification in a recent arrest? Is that

1 practical?

2 MR. JORDAN: Well, you've hit on a number
3 of things, and so has Joan, and so has Werner. I
4 think my personal thing is you're dealing with two
5 things. One is dedication to duty on the officer
6 that makes the initial contact. Also,
7 self-generated activity. You want to have someone
8 with initiative that's going to take that one step
9 further and absolutely ensure that they have the
10 right person in custody. I've been doing my job
11 for 29 years, and in California, we have a law
12 that's called false impersonation, and it's 529.3
13 of our penal code, and it deals directly with the
14 criminal aspect of identity theft, and it's been on
15 the books for a long time.

16 The nightmare is the person that gets
17 arrested innocently, that's one instance, and we
18 have a law that's in the 850s of our penal code
19 that deals directly with what's called factual
20 innocence, and that is where you apply to the court
21 of jurisdiction where the original crime occurred,
22 and you present evidence in front of the district
23 attorney and the judge. The judge deems that that
24 individual is factually innocent, and then it
25 directs the state to eliminate every piece of paper

1 that deals with that crime from the records system.

2 To answer your question again, though,
3 would it hamstring the officers that make the
4 initial contacts, no. Most of the deputies that I
5 have dealt with in my career as a sergeant since
6 1981 and a lieutenant since 1986, there's a check
7 and balance, like I said yesterday. Every person
8 has to do his or her job, and when that officer
9 comes in and gets that arrest approved, if it's a
10 misdemeanor, it's presented in front of a sergeant.
11 If it's a felony, it's presented to the watch
12 sergeant, and then the watch commander, who is
13 usually a lieutenant.

14 We have to ask the hard questions. We have
15 to ask what follow-up steps did you take to ensure.
16 Generally speaking, if you have a person like
17 Robert in the booking cage at a sheriffs station in
18 South Central Los Angeles, they're kicking and
19 screaming to say this is not me, get me out of
20 here, I want to get out of here. Fortunately, in
21 California, they do have bond systems, even if you
22 do have a warrant out for your arrest where you
23 have failed to appear, you can get bonded out.

24 So, unfortunately, a lot of us don't have
25 \$600 sitting in our pocket to go down on Saturday

1 night and fork it over to the cops to get you out
2 of there.

3 So, self-initiated activity and dedication
4 of the person to get the right person. And going
5 back to the golden rule. I testified August 30th,
6 Sheriff Lee Baca our sheriff of Los Angeles County
7 and Senator Diane Feinstein, held a Senate
8 fiduciary -- judiciary hearing, we're stuck on
9 money, and anyway, we dealt with just exactly that,
10 where the federal government can go, where the
11 State of California and the individual states can
12 go and where the individuals have to go. And
13 hopefully we can do what we said yesterday and let
14 the state carry the victims and minimize the
15 problem.

16 MS. ANTALIS: John, if I can ask a
17 question.

18 MR. ARTERBERRY: Surely.

19 MS. ANTALIS: Is there a way to separate
20 the victim from the imposter, because at that point
21 doesn't the police need to know that there's a man
22 out there using Robert Greer's identity and using
23 that as an alias? So where that is warehoused and
24 later used for background checks and things like
25 that, how do we make sure that we keep the

1 criminal's information out of Robert Greer's
2 information, but keep Robert Greer attached to the
3 criminal? Do you see what my question is?

4 MR. McLAUGHLIN: John, I would like to add
5 a comment to that if I could, amplify Sylvia's
6 remarks and perhaps hear from law enforcement in
7 response. I would like to add a couple of points
8 to some of the remarks I made earlier concerning
9 Rob Greer and I think they go right to the points
10 that you're raising and the points that Werner
11 mentioned earlier in terms of education, as well as
12 Joan and Jack in terms of law enforcement doing
13 their job.

14 In Robert's case, and he's mentioned two
15 cases. He's mentioned a case that arose out of a
16 place called Avon, Mass, where the perpetrator was
17 actually arrested for trying to open an account.
18 That's a little bit separate from what we're
19 talking about today in his cases because his case
20 that brought him the most grief, the most trouble
21 and the outstanding warrants arose out of the use
22 of a fraudulent Massachusetts driver's license, and
23 it was so fraudulent, and I have a copy of it here
24 today, with his photograph on it, the perpetrator's
25 picture.

1 The signature was a typed face from a
2 computer, it's fairly clear that it's not a
3 signature at all, it's just a font from the word
4 processor they used to create the fake ID. But
5 when he perpetrated his crime, he used the fake ID
6 to enter a gymnasium establishment, a health club,
7 and when he entered the health club for a day pass,
8 they took a photocopy of the driver's license as
9 his -- as has been well noted this morning, routine
10 identification, and valid ID.

11 Now, they took that, he went into the
12 health club. While he was there, for not health
13 purposes, he entered the locker room, he went into
14 someone's locker which was unlocked, took a credit
15 card out of the wallet, substituted another credit
16 card in the place where the other was, put the
17 wallet back, although not as -- in the same
18 condition it was when it went back in. And then
19 exited the establishment with the new credit card
20 and right away, within minutes, went to proceed and
21 make a purchase. We know this.

22 What happens, and this gets back to the
23 point that you were making. What happened was
24 this, is that he went to another establishment,
25 made some purchases with the card. The individual

1 who was working out at the health club went to his
2 locker, said geez, I didn't hang my clothes up in
3 the same place, this doesn't look right, and he
4 looked in his wallet, found the missing credit
5 card. Immediately went to the front desk and said
6 I'm missing a credit card, called his credit card
7 company right away, and they said you're too late,
8 someone has just made a purchase ten minutes ago.

9 So, he had the presence of mind and the
10 health club did as well, they said it must have
11 been stolen here, who has been here today. They
12 went and they called the establishment, they were
13 able to locate it and the police were helpful in
14 this respect, and in short order, find out where
15 the perpetrator had made the purchase on the
16 recently just stolen credit card.

17 In any event, the perpetrator left, he was
18 gone and he had left with the merchandise, it was
19 \$250 in this case, and all they had was a photo of
20 a driver's license.

21 Now, the point here, and this gets back to
22 the comments that were made earlier. On the
23 driver's license, the only information they had was
24 a name, they had a false address, however, they had
25 a correct date of birth for Robert Greer. And most

1 importantly, for this discussion as well as for the
2 Social Security Administration discussion tomorrow
3 on the social security numbers, they had his social
4 security number. And that's the tracking ID that
5 will follow, and if Rob is haunted by this for the
6 rest of his life, it will be because of that social
7 security number that to some extent may be
8 inextricably linked to those complaints.

9 Now, the arresting officer, and this moves
10 on to your point, the arresting officer took a
11 copy, I say the arresting officer, the processing
12 officer, or detective, took a copy of the license
13 and used that license alone, which had no other
14 information than a photo, name, date of birth, and
15 social security number, and prepared the criminal
16 complaints against the perpetrator.

17 Now, the perpetrator was of a different
18 race, and that helps us in this case, because it
19 makes a little bit more clear that geez, it
20 couldn't be, it couldn't be Mr. Greer, they just
21 don't look alike at all. However, in the
22 complaints that were prepared by the police
23 department, there are three identifying pieces of
24 information, there's a name, there's an address,
25 which turns out to be incorrect, however, the same

1 address that is on the whole line of fraudulent
2 credit cards that were obtained in the year
3 preceding, and the other two identifying pieces of
4 information are what, date of birth, and social
5 security number. Nothing else.

6 That's enough, however, to trigger a notice
7 to the New Hampshire DMV that's sufficient to
8 suspend Robert's driver's license, as well as to
9 get him into the federal warrant computer to deny
10 him the ability to obtain a firearm on the warrant
11 -- when the firearm check is completed.

12 So, responding back and following up,
13 Sylvia, on your point, we've got a database here at
14 issue in terms of tracking numbers through the
15 system, we've got merger issues, and we've got
16 police -- we've got some police departments, no
17 doubt due to resource-specific problems, and a lack
18 of perhaps education about the seriousness of this,
19 who aren't following through. The system is
20 breaking down.

21 MS. ANTALIS: Well, I think it's a
22 catch-22, though, because we want law enforcement
23 to be able to put in the wrong-doer's alleged
24 social security number, and while it says Robert
25 Greer, to ultimately lead back to the wrong-doer.

1 I mean, we want to add that information in as an
2 alias so that we know ultimately who committed the
3 crime.

4 However, that doesn't get Robert away from
5 the criminal. And when background checks are
6 compiled and things like that, Robert will always
7 be strapped with the wrong-doer's wrongdoing, in
8 addition to the criminal himself. And I just don't
9 know if law enforcement has a suggestion to keep it
10 in for the good purposes and keep it out for the
11 bad purposes.

12 MR. RAES: Sure, I think if I could
13 comment, I think you've clearly just in great
14 detail illustrated what the problem is. And the
15 problem is, and it's not just through law
16 enforcement, it's throughout our society. And the
17 problem is we are incorrectly relying on account
18 numbers, social security numbers, and all of these
19 numbers, which is step two.

20 Step one is, affix a human being to a
21 number. The number is second, and what we are
22 doing as a society, whether it be in these arrest
23 situations, applying for a credit card, applying
24 for a loan, we're skipping over step one. And
25 we're doing it as a society.

1 What we need to do is, and your example, if
2 this crook had stolen the credit card out of the
3 gym locker and gone out and used it, if he had been
4 mandated by federal legislation, local legislation,
5 whatever, to provide a biometric identifier, so
6 that he would have had to be properly identified,
7 it would not have been this gentleman here, okay?
8 It would have red flagged it. The transaction
9 wouldn't have gone through.

10 Possibly, ideally, an arrest would be made
11 at that point. It would have stopped the whole
12 thing. We're relying on too many numbers in this
13 society in our systems, okay? Systems are great,
14 high tech is great, but we have to get back to
15 basics. We have to get to step one, identify human
16 beings at each point of transaction, at the booking
17 point, at the point of application for the credit
18 card, when you go apply for your gym membership,
19 when you use that credit card. We have to somehow
20 identify human beings.

21 MS. GIVENS: The thing is, in some respects
22 the cure is worse than the disease. I think what
23 you're talking about is a society in which we base
24 every day transactions proving who we are by giving
25 a fingerprint or an iris scan and I think that

1 brings up some pretty serious civil liberties
2 implications if you look at what could happen when
3 you've got, you know, a fingerprint shopping for
4 grocery, a fingerprint at the ATM, or an iris or
5 whatever.

6 But I wanted to go into just a little bit
7 different direction for a couple of moments, if I
8 could, it's related to background checks, but since
9 this is a Federal Trade Commission hearing, I
10 wanted to bring up some of the problems with
11 information brokers, and the fact that this
12 information is getting out from criminal records
13 and from law enforcement into many, many different
14 databases that are on the commercial marketplace.

15 What we're seeing a lot of, and it's not a
16 -- we're not seeing it through the law enforcement,
17 which is where we've been focusing our attention
18 this morning, but we get called from individuals
19 who say I'm perfectly qualified, I can't find a
20 job. I go to interview, interview, interview. I
21 can't find a job. Do you suppose there might be
22 some information out there about me.

23 And what we got started on this path in
24 California was when we got a call from a man who
25 had told us that he had become homeless for about a

1 year because he went from interview to interview to
2 interview, wasn't getting jobs, and what he had
3 later found out is that the person who had stolen
4 his wallet had used all of his IDs and been
5 arrested for shoplifting and larceny and had always
6 been released, but what bothered us most is that
7 none of the employers, none of the employers told
8 him that the reason we're not hiring you is because
9 we see that you have some criminal activity here.

10 And there is the Fair Credit Reporting Act,
11 which thankfully now says that the reporters have
12 to report the employers. The reporters have to
13 report the employers to the applicant for turning
14 them down for a negative reason, but I think there
15 are some loopholes here.

16 One is that I think that the employers
17 should give the report, the background check to the
18 applicant every time, whether or not it's adverse,
19 because many of the employers will say well, we
20 decided not to hire you because there are many
21 people more qualified and they'll try to shuttle
22 that criminal record aside, but that's probably
23 what was in their mind in not hiring that person.

24 MS. ANTALIS: Actually that's exactly what
25 happened with my client, Scott Lewis, is that he

1 went from interview to interview to interview and
2 simply could not get a job. And upon hiring people
3 who know what's going on and eventually hiring a
4 private investigator, he found the arrest record,
5 several felony convictions, actually the most
6 recent being a murder arrest, and no one was
7 telling him why he wasn't being hired.

8 And I think that touches on what Beth was
9 going to say about information brokers. Not only
10 did it cause Scott a problem in getting a job, we
11 have no idea where the information is right now. I
12 mean, there's no way to tell who has tapped into
13 the database originally and who is reselling it.
14 There's no mechanism to track that information to
15 put a stop to it.

16 So, you know, we can talk about prevention,
17 you know, how do we get criminals to stop stealing
18 people's information. I think the real question
19 is, how do we stop letting them use the
20 information, and how do we reign that information
21 in so that it's not causing any damage to the
22 individual. And until we get to a point that we
23 track every single step of that information, and
24 who is getting that information, and what are they
25 doing with it, we're not going to be able to help

1 people like Scott. I mean, Scott's information is
2 out there with a lot of negative stuff, and we
3 don't even know who to contact to say that
4 information is false, and dispute that information
5 with. And that's a very big problem.

6 MR. RAES: You know, Sylvia, I would like
7 to comment, I think we're at an age in high tech,
8 and I think we ought to try to be prudent and
9 safeguard our information, I really after 28 years,
10 15 of them in this ID theft area, I really am
11 coming to the conclusion that I don't think we're
12 able to build a picket fence around our information
13 anymore.

14 MS. GIVENS: But you can do disclosure and
15 notice. And see the thing is we can have a lot of
16 early detection of these things if the employer is
17 required to say I use X, Y, Z database and this is
18 what I found out about you. We have a problem of
19 there just isn't adequate -- there is a lot of
20 noncompliance I think with the Fair Credit
21 Reporting Act in this whole area that I think needs
22 to be looked at very seriously.

23 If these individuals, and by the way, more
24 and more background checks are being done on
25 applicants. It's very, very common. They're

1 cheap. You can go on the Internet and do a
2 background check for \$40, and that's another
3 loophole in the Fair Credit Reporting Act.

4 MS. ANTALIS: And perhaps they should be.
5 I mean I'm not advocating that employers don't do
6 background checks, because then I'm going to be the
7 attorney who sues them for negligent hiring, so I'm
8 not suggesting that we should build a picket fence
9 around our information, but I think since our
10 information is out there, we should know who has it
11 and what they're doing with it, so that when
12 there's a problem, I know who to dispute it with.

13 MR. RAES: Agreed.

14 MS. ANTALIS: And under the Fair Credit
15 Reporting Act, we require for credit information,
16 and I'm going to argue that we require that for
17 criminal information, but that's completely
18 different.

19 MS. GIVENS: Adverse or averse, everyone
20 should get their background check, unless there is
21 some sort of exception, like we are investigating
22 you, you're on the job for possible wrongful
23 conduct on the job. But it shouldn't be just if
24 they make a negative decision, it should be all of
25 them.

1 MR. RAES: But that information I think
2 needs to be tied again to the human being. There
3 are so many different ways and so many different
4 systems out there, and yes, there needs to be
5 disclosure, there needs to be accountability, but
6 there also needs to be assurances that this is tied
7 to the human being that you're looking at.

8 MS. ANTALIS: I think it's going to depend
9 on whether you're talking about the actual criminal
10 act of stealing someone's identity versus the
11 inadvertent identity, and I would agree with you
12 that when you have a wrong-doer who steals
13 someone's every bit of information that yeah,
14 there's going to be -- we're going to need some
15 other pieces of information to tie it to the
16 individual, but in my experience, the inadvertent
17 theft of someone's identity is far more rampant
18 than anybody realizes.

19 By allowing partial information to be put
20 out there, just a name and a social security
21 number, or just a last name and a social security
22 number, you could have merges of information which
23 appear to be theft of identity, when really it's
24 just been the miskey of information.

25 MR. RAES: But Sylvia, that's again what

1 I'm saying, the mismerges can't occur if you have
2 proof positive tying information, numbers and
3 things to a human being. The mismerges cannot
4 occur.

5 MS. ANTALIS: Well, I would agree with you,
6 I don't think that we necessarily need to get to
7 thumbprinting every single person in every single
8 transaction. I think if we required, you know,
9 first, middle, last name, date of birth, social
10 security number, on every single transaction, or
11 transactions that would be reported on, that's
12 going to prevent the mismerges. So, I think the
13 only thing we're disagreeing on is I don't think
14 the biometric step is necessary to curb inadvertent
15 theft identity.

16 MR. RAES: If you hear from the victims
17 here, ask the victims who have been through it
18 whether that will work. After they went through
19 it, no. Beforehand, everybody wants to say, you
20 know, we want our liberty, we want our freedom, we
21 don't want our privacy invaded. And I could sit
22 here and make the case for an hour about it versus
23 whether it's education or an invasion of privacy, I
24 won't go there.

25 But I think we need to generally

1 philosophically achieve a balance. We want to
2 achieve a balance of privacy versus proper
3 identification, and right now we are so far to one
4 end of the pendulum, that's why we're having this
5 workshop. And all I'm trying to do is propose one
6 solution to bring it back towards middle ground.

7 MS. ANTALIS: And I understand that, and I
8 understand what Robert is saying, too. And I
9 prefaced what I said by, you know, if you actually
10 have a wrong-doer who is stealing someone's, you
11 know, targeting Rob Greer and taking his
12 information, it's not going to help. But I think
13 that if we completely underestimate how much the
14 inadvertent theft of identity that's going on,
15 that's sort of what my comments are talking about,
16 if we have an exact match of personal identifying
17 information, mismerges won't occur, and the actual
18 damage to the average consumer would be less.

19 MR. GREER: Right, the mismerges would not
20 occur, but the information that is keyed that got
21 me into trouble and the whole reason I'm here
22 becomes more widely available.

23 MS. ANTALIS: Sure.

24 MR. GREER: To everybody.

25 MR. ARTERBERRY: And, Robert, I think one

1 of the things that ultimately you want is that you
2 would like to see that there are steps taken that
3 preclude this from happening to others, and
4 happening to you again.

5 MR. GREER: Um-hmm.

6 MR. ARTERBERRY: How do you get your good
7 name back, and ultimately it comes to that, and
8 Beth, there is recent legislation, Jack just
9 alluded to it somewhat out in California, that aims
10 to try to take those steps. How can you help?

11 MS. GIVENS: Well, I mentioned the case of
12 the homeless man who came to the Privacy Rights
13 Clearinghouse, and that really opened up our eyes
14 to the -- the real problem that one person had and
15 the potential problem that a lot of people had. He
16 suggested that there are -- he tried to do an awful
17 lot of his investigation, and he ended up talking
18 to so many different law enforcement entities and
19 different kinds of governmental agencies, he said I
20 think we need to get everyone together around the
21 table and talk about this issue from everyone's
22 perspective, all of the stakeholders.

23 So, we formed a task force in California to
24 an informal kind of self-called task force. We've
25 got the District Attorneys Association, DMV, LAPD,

1 Los Angeles Police Department, Los Angeles Sheriffs
2 Department, including Jack here, the Attorney
3 General's Office, of course they have the criminal
4 records database, the Judicial Council of
5 California, which is the administrative
6 environment, the courts, two victims, including
7 Bronte [phonetic], the individual I've been telling
8 you about, and then two consumer privacy advocates.
9 And we've worked towards first we studied the
10 issue, what needs to be done, and then we came up
11 with some legislative ideas, which we did introduce
12 in the legislative session this year, and the bills
13 did pass.

14 One of the bills expands upon the existing
15 statute and sets up an expedited court process for
16 individuals to clear their names where they can
17 start at their own jurisdiction. I have a feeling
18 that most of these criminal identity thefts are
19 multijurisdiction, and people don't know where to
20 go first.

21 So, this at least says the police
22 department is the first stop. They don't have to
23 do the investigation, but they can take the police
24 report, and then send that person along to whatever
25 step they need to take next. And of course that

1 will require a lot of education, and training at
2 that point.

3 And the other -- and then they can go
4 through the court process. The Judicial Council is
5 coming up with a form that people can then use, and
6 once they are determined that they're factually
7 innocent, they get a certificate of some sort, and
8 also the record is expunged.

9 The second bill is kind of interesting,
10 because it gets to that background check problem
11 that I've been talking about. The -- and this is a
12 bill that was backed by the Attorney General's
13 Office, and they're going to establish a database
14 that's kind of a companion to their criminal
15 records database, and this is a database that
16 people who have proved that they have a wrongful
17 criminal record.

18 And so let's just say they are stopped for
19 that broken taillight, they can say check this
20 database, here's the 800 number that you can call,
21 it's in the Attorney General's Office, here is my
22 PIN number, I give you permission to get into my
23 record.

24 They can also do this if they're applying
25 for work, and they're going to say look, I know

1 you're going to do a criminal background check,
2 you're going to find that I am associated with this
3 crime, either as a key name or as an alias, and
4 here's my PIN number, I want you to know that the
5 state of California has a database and you can
6 check that out and you can get the true record that
7 I am the one associated with that record, but it's
8 not me.

9 And I think that those will help a lot. We
10 still have a lot of work to do in our task force,
11 because those just attack a couple of the issues.
12 We do think the information broker is one that
13 deserves a lot more look and the background check
14 process.

15 MR. ARTERBERRY: Unfortunately for Robert,
16 though, he doesn't live in California.

17 MR. GREER: Absolutely.

18 MR. ARTERBERRY: Shane, what have you told
19 Robert that he needs to do to try to protect
20 himself in the event he is somehow associated with
21 this information, this misinformation about his
22 criminal record?

23 MR. McLAUGHLIN: Well, I -- that's the most
24 important question we've got, the most significant
25 one that Robert's facing, excuse me, right now.

1 We've just recently cleared his criminal records,
2 and we were able to do this inside of about two
3 weeks. Most of it was by telephone, and also one
4 personal appearance by me at the originating police
5 department that originated the complaints, the
6 bench warrants against him. But it wasn't easy,
7 because of all of the probably 40 or 50 or 60 calls
8 that I had made to authorities, three were
9 returned. Yeah.

10 The next step for us are to determine what
11 databases still have information about his record
12 -- about the complaints that were against his
13 record, and I say against his record, I'm returning
14 again to that social security number issue. In his
15 case, I see that as the core or the crux of the
16 problem, because the only other identification
17 number was a name and a date of birth, but it was a
18 name with a middle initial, the perpetrator didn't
19 have the correct middle name, and so names and date
20 of births may be coincidental, but the social
21 security number was our central problem.

22 So, we'll need to track down, and I don't
23 know the full answer to that question, John, in
24 terms of where we go now, and that gets back to the
25 comments made by Beth Givens and the good work that

1 her organization has done in California, we need in
2 our state, and I would suggest on a national level,
3 a protocol that's in place for both federal law
4 enforcement as well as local state law enforcement.

5 It could be a protocol, a guidance issued
6 perhaps by the FTC in conjunction with its own
7 program here, reporting program for credit card
8 theft, for consumer fraud, but a protocol that's
9 disseminated to the different law enforcement
10 agencies all the way down to the local police
11 department. So that when someone presents himself,
12 like Rob, or like myself as counsel for Rob, or
13 when the case comes in the office in the first
14 instance, you know where to turn, you know what the
15 steps are that you're going to need to follow, and
16 you also know that there are 12 different state,
17 federal and local criminal databases in which the
18 information is likely to be stored, including
19 possibly INS computers. And that you need to then
20 obtain, as was suggested by one of the victims
21 yesterday, it might have been Eric Graves or Joe
22 Genera, that we need to have some sort of, if you
23 will, a safe harbor letter or document issued from
24 a court that ought to be perhaps from one
25 jurisdiction or one court, or perhaps from one

1 entity like the FTC. And I just suggest that as
2 one possibility. That the individual who has been
3 the victim of these offenses, these crimes, can
4 place in his wallet, in which there's a database,
5 like as the database in California is maintained,
6 which access can be gained with a PIN number, and
7 that letter can be given to someone arresting him
8 on a warrant from we'll say Alaska, when we're here
9 in New Hampshire or Massachusetts, or D.C. And
10 then that the arresting officer can say all right,
11 he can call, the case will be flagged, and right
12 away he will know that this is a probable victim of
13 ID theft, and that that other warrant is probably
14 or may not be him, but at least he's then been
15 given reason to believe that there's an issue and
16 doubt exists.

17 MR. RAES: Shane? One of the things I want
18 to point out from law enforcement perspective is
19 that there's an organization that's an
20 International Association of Financial Crimes
21 Investigators, and we network with the federal law
22 enforcement, local law enforcement and private
23 industry and credit card companies, financial
24 institutions, throughout the world. And it's a
25 very strong partnership, and we've had a lot of

1 success, and lately we're focusing a lot on
2 identity theft prevention and how to assist
3 victims. And we have annual training conferences
4 and such, and I know the Postal Inspection Service
5 has taken the lead federally in identity theft and
6 been very instrumental, they have put an 11-minute
7 video out that's available in trying to train law
8 enforcement folks.

9 Another thing that we do to help victims,
10 is we partner with like the credit unions -- credit
11 reporting bureaus, in particular Trans Union has a
12 victim fraud -- fraud victim assistance center, and
13 what we do is we refer people like Robert to them,
14 and what they have been doing and very, very
15 successfully is helping to run that credit report,
16 not only put flags, but to help clean up with
17 situations of criminal identity theft.

18 And when I teach other detectives
19 throughout the country, I actually will point
20 victims in that direction to try to get that done
21 on what I call the civilian end of things.

22 Back to the criminal end of things, I think
23 what we do need to do, and I think I probably
24 concur that we need some sort of a protocol, some
25 sort of a clearinghouse, because unfortunately in

1 our country, what we have is so many small
2 jurisdictions, we have so many county sheriffs, we
3 have so many law enforcement agencies, that it is
4 hard to integrate all the systems. And I couldn't
5 sit here, quite honestly, after 28 years and tell
6 you, Robert, here's a list of 20 places to call to
7 get your name and number off of there, you know.

8 I'm kind of ashamed to say that, but that's
9 the truth. I'm really, after 28 years, I'm not
10 sure that I would have every database that he would
11 need to go to.

12 MR. ARTERBERRY: We had a question out
13 here. Yes, sir?

14 MR. MEISSNER: Yes, sir, Gary Meissner with
15 the Office of Consumer Credit Commissioner in
16 Texas. I'm Gary Meissner with the Office of the
17 Consumer Credit Commissioner in Texas. I'm about
18 to raise a human cry here for half a second. I
19 read a document recently and have studied it over
20 the years that says the right to life, liberty and
21 the pursuit of happiness. Mr. Greer's life has
22 been put in the tank. His liberty is pretty well
23 stopped. And his happiness is pretty well down the
24 tubes, also.

25 Back to what the law enforcement officers

1 are saying, what ties my identification, if it's
2 fingerprint, what is -- what makes me unique to the
3 rest of the world? And I'll go with what the
4 officer says, I'm sorry about civil liberties and
5 everything else, but the same way is, what is going
6 to identify me to the world? Mr. Greer's print
7 would identify him to the world. What can we do to
8 augment that and go with it?

9 MS. LOGAN: I have one comment, just we
10 need to make people less vulnerable. There are
11 some states who use your social security number as
12 your driver's license number, your soundex. This
13 isn't good practice. You have health care
14 providers who use your social security number as
15 your number. And you provide that readily to many
16 places, and that can get out of control if we don't
17 get a hand on it.

18 So, until we can get to something with
19 technology and fingerprints, at least let's make
20 people less vulnerable by changing those type of
21 practices, because they are not -- right now, it is
22 just not good for anyone. It is not practical.

23 MS. ANTALIS: I agree completely. The over
24 reliance on the social security number is what
25 allows the dissemination of the information. In

1 many instances, that's the tie-breaker. If that
2 matches, people just assume that well, gosh,
3 everybody only has one social security number, just
4 because the first names are a little different or
5 the last names, there must be some logical reason
6 for that, and that's what allows the information to
7 be merged together and disseminated throughout the
8 system. And then once it's out there, you have no
9 control over it.

10 MS. GIVENS: Werner mentioned that you
11 can't put picket fences around information. I'm
12 suggesting that if we were to have a nation-wide,
13 all-encompassing biometric system, it would need to
14 be done within some kind of regulated system where
15 there are picket fences put around the uses made.
16 Because there's a classical principle in privacy,
17 information that has been gathered for one purpose
18 shall not be used for another purpose without the
19 consent of the individual. One of the problems
20 with a mass biometric system, we will see that
21 information used for other purposes. If we can put
22 picket fences around it, I would be more inclined
23 to be forward with that.

24 MR. ARTERBERRY: I see three other
25 questions, but we are exceeding our time. Do we

1 have time for those questions? We'll try to
2 squeeze those in.

3 MS. FRANK: This is just a brief one. I
4 sat on that task force with both Jack and Beth, and
5 one of the things that we did was we were able to
6 last year amend one of our penal code sections,
7 530.5 to include since many -- I was a victim of
8 identity theft and I am an alias for Tracey Loyd,
9 who is my imposter. So, what we did was we got the
10 penal code changed so that when you arrest someone,
11 if someone is arrested as an imposter, the record
12 must reflect that the person is not an alias, but a
13 victim, and that's put into the field, and so that
14 is one thing that has helped.

15 My suggestion is that that should happen
16 not only when it's civil, you know, identity theft,
17 but also when someone assumes your identity and
18 they are arrested for criminal identity theft, that
19 the field should also reflect that the alias was
20 really a victim, a real live victim. That would
21 help a little bit to start, and we've done that in
22 California already.

23 So, I also agree, I mean I know Scott Lewis
24 because I referred him over to them, and I lived it
25 with him for ten months, just trying to clear up

1 his record, and he was just devastated, could not
2 get a job. And I think the real issue is who is
3 selling these databases to the information brokers
4 who are then selling it. We could -- I mean I
5 talked to the CEO of Open, who said I can't tell
6 you who we sell this data to, so all of the
7 employers that found out that Scott Lewis was
8 arrested for murder never got that corrected, and
9 we don't know who it is, and thank God for Sylvia,
10 who is now taking it to Court. But I must tell you
11 that's a huge issue.

12 MR. JORDAN: Mari, and I agree with you and
13 I have talked at length with you. I spoke with
14 you, Shane, yesterday, about Robert's case?

15 MR. McLAUGHLIN: Yes.

16 MR. JORDAN: Years and years ago, and I'm
17 not that computer literate, there was a statement
18 that said garbage in, garbage out. My first thing
19 to anybody out there that deals with this is to go
20 back to the origin. You told us that the driver's
21 license had a typed signature on it, the picture is
22 of another nationality. My thing would be if
23 anybody came to me and said what do I do, Jack?

24 Street cops have common sense, and we learn
25 very early in our careers, there's two sides to

1 every story. I would be at the desk, and I know
2 it's inconvenient for people to travel across town
3 or whatever. I would go to the desk and say I
4 would like to speak with the watch sergeant. How
5 in the name of God did you do this? You took
6 somebody who is one ethnicity and you gave this
7 record to my client, and look at this. I don't
8 want to sue you, I want to know why, just explain
9 this to me, how did you do this and take this
10 license and put this record on somebody.

11 MR. McLAUGHLIN: And Jack, that's what I
12 had to do.

13 MR. JORDAN: Eventually, yeah, and it took
14 a long time.

15 MR. ARTERBERRY: I have another question
16 back here. One more after this and I think we're
17 going to have to finish.

18 MR. McGEE: John McGee with Computer
19 Sciences Corporation and I have heard a lot of
20 discussion about the validity of social security
21 numbers. I just want to make a small comment,
22 hopefully it will come out tomorrow. Unlike you
23 credit cards, a social security number is not a
24 check digitated number, and any nine digits could
25 potentially make a valid social security number.

1 So, I think that as it's been pointed out here,
2 that we rely an awful lot on the social security
3 number as being an accurate number, as I said, any
4 nine digits could make up one, it could be yours or
5 mine or anybody else's in the country and I think
6 you need to keep that in mind.

7 MS. ANTALIS: That's actually my
8 experience, and I think we will talk about this
9 more tomorrow, is the fact that a lot of people in
10 this age of information overload, being afraid,
11 give fake social security numbers, just make them
12 up. I mean people do that all the time. You know,
13 they know that any nine digits will do, and with
14 the over-reliance on social security numbers, once
15 that's merged together, it's out there, and there's
16 no way to track where it went or how to reign it
17 in.

18 MR. GREER: And once that information is
19 combined with a valid birthday and name, the name
20 of that victim is --

21 MS. ANTALIS: Once it's merged, there's
22 absolutely no record. If you start with two files,
23 once they're merged, you don't know what the two
24 files used to be. I mean you go from that point,
25 and future mergers will be based on the

1 inaccurately merged information.

2 MR. ARTERBERRY: One final question.

3 MR. THOMPSON: Joe Thompson, the
4 President's Information Technology Advisory
5 Committee. I wanted to pick up on the comment from
6 the gentleman from Texas over here. Roosevelt
7 identified four freedoms, and one of those freedoms
8 was freedom from fear. We have fear back big time
9 today, the victims have certainly exemplified that.
10 It's a growing problem that has the potential to
11 touch any one of us, any day. The President's
12 Information Technology Advisory Committee, PITAC,
13 is implementing a study in this regard that will be
14 taking place from now through the next year. And
15 we're calling it individual security. We're also
16 doing a parallel study on national security,
17 national security is very much in the public's eye.
18 Individual security has not yet become such an
19 issue with the public, but it's potentially even a
20 bigger issue.

21 I couldn't agree more with Werner about the
22 biometric. Regardless of all of our other
23 concerns, it's certainly the biometric that's put
24 in jail. There's no way to get around that. The
25 cyber identity is not the one that's put in jail.

1 We have a spectrum that extends from privacy to
2 security, and it all has to be balanced.
3 Technology has to provide some answers.

4 I'm afraid we're in the situation that we
5 were with nuclear energy in the late forties when
6 we didn't really understand the effects of
7 radiation on human beings. We don't right now, the
8 public does not appreciate the effects of the
9 individual security that has been exacerbated by
10 the information age on the individual. This is a
11 serious problem.

12 MR. McLAUGHLIN: You know, as a personal
13 comment to Mr. Thompson's remarks, and I heard his
14 remarks yesterday in the form of a question. I
15 would have to say that I'm being brought to the
16 conclusion as well that although I've been a
17 staunch privacy advocate all my life, I come from a
18 conservative state and a conservative family, that
19 I think that Werner's remarks need to be taken
20 seriously in terms of the biometrics, and I think
21 that we need to be exploring new options, because
22 the current system of identification simply isn't
23 working.

24 MS. CRANE: Thank you very much, to John.

25 MS. GIVENS: Actually, I'm sorry, I forgot

1 to mention this earlier. We're putting together,
2 one of the things we do is put together tip sheets
3 or fax sheets for victims, where we've got a draft
4 up here for a guide for victims who are victims of
5 criminal records identity theft, and we are asking
6 people's help, also if you're just curious and you
7 want to read it, they are right up here in front of
8 me and we will put them out back. If you want to
9 help us, great, we would like to -- we would like
10 to clear this up in the next couple of weeks, two
11 or three weeks.

12 MS. CRANE: Thank you so much to John and
13 the entire panel. Of course tomorrow social
14 security is having a workshop on prevention and I
15 think a lot of the issues raised today touch upon
16 the prevention issue as well, so hopefully we will
17 continue our robust discussion at social security
18 tomorrow.

19 Let's take a quick, really quick break,
20 five, ten minutes, and we'll need to get started
21 with panel 5.

22 (A brief recess was taken.)

23 MS. CRANE: We have another great panel
24 here today of experts. Jeannie Crouse, the
25 bankruptcy counsel for the Federal Trade Commission

1 is going to moderate this panel today, which will
2 focus on another issue that we're hearing about on
3 our identity theft hotline, and that is fraudulent
4 recording of a bankruptcy filing in a victim's
5 name. Thank you very much. We're going to run
6 from 11:30 to 12:30 --

7 MS. CROUSE: 10:30 to 11:30.

8 MS. CRANE: Oh, really, it's that early?
9 I'm sorry. 10:30 to 11:30, and then we will push
10 everything back by 15 minutes after that.

11 MS. CROUSE: Good morning. As Joanna
12 introduced me, my name is Jeannie Crouse, I'm the
13 Commission's counsel for bankruptcy and redress,
14 and I would like to take a moment to briefly
15 introduce the other members of our panel here
16 today.

17 On my far right, is Mr. Tom McQuillan, an
18 Assistant United States Attorney from the Eastern
19 District of Virginia, which is located in
20 Alexandria . To Tom's immediate left is Mr. Eric
21 Graves, a resident of California who appeared on
22 several panels yesterday. To my immediate right is
23 bank -- I'm sorry, nonbankruptcy -- admittedly
24 nonbankruptcy attorney, privacy expert, consumer
25 rights advocate, Mari Frank. To my immediate left

1 is Mr. Lee Barnhill, a senior attorney for FOIA and
2 privacy issues with the executive office for U.S.
3 Trustees. And finally, to Lee's immediate left,
4 Mr. Cliff White, Assistant United States Trustee
5 for the U.S. Trustee Programs Office in Greenbelt,
6 Maryland.

7 Before I begin, there are a few
8 administrative, one administrative issue. There
9 are various hand-outs in the back as you leave, you
10 will not need them today for this -- for our very
11 -- for our panel, but there are -- I just wanted to
12 alert you to the fact that there are several
13 hand-outs in the back on that table as you leave
14 the room.

15 Now, our panel has let's say the dubious
16 honor of being asked to discuss bankruptcy and
17 identity theft. Many people mistakenly believe
18 that because individuals file for bankruptcy relief
19 and therefore their perspective is that their
20 credit is already, quote unquote, "ruined," there
21 is no intersection between these two issues. But
22 regrettably, that is not the case.

23 To demystify what can be a very complicated
24 and confusing world of bankruptcy, we have here
25 today attorneys who practice in the civil and

1 criminal context, identity theft victims and
2 consumer rights advocates, and we will also be
3 discussing the manner in which private information
4 is collected in the bankruptcy system, and a
5 current study that's being conducted by the
6 Clinton-Gore Administration on that issue.

7 Because this process can be very
8 complicated and confusing, we're going to take a
9 slightly different approach than that of the other
10 panels. Our first two panelists are going to make
11 a little bit more of a formal presentation with
12 respect to the civil context of the bankruptcy
13 system and with respect to the criminal context.

14 And with that, I would like to ask Cliff
15 White, who represents the civil side of the
16 bankruptcy world, as Assistant United States
17 Trustee, to talk a little bit about the way -- the
18 bankruptcy system itself, the ways in which the
19 United States Trustee Program has seen identity
20 theft impact on the system, and approaches that the
21 program is adopting to combat the problems. Cliff?

22 MR. WHITE: Thank you, Jeannie. Let me
23 start, then, with just a very brief and very
24 general description of the bankruptcy system. The
25 bankruptcy system is first and foremost a judicial

1 process, and that means it's serious business. And
2 that is a theme I think we'll see throughout our
3 discussion of implications of identity theft in
4 bankruptcy.

5 Essentially the bankruptcy laws of the
6 United States are designed to permit a person or a
7 business that is overburdened with debt to be able
8 to discharge or be forgiven most kinds of debts, or
9 to change the repayment terms. And the first step
10 in that process, the first and a key step for our
11 discussion today is the filing of a petition, the
12 filing of a bankruptcy petition. Because when
13 that's done at the court house, instantly, and I
14 mean instantly, there is an automatic stay, a court
15 order, if you will, imposed that stops most kinds
16 of actions by creditors to collect on debts. And
17 most particularly, that includes actions to
18 foreclose on a home mortgage.

19 Now, in some cases, a debtor may have to
20 give up most of their personal property to a
21 private trustee who will liquidate or sell that
22 property and distribute the proceeds to creditors.
23 So, in a nutshell, that's sort of the bankruptcy
24 system with about a 1,001 steps left out.

25 But what's the purpose of the system? I

1 describe it essentially as having a twofold
2 purpose, it's both fairness and it's efficiency.
3 Because to the consumer the bankruptcy system is
4 designed to provide a fresh start, so that someone
5 who is overburdened with debt can get on with the
6 rest of their lives without being burdened by that
7 past debt forever more.

8 And for creditors it serves certain
9 fairness and efficiency purposes as well, because
10 it is designed to provide the most effective means
11 for locating assets, liquidating assets, and then
12 distributing those proceeds according to a scheme
13 set out in the statute. So, more efficient for
14 creditors than the so-called race to the court
15 house to see who can get the first judgment against
16 the debtor.

17 Let me move on, then, very briefly to what
18 is the U.S. Trustee Program? We are a part of the
19 United States Department of Justice, and
20 essentially we have the responsibility for the
21 appointment of private trustees and for the
22 oversight of bankruptcy trustees in bankruptcy
23 cases.

24 We have more than 90 offices in almost all
25 of the judicial districts in the country, but we

1 are not the Court, and we are not the private
2 trustees who administer most of the consumer cases.
3 We are, however, regulators of those trustees and
4 debtors, and we're litigants who go into court to
5 see that the bankruptcy law is enforced.

6 In the legislative history that created us
7 more than two decades ago, we were called the
8 watchdogs of the bankruptcy system.

9 Now, an important part of our
10 responsibility is consumer protection, but by
11 statute, we're a neutral party in a case. We
12 cannot represent an individual. We promote the
13 integrity of the bankruptcy system, and in doing
14 that, we may directly benefit individual parties,
15 but we're not a substitute for a victim's own
16 lawyer, who can look out for the specific interests
17 and problems of her client.

18 Now, in addition to our civil enforcement
19 responsibilities, we also make criminal referrals
20 to the U.S. Attorney, and we'll hear more about
21 that later. And we try to assist law enforcement
22 in prosecuting cases, such as by advising them on
23 bankruptcy law, or testifying in court as fact or
24 expert witnesses.

25 Now, as Jeannie said, in the bankruptcy

1 system, in fact we do see many kinds of cases of
2 identity fraud, and there are a number of different
3 scenarios, and believe me, we don't possibly have
4 time to go into as many as we could, but let me
5 just identify three broad kinds of scenarios with
6 an example maybe for each.

7 First is the credit doctor scenario.
8 Someone with a credit problem will go to a
9 so-called credit repair service, and I know this
10 has been an area of interest to the FTC as well in
11 its enforcement responsibilities. But someone with
12 a credit problem will go to a credit repair
13 service, and a disreputable service among other
14 things provide a false social security number or
15 false identity to the client who then would apply
16 for new credit under that false social security
17 number.

18 And then when that debtor, that client,
19 falls behind on payments, she might file for
20 bankruptcy under the false number. Now, why file
21 for bankruptcy? Because in many cases, although a
22 false social security number is being used, the
23 address and phone number on the credit applications
24 is that of the person using the credit card, and
25 that person therefore has just as much an interest

1 in trying to stop creditors from collecting and
2 making phone calls as a legitimate user, as a
3 legitimate credit user would have.

4 And the victim, the real holder of the
5 social security number may not become aware of the
6 theft for years. We had a recent case in Greenbelt
7 where the debtor, come to find out, had filed seven
8 bankruptcy cases over nine years, using four
9 different social security numbers. There are a
10 couple of variations in the name, but the key to
11 the fraud was the use of the social security
12 number. And by using phony social security
13 numbers, that was a way to evade detection for
14 years by the Court, the U.S. Trustee, creditors,
15 and others.

16 The next example I'll give is the mortgage
17 scam. Now, usually this will involve a con artist
18 who promises to help a debtor stop foreclosure on a
19 family home. And for a large fee, usually
20 something like hey, what would be your mortgage
21 payment to the mortgage broker or service, for that
22 large fee, the scam artist will, among other
23 things, file a bare bones bankruptcy petition for
24 the client, a petition that doesn't have all the
25 required information that Lee may talk about later,

1 and that will cause the case to get dismissed.

2 But again, because it is filed, the
3 foreclosure will stop on the home, for example.
4 And then the case is dismissed, and then perhaps
5 with a new social security number, the case can be
6 filed again, and again, and again. If you get the
7 idea. The different use of social security number,
8 evade detection, the automatic stay goes into
9 effect, foreclosure is delayed, and there's a scam
10 and there is a victim, two victims, the victim
11 being perhaps the mortgage company, as well as the
12 real holder of the social security number.

13 We had a case within the last year in
14 Greenbelt where the debtor was a real estate
15 investor, and he and his wife filed six cases over
16 six years using false social security numbers, and
17 when we put him on the witness stand, he said that
18 well, he really needed the -- what the bankruptcy
19 court relief afforded him, because he was under
20 capitalized, and filing bankruptcy was just as much
21 a part of his business plan as getting the mortgage
22 in the first place.

23 The third and final scenario I'll describe
24 is one you've heard something about already, I
25 think, during the conference, the family member or

1 the friend who purloins the social security number.
2 And this might be done by a family member, an adult
3 child, for example, who lives with the victim, in
4 the victim's home, and maybe is responsible for
5 making the monthly mortgage payments for the
6 victim, and that adult child or friend maybe starts
7 not to make those mortgage payments, and maybe runs
8 up some other debts in the victim's name and social
9 security number. So, again, with that key
10 objective being for stalling foreclosure,
11 bankruptcy will be filed.

12 We had a case in Greenbelt I'll use as a
13 final example where a man cosigned what he thought
14 he was cosigning a mortgage loan for his girlfriend
15 who had bad credit. Well, that's what he thought.
16 In fact, he had gone to a settlement on a house, he
17 became the owner of the house and the sole obligor
18 on the note. And he didn't realize that until his
19 girlfriend fell behind on her mortgage payments,
20 filed for bankruptcy, in his name, of course, and
21 in the bankruptcy papers, she also revealed she had
22 also taken out some credit cards in his name and
23 she wanted those debts discharged, too. And the
24 boyfriend found out about it after he was turned
25 down for credit when he decided he needed another

1 credit card for himself. And in that case,
2 incidentally, he also through the testimony of his
3 girlfriend in that case found out that she thought
4 that she was his fiance and he protested that was a
5 lie, too. We didn't ask the judge to resolve that
6 one way or the other.

7 Now, what can the U.S. Trustee try to do to
8 -- when it uncovers identity theft, and we
9 certainly welcome your thoughts on this during the
10 panel session and afterwards, but let me tell you a
11 bit about the kinds of things we presently do.

12 And importantly, again, we're a civil
13 enforcement agency. We don't prosecute crimes,
14 only the U.S. Attorney can do that, but we uncover
15 such a situation, if the mistake is innocent, such
16 as the transposition of a social security number,
17 we will ask the debtor or debtor's counsel
18 themselves to correct the court record, but in a
19 more serious case, it's more likely that what we
20 will do is file a motion asking the bankruptcy
21 court to dismiss the case, but with special relief,
22 designed to do two things. One, to impose a civil
23 sanction on the identity thief, and two, to try to
24 help the victim as well.

25 And with regard to the sanction, we will

1 try to have the case, a denial of discharge order
2 entered, so that the person who ran up the debts
3 will still be responsible for those debts, and a
4 bar against that person refiling with any social
5 security number, and if they violate that, then
6 they've got a contempt of court problem as well.

7 As remediation for the victim, we might
8 more typically seek a court order declaring that
9 the debtor is not the person whose name or social
10 security number is on the petition. Now, in some
11 cases, we just don't know who the real victim is,
12 we at least can get a court order and where we do
13 know who the victim is, that is a document that
14 they can use from the court to go to the credit
15 reporting agencies and so forth.

16 There are numerous other approaches we
17 might take in a case, and we can discuss some of
18 those later on, if there is time.

19 Just some parting advice, if you think that
20 you're a victim of an identity theft involving
21 bankruptcy fraud, I suggest you first gather up all
22 the information you have, the notice from the
23 credit card company denying your credit and so
24 forth, but remember there's really no substitute
25 for self help, and I know that isn't, perhaps, the

1 most pleasing statement to hear, but bankruptcy is
2 a judicial process.

3 Sometimes it might be necessary to obtain a
4 lawyer to address the specific problems that the
5 theft may cause an individual victim. Among other
6 things, you will have to show that you're not the
7 person who filed the petition, and you'll have to
8 show that to the court.

9 I would also ask you, please, contact your
10 local U.S. Trustee office where there is fraud.
11 There is no simple way to solve your problem, and
12 under different fact scenarios, different things we
13 may or may not be able to do, but we would want to
14 be aware, and we might be able to be of some help.
15 And by coming forward, you're, of course, helping
16 yourself, you're promoting the integrity of the
17 system, and perhaps retarding the chances of this
18 happening in the future.

19 So, with that brief overview, which I hope
20 wasn't -- was sufficiently brief, but maybe not
21 given our time constraints, I do thank you for your
22 attention.

23 MS. CROUSE: And, Cliff, before we turn to
24 our next panelist, you have mentioned that you
25 would encourage victims to contact the appropriate

1 U.S. Trustee offices. Do you have any suggestions
2 as to how members of the public can identify those
3 offices? Because I know you have 90 offices
4 throughout the country.

5 MR. WHITE: Well, I think that if you were,
6 for example, obtaining the -- if you knew a
7 bankruptcy has been filed, you're going to be
8 trying to obtain the bankruptcy petition filed in
9 your name, the clerk's office will have the phone
10 number for the U.S. Trustees office serving that
11 district.

12 MS. CROUSE: And there's also information
13 on the website as well?

14 MR. WHITE: There is, which you can go to
15 the main DOJ website and work to. Um-hmm.

16 MS. CROUSE: Thank you. As Cliff has
17 described, the U.S. Trustees program has a civil
18 authority within the bankruptcy system to supervise
19 and appoint trustees, and to also supervise
20 bankruptcy cases. The other end of the spectrum is
21 the criminal side, and our representative here is
22 Tom McQuillan, AUSA, from Alexandria.

23 Tom, could you briefly address criminal
24 issues that your office has seen within this
25 context?

1 MR. McQUILLAN: I would be pleased to do
2 that, Jeanne, thank you very much. Thank you,
3 Cliff, too. Thank you ladies and gentlemen, I have
4 for the first time in my professional career
5 prepared a power point presentation.

6 MS. CROUSE: And we're all going to be
7 subjected to it.

8 MR. McQUILLAN: Bear with me, please.
9 First of all, I would tell you that I am an
10 Assistant U.S. Attorney. I work in the U.S.
11 Attorney's Office in the Eastern District of
12 Virginia, right across the river. I'm an AUSA in
13 the Eastern District of Virginia in Alexandria, and
14 I work in a particular unit within the criminal
15 division of that office, known as the fraud unit.
16 We are responsible for investigating and
17 prosecuting all sorts of economic crime, and one
18 particular type of crime that I have recently
19 become involved in for the first time is bankruptcy
20 fraud.

21 And Jeanne asked me to be on the panel
22 today because of a case that I handled over the
23 summer, which thankfully resulted in a guilty plea.

24 It was a scheme, a bankruptcy fraud scheme,
25 a criminal scheme, remarkably similar to one of the

1 schemes that Cliff just pointed out. It was a real
2 eye opener for me. I had not been involved in this
3 area before. And for that reason, Jeanne asked me
4 to speak to you a little bit today.

5 Before we talk about that case, though, I
6 want to talk a little bit about how we function,
7 how the United States Government functions as a
8 team when it investigates economic crime. We have
9 the concept, we use the concept of the prosecution
10 team. The FBI, I should point out, does not report
11 to us, they would be very upset if they thought for
12 a moment that they worked for me, although in
13 reality they do. But in any event, when a case
14 comes in to be investigated, the bankruptcy fraud
15 case, it is generally assigned to the FBI. The
16 FBI, of course, is the chief investigating agency,
17 criminal investigating agency of the federal
18 government. They cover the whole gamut of crimes
19 and they have a very ambitious economic crime
20 program.

21 And so the -- a case agent is assigned that
22 will investigate the case. Also, on the other side
23 of the organizational chart, the United States
24 Trustee, which, of course, does not work for the
25 U.S. Attorney, but which provides invaluable

1 assistance to the government, or to the AUSA, in
2 investigating bankruptcy fraud.

3 Now, in my office, we have a general crimes
4 unit that handles reactive type crimes, bank
5 robberies, kidnappings, that sort of thing. We
6 have a drug unit, narcotics unit that handles
7 sophisticated drug cases. And we have the fraud
8 unit where I work. Our cases are traditionally
9 paper cases, the fraud unit's cases.

10 How do we investigate a case? Sometimes I
11 wish I could tell you that we investigate a
12 bankruptcy fraud case like this. I really wish I
13 could tell you that because it's just so exciting
14 to be able to say, we have a rapid response unit
15 and we go out to the bankruptcy court and pick up
16 those petitions. We don't do that.

17 Economic crime cases, bankruptcy fraud
18 cases, are paper intensive and require a lot of
19 time to investigate. Agents gather facts, agents
20 work with assistant U.S. Trustees to try and
21 understand the system a little better, and
22 ultimately agents seek my advice and counsel, and
23 describe to me what they found. And what I do is
24 reading, after having read their reports, is I look
25 at this. This is Title 18, United States Code,

1 Section 157. This is, for me, at least, an
2 extraordinarily interesting statute. This is the
3 bankruptcy fraud statute.

4 And if you look at the criminal code, Title
5 18, you will see that there are various other
6 statutes that concern lying on bankruptcy forms,
7 concealing assets, that sort of bankruptcy fraud.
8 More traditional bankruptcy fraud. People who want
9 to hide assets. This statute is, I would say,
10 maybe three years old. And it addresses a whole
11 different problem.

12 And the problem that it addresses is -- one
13 of the problems that it's aimed at addressing is
14 massive bankruptcy fraud schemes, schemes that are
15 aimed at the public. Think about it for a minute.
16 You have received in the mail a foreclosure notice.
17 They say they're going to take your house away.
18 You're not a sophisticated person. You're scared.
19 And you get a call or a letter from somebody who
20 says they're a work-out specialist, they can help
21 you. They're hiding your mortgage payments, your
22 rent, they're going to kick you out of your house.
23 I can stop it, right now. All you need to do is
24 pay me. All you need to do is give me a month's
25 rent or a month's mortgage payment, money that you

1 really don't have. I can stop it.

2 How do I do it? Well, first of all, as a
3 work-out specialist, I've got to find business.
4 Who am I looking for? I'm looking for the people
5 who are kind of marginalized, unsophisticated.
6 Where do I find these people? I have employees who
7 troll the foreclosure notices for new business.
8 That's how I find my victims.

9 Kind of makes you think the of the term
10 bottom dwelling, doesn't it? What am I going to
11 do? How do I accomplish this service that I'm
12 going to provide? Well, essentially what I'm doing
13 is making or abusing one particular facet of the
14 bankruptcy code for my benefit, and that's called
15 the automatic stay, and that's something that Cliff
16 just talked about a moment ago.

17 Because the moment a bankruptcy petition is
18 filed, the stay takes effect. You can't be kicked
19 out of your house. They can't evict you. They
20 can't foreclose. But am I for real about this? Am
21 I really -- do I really want these people to follow
22 through with bankruptcy? No.

23 For that payment of money, what I ask the
24 victims in this scheme to do as the work-out
25 specialist, is sign bankruptcy petitions in blank,

1 and sign voluntary dismissal motions in blank. Do
2 I as the work-out specialist tell these people
3 exactly what I'm doing? No. Because if I did,
4 they might turn around and say you're going to do
5 what? You're going to file bankruptcy? They might
6 say will it have an effect on me? Is this a good
7 thing in my life, or a bad thing?

8 After I get those clients to sign those
9 blank petitions, what do I do as the work-out
10 specialist? Well, I fill in portions of the
11 petition that need to be filled in, listing
12 addresses, things of that nature, the address of
13 the property, the mailing address, the social
14 security number. And I have one of my employees
15 file it in court. Of course, it triggers the
16 automatic stay action.

17 At the same time, I serve the mortgage
18 holder with a copy of the petition, putting the
19 mortgage holder on notice that hey, stop,
20 bankruptcy, you can't do anything more. So, where
21 are we in the process now? Well, where we are is a
22 bankruptcy has been filed in somebody's name, and
23 they really -- the person in whose name it's filed,
24 they're really not that sure they understand all
25 this.

1 What's the practical effect? Well, you
2 know, I asked Cliff this morning what the practical
3 effect terms of a credit reporting agency is when a
4 -- or what the practical effect on that agency is
5 when a bankruptcy petition is filed, and he told me
6 that two or three times a week representatives of
7 credit reporting agencies are in the bankruptcy
8 court, monitoring the docket, looking at who's
9 filing what.

10 So, you know that when a bankruptcy
11 petition is filed in somebody's name, within a
12 matter of two or three days, that is picked up and
13 reported to a credit reporting agency. That's not
14 a judicial function. These people from these
15 credit reporting agencies, they serve a legitimate
16 purpose, they are sitting in court, going to the
17 clerk's office, looking through the documents.

18 Now, there's another part to this process,
19 right? I mean, nobody in this process is thinking
20 -- the work-out specialists are not thinking we're
21 going to follow through on this, so how do you stop
22 a bankruptcy case once you file a petition? Well,
23 remember that voluntary dismissal notice that you
24 asked the client to sign? That's what you file.
25 You wait a couple of weeks and you file that. But

1 who don't you serve? You don't serve the mortgage
2 company, right? Because you don't want the
3 mortgage company to know that the case was
4 dismissed. Why? Because you want the mortgage
5 company to think that there's still a bankruptcy,
6 and that they shouldn't be messing around trying to
7 foreclose on somebody's property.

8 But nothing lasts forever, and the mortgage
9 company is ultimately going to say hey, what's
10 going on with this bankruptcy that we heard about
11 six months ago, I mean, where are we in the
12 process, and they will eventually find out that the
13 case was dismissed. So, what do you do as the
14 work-out specialist then? After the mortgage
15 company starts the process all over again. Well,
16 you respond in kind. You start the process all
17 over again. And you run to bankruptcy court and
18 file another case. Because you've gotten the
19 person, your client, to sign multiple bankruptcy
20 petitions.

21 But are you going to file in Greenbelt,
22 Maryland if you've already filed there? Probably
23 not. You'll probably go down to the Alexandria
24 bankruptcy court and file there where they don't
25 know you. You use a false address. You use a

1 vacant lot or a mail drop to put on as the mailing
2 address. And that's how the system works. That's
3 the work-out scheme.

4 Who are the victims? Well, certainly
5 victim number one is the mortgage company who has a
6 legitimate claim on the property or the property
7 owner in the case of somebody who is renting. On
8 the people who are the clients of work-out
9 specialists victims? By and large, yes, they are,
10 because by and large, work-out specialists don't
11 tell victims the whole story. They take their
12 money and they tell them that they can make their
13 problem go away. It only goes away temporarily,
14 but that's what they tell them. They take their
15 money and they don't produce.

16 And the third victim, of course, in a sense
17 probably the most important victim, in a larger
18 sense, is the court system. Because in order for
19 this crime to take place, the court system, the
20 judges, the U.S. Trustees, everybody involved in
21 the court system has to be lied to. They have to
22 be made to think that the bankruptcy petitions are
23 part of a legitimate case, when, in fact, they're
24 not.

25 So, it's a scheme. It's a scheme that only

1 recently we're really, you know, fully
2 understanding.

3 I had occasion this summer to prosecute a
4 case involving this scheme, and I was amazed at how
5 little law there was on the subject. As an aside,
6 when somebody is sentenced for a bankruptcy fraud
7 scheme, one of the most important sentencing
8 factors is the amount of loss in the case. That's
9 what drives the sentence. That's what determines
10 how many months somebody is going to spend in jail.

11 And in my particular case, because this is
12 such a new area, there was no law on how to
13 determine loss. It was what we call a case of
14 first impression, which is rather rare in trial
15 courts, especially when you're talking about
16 criminal law.

17 So, we have a problem, and we have emerging
18 a federal response from the criminal loss side.
19 And the twin goals are, of course, as the twin
20 goals are in any sort of crime, to punish the bad
21 guy and to help the victim.

22 But Cliff touched on something, or maybe it
23 might have been Jeanne, just a little while ago,
24 and that is self help. If the federal response is
25 to work, then people who have been victimized have

1 to help us. They are witnesses. A long time ago,
2 a boss of mine when I was a new prosecutor starting
3 out said to me, he gave me sage advice, he said to
4 me lawyers are fungible, witnesses are not.
5 Witnesses are very, very important. These are the
6 people who tell the story of the crime, to us and
7 to the judge and to the jury.

8 So, witnesses may need to testify. If the
9 bad guy is convicted, hopefully he gets a stiff
10 sentence. He goes to jail, and other work-out
11 specialists, because they track the prosecution,
12 because they read about it in the papers, because
13 we issue press releases, understand that they might
14 be next. Restitution in a criminal case is
15 available.

16 And particularly in a case like this, where
17 you're prosecuting a man who is operating a
18 business, sometimes you find that there is actual
19 money out there that can be used to pay
20 restitution. But the focus here today is really on
21 victims, and what we do as the Department of
22 Justice, as U.S. Attorneys, to help victims.

23 In the interest of time, I'll be brief, one
24 area that would be of interest, I think, to you
25 all, is a website. I have the site up here. It is

1 a website for the office of victims of crime. And
2 it explains or contains -- it's a comprehensive
3 website, and it contains a lot of information on
4 services that victims of crime, particularly
5 bankruptcy fraud, people who have had their credit
6 rating negatively affected because somebody's filed
7 bankruptcy on their behalf. It contains
8 information on what can be done.

9 There is a new and emerging emphasis on the
10 victims of financial crime. Victims' rights have
11 always been of a concern to the Department of
12 Justice, but only recently have victims of
13 financial crimes, the rights of those people, only
14 recently has that subject area really moved to the
15 fore. And perhaps at a local level, that is to say
16 at a local U.S. Attorney's Office level, one of the
17 most important things to know is that we all had a
18 person known as a Victim Witness Coordinator, we
19 have one in my staff, and these are the front-line
20 people who help victims of crime, including people
21 who have had their identities stolen from them,
22 people who have experienced bankruptcy fraud
23 problems.

24 What can the Victim Witness Coordinator do?
25 In short, they can do -- they can help you through

1 the process. They can write letters on your
2 behalf, they can contact lawyers, employers rather,
3 to inform your employers and your creditors as to
4 what has happened to you as a victim. They can
5 deal with creditors, landlords, mortgage companies,
6 who may not fully realize that people have been the
7 victim of crime. They maintain contact with credit
8 reporting bureaus, and can be of help in working
9 things out. Lastly, they can obtain court-ordered
10 certified copies of court orders involved.

11 My final thoughts are essentially the same
12 as Cliff's final thoughts. These crimes are
13 insidious because it takes a long time for people
14 to realize that they've been victimized. So, if
15 you ever meet somebody who is going to -- thinking
16 about using the services of a work-out specialist,
17 tell them to ask a lot of questions, and understand
18 what it is they're getting into, and of course
19 never sign documents in blank, maintain good
20 records, and contact the U.S. Attorney, the FBI or
21 the U.S. Trustee if you think there's been a
22 problem.

23 MS. CROUSE: Thank you, Tom, for those
24 resources. I would also note that out in the front
25 is a fax sheet prepared by the office of Department

1 of Justice Programs that also lists other
2 references that victims may want to consult.

3 Now, as Tom has pointed out, the witnesses
4 are very important in the process, and with that, I
5 would like to ask Eric Graves, who we have heard
6 from before, but not necessarily within the context
7 of bankruptcy fraud, to share a little bit about
8 his experiences as a layperson who got inveigled
9 into the bankruptcy process.

10 Eric's son's identity and social security
11 number was used improperly to file for Chapter 13
12 relief in the Central District of California. Now,
13 there will be a quiz later, so for those of you who
14 don't know, Chapter 13 relief is available in
15 bankruptcy for individuals who have limited debts,
16 and regular income. And with that, Eric, could you
17 share a little bit about your prospectus as a
18 layperson who was brought into the bankruptcy
19 process?

20 MR. GRAVES: Sure. Thank you very much.
21 Let me say that it's been very educational, these
22 panels and everything, to myself, because even
23 though we have gone through a lot of this, there's
24 more to learn.

25 My son was 19 in September of '98 when we

1 first found out through a declined auto loan that
2 he couldn't get an auto loan, and the credit union
3 told us, you know, which report they used and why
4 it was declined. So, we started pursuing it. We
5 contacted the OIG Hotline through an email. We got
6 a response within four days of basically talking,
7 it was in '98. I get the impression that this
8 crime was fairly new, and a lot of agencies hadn't
9 really addressed it directly.

10 And so the word -- the verbiage in the
11 social security reply was more around workplace and
12 employer benefits and what was on your account,
13 although it did specify the three credit agencies
14 to pursue, which we had already done.

15 But in trying to -- once we found that
16 there was this bankruptcy on his report, you know,
17 you wonder, 19 years old, address that was not his.
18 They did have his name, obviously the social
19 security number, and we started pursuing that, and
20 my son got down to the Woodland Hills branch of the
21 bankruptcy court, got the documents, I really, as I
22 said before, I don't know how he did that, but I
23 guess it's information that's available, and I
24 credit him for doing that. And we got the names,
25 there was the attorney's name, the plaintiff, the

1 defendant, and apparently the defendant was late in
2 paying a rent, and so the landlord was pursuing
3 this, and the guy claimed bankruptcy, somehow he
4 got my son's name and social security number.

5 I called the bankruptcy court, they said
6 that we needed to contact the U.S. Trustees Office.
7 I contacted the trustees office, they said we
8 needed to contact the court. I contacted the
9 court, they said I needed to contact somebody else
10 at the trustees office. I spent a dozen calls
11 contacting ten different people, being pointed back
12 and forth between downtown LA Trustee and Woodland
13 Hills branch of bankruptcy court, getting really
14 nowhere.

15 I sent three letters to the trustees
16 office, which I did get response from, but they
17 suggested -- the first suggestion was to contact a
18 bankruptcy attorney. Let me just say that, you
19 know, that hasn't been cleared out of the court
20 yet. It has been taken off of all the credit
21 reporting agency reports. Trans Union was the
22 last, and I think the only reason it's off of that
23 is because I pressured them because Experian and
24 Equifax had already taken it off. And not until I
25 presented those facts did they finally say they

1 would investigate it.

2 I had conflicting correspondence between
3 Trans Union because of different timings of letters
4 that were sent, but excuse me for any bad English I
5 am going to say, but I am getting real emotional
6 about this, I have had too much caffeine this
7 morning, and, you know, this panel that was up here
8 earlier, just, you just get really galled as a
9 victim, and I'm not the victim, it's my son. And
10 he's 21 years old, and he has not established
11 credit, I wanted him to establish credit by this
12 point, and he has not done that, because he is only
13 a secondary signer on the loan. And then all this
14 criminal activity that went with Robert and could
15 potentially go with any of us as victims, or any of
16 you. And I know all of you are victims of some
17 sort of this crime, and what else can they do, if
18 they haven't racked up your credit cards, they are
19 going to possibly go for a crime.

20 I don't understand, and excuse me, but
21 screw the ACLU. You know, as a victim, you want to
22 be able to have your rights, and I don't understand
23 why a fingerprint can't be utilized. I know that
24 it has to have safeguards, there obviously is all
25 this warehousing of data that gets sold, but it's a

1 direct ID of all of us. I don't see --

2 MS. CROUSE: I think what Eric is pointing
3 out here is the question of whether identification
4 needs to be provided with respect to bankruptcy
5 filings.

6 MR. GRAVES: Yeah, I know I'm getting off
7 track, but I think that's the issue is why didn't
8 the bankruptcy court ask for ID.

9 MS. CROUSE: That's one of many.

10 MR. GRAVES: Why didn't this get
11 fingerprinted, if it was instituted, all of us, we
12 think you're trying to be responsible, you think
13 you're doing the right thing through life.

14 MS. CROUSE: Just so I'm clear, one of the
15 problems that Eric encountered, that Eric's son
16 encountered, was the fact that the person who filed
17 bankruptcy using his son's social security number
18 did not provide identification when the bankruptcy
19 was filed. And that is, in fact, the case in many
20 jurisdictions. I understand that the U.S. Trustee
21 program is currently reviewing this issue. Cliff,
22 would you like to speak to that?

23 MR. WHITE: Well, with respect to one of
24 the steps of the process, all of the filings are
25 asked to come to a meeting of creditors and testify

1 under oath before the a private trustee or the U.S.
2 Trustee and creditors can ask questions. So, we
3 are looking at possibilities at that step in the
4 process. But the first step is the filing of the
5 petition and I am not aware of any clerk's office
6 that requires any method of identification.

7 MR. GRAVES: Well, this is the point and
8 we've been saying this time and time again here,
9 and it is getting to the point where Werner said,
10 you know, a camel is nothing but a horse made
11 through committee. But, you know, you have got to
12 be able to cut through all this paper chase, the
13 bureaucracy. A fingerprint would do that,
14 especially when you are going to ID a guy in a car
15 or whatever, you've got the technology, why start
16 new technology for things?

17 MS. CROUSE: Eric. There are two other
18 points that we need to make here, and first of all,
19 this is very uncharted territory. The fact that
20 there is -- that the Internet exists, that there
21 are now potential collectors of this private data,
22 have increased expedientially the availability --
23 the possibilities for identity theft.

24 So, these are -- and the other problem that
25 has been tangentially touched upon is the fact that

1 you have various agencies. You have the U.S.
2 Administrative Office of U.S. Courts which deals
3 with the court system which deals with the actual
4 filings of documents and you have the U.S. Trustees
5 office which deals with the civil side, they are
6 more of the administrators, but they're not the
7 courts, and they have no jurisdiction over the
8 courts. And then finally you have the U.S.
9 Attorney's Office. So, these are very important
10 issues that Eric raises, and sadly they are not
11 issues that have been resolved yet, but hopefully
12 they are rising higher on the radar screen.

13 MR. GRAVES: I guess all I'm suggesting, I
14 hate to interrupt, but just a federally funded
15 program to implement and deploy fingerprint
16 technology.

17 MS. CROUSE: Now, Mari as a consumer rights
18 and privacy advocate, but a non-bankruptcy
19 attorney, has had to deal with the bankruptcy
20 system with respect to various individuals she has
21 tried to assist, and Mari, if you could share
22 briefly your perspective based on those
23 experiences.

24 MS. FRANK: I didn't know very much about
25 bankruptcy, I never filed bankruptcy, I always

1 referred it out, thank goodness, and now you know
2 why. I have gotten calls from several victims of
3 identity theft, one was a gentleman from Nebraska
4 who called me who went out to dinner with business
5 clients and he went to pay the bill with a credit
6 card and it didn't work. And he thought well,
7 there's something wrong here, he tried a second
8 card and he tried a third card, and it didn't work.
9 He was humiliated, he didn't have money to pay the
10 bill. He goes back home, he calls his credit
11 cards, the 24-hour number, and they said well, I'm
12 sorry, Mr. Jones, you filed bankruptcy, so we
13 cancelled your credit cards. And he said what do
14 you mean I filed bankruptcy? Well, you filed
15 bankruptcy in Los Angeles. He said I don't live in
16 Los Angeles, I live in Omaha, Nebraska, and I have
17 never been to Los Angeles, what are you talking
18 about?

19 And this started this horrible thing that
20 he went through. And he also found out, when I was
21 trying to help him through the process, we found
22 out there was no attorney, because in California,
23 unlike other states, there a lot of preparers who
24 file, or you file with a paralegal. So, we had no
25 attorney to call to scream and yell at, we had to

1 try and get the records. And it was, for me, as an
2 attorney trying to help him, it took us months and
3 months. And I still don't know if those records
4 that the original filing that was picked up by the
5 credit -- we did get it off the credit reports, but
6 I don't know if the original filing was then sold,
7 like with Sylvia's case, resold by other data
8 brokers that are on other databases that will again
9 show up later, which might happen to your son as
10 well, because we don't know who is reselling this
11 information.

12 And I know Lee is going to talk about the
13 privacy issue. I also got a call from a woman who
14 was from Virginia who found out that she wanted to
15 buy a home with her husband and found out that she
16 already owned a home and this home was starting
17 foreclosure and then, of course, the person filed
18 bankruptcy to, you know, forestall the foreclosure
19 with the automatic stay.

20 So, the two main reasons that someone will
21 file bankruptcy in your name is to avoid getting
22 kicked out of your apartment, and avoid getting
23 kicked out of your house, all right? And being --
24 and so you buy a house in somebody's name and then
25 of course, you avoid losing that house by filing

1 bankruptcy. And then the person who is the
2 innocent victim, doesn't find out until they go out
3 to dinner or they're denied credit when they want
4 to buy a car.

5 So, it's a horrifying experience. Now, if
6 you live in the same jurisdiction, which luckily
7 Eric lives in the same state, but we're talking
8 about what do you do if you're in Nebraska and, you
9 know, you're not even in that state, let alone you
10 can't just drive to the court house.

11 So, it's a real hassle to even get the
12 court records, no one believes you, they don't want
13 to have any time with you. So, here are some of
14 the suggestions, in our limited time, I wrote
15 something and there's something out on the back
16 shelf, but I just wanted to go over some of the
17 suggestions that I have for victims dealing with
18 the kind of problem that Eric has.

19 First of all, I think, and this is kind of
20 a prevention measure, is requiring some kind of
21 authentication of identity, which you're talking
22 about. Someone can go into the bankruptcy court
23 and show no identification whatsoever. Not only
24 that, now we're going into bankruptcy electronic
25 filing.

1 So, again, are we going to authenticate
2 with some kind of digital signature? What I think
3 we should have is if you're going to have an
4 attorney file for you, the attorney should -- the
5 attorney should file a declaration that they have
6 verified your identity, or if a paralegal is going
7 to file for you, that they should verify your
8 identity, or somehow the initial court should take
9 verification of identity.

10 Secondly, that's first, and second, I think
11 when the bankruptcy court does become aware that a
12 debtor has used the identity or the social security
13 number of another person, what they should do is
14 they should contact the Social Security
15 Administration. I know that you've told me and
16 I've heard from other people in the Los Angeles
17 area, but sometimes a debtor will just use a series
18 of social security numbers, like Cliff was saying,
19 they don't even know who it is. They are not like
20 deliberately taking the identity, the whole
21 takeover, but what happens is they use the social
22 security number, and then we find out somehow that
23 it is not the correct social security number.

24 When the bankruptcy court finds out about
25 this, they should somehow notify that victim, just

1 like we have the criminal victims that don't know
2 until much later. If a bankruptcy court finds out
3 that a social security number is used, I know they
4 can't get that social security number, however they
5 can report it to the Inspector General of the
6 Social Security Administration who can investigate
7 and that department can notify the victim.

8 We have a tremendous problem with victims
9 not knowing, and if they know early on, they can do
10 that self-help that you were talking about, Tom,
11 and perhaps get the bankruptcy dismissed before
12 it's discharged.

13 MS. CROUSE: But the cross border issue
14 with jurisdiction is a very difficult one, and in
15 Mari's hand-out, which I commend to all of you are
16 some wonderful suggestions for approaches, but
17 Mari, other than what --

18 MS. FRANK: Let me just finish up.

19 MS. CROUSE: If you could, fine.

20 MS. FRANK: Okay, basically you can look at
21 the hand-out, but one of the main issues is, Cliff
22 was talking about hiring an attorney. When a
23 victim has gone through what they have gone
24 through, they don't feel like they can hire an
25 attorney. Often they don't have the funds. So, I

1 think what they should do is luckily what Los
2 Angeles County is starting to do, which is putting
3 together forms and declarations that you just fill
4 in the blank, I think they should be available, so
5 that you can go in and have the bankruptcy either
6 dismissed, if it's prior to discharge, or the case
7 opened, and then have it expunged.

8 And I have talked with a judge in Orange
9 County, California, who is very open to making up
10 these forms. So, again, it's kind of like what
11 we're asking the criminal aspect to do, which is we
12 need to have -- this is U.S. Department of
13 Trustees, we need to have a formal protocol that
14 are a list of steps for victims to do, even though
15 you have victim assistance programs, I can tell you
16 that they did nothing for the clients that I have
17 talked to, okay? Nothing. And we hear now that
18 even if you call the Office of Trustees, everybody
19 does this, here, go to them, go to them. No one
20 gives you the right answer.

21 So, we need a one-step protocol that
22 everybody can tap into.

23 MS. CROUSE: I also have to point out,
24 though, that this issue is just coming up on the
25 radar screens, and unfortunately three years ago,

1 four years ago, whatever, it did not have the
2 publicity that it is incurring now. So, again,
3 this is unchartered territory, it's difficult. As
4 you can hear, what Mari has suggested is an
5 excellent approach within a particular
6 jurisdiction, but you may even find within one
7 district court that one of your judges likes this
8 approach, whereas the other one doesn't and the
9 chief judge will not mandate a specific approach.

10 So, unfortunately there may not be one
11 cookie cutter approach.

12 MS. FRANK: Jeanne, let me just say one
13 thing to that, and this is why I got our judge
14 involved. When I was doing my research, I talked
15 to Judge Riddle and I said you need to have all the
16 stakeholders involved, you need to have the judges
17 represented by several judges and you need to have
18 the victim advocates there and you need to have the
19 prosecutors there and the civil U.S. Trustees to be
20 part of the process.

21 MS. CROUSE: And that district may be an
22 unusual district, but I unfortunately know from
23 past experience that there are other districts
24 where they're not so collegial and one judge may
25 impose in fact a certain local rule with respect to

1 a fee application in bankruptcy that is completely
2 different than what the other judges do.

3 MS. FRANK: Then maybe we need legislation
4 to mandate them, if they're not willing to be
5 cooperative.

6 MS. CROUSE: Now, there are other privacy
7 issues that the bankruptcy system impacts, and that
8 is the fact that debtors, in order to avail
9 themselves of the fresh start in bankruptcy must
10 necessarily provide certain sensitive data, and
11 that data includes name, social security number and
12 birth dates. With that in mind, the Clinton-Gore
13 Administration is conducting a study on financial
14 issues and financial issues within the realm of
15 bankruptcy, and Lee Barnhill is here as the contact
16 person for the administration study.

17 Lee, if you could tell us a little bit
18 about the study, the procedures, and where we are
19 going from here.

20 MR. BARNHILL: Well, as you can see, the
21 financial privacy is really on the radar screen
22 now. I mean, it wasn't a couple of years ago, but
23 it definitely is now, and it has the attention of
24 the administration. In April, the President came
25 forward with a plan to enhance the privacy. And

1 part of that plan was in August to go ahead and
2 direct three agencies, Department of Justice, the
3 Treasury and OMB to go out and accept comments from
4 the public.

5 So, now we have 300 or so pages of
6 comments, recommendations, policy recommendations,
7 statutory recommendations as to how we might
8 address some of these issues. We have a very
9 ambitious schedule, and as a matter of fact we meet
10 tomorrow for a couple of hours, and we have to have
11 this thing done by December, for a lot of reasons.

12 So, keep us in your prayers, but I tell
13 you, the privacy issue is so important, because
14 there is so much that is in a bankruptcy petition.
15 When an individual files -- and so many things
16 happen. We talked about the identity situation,
17 but also, there's so many chances for somebody to
18 go out in a bankruptcy file and pull data out,
19 because it's public record data. There's also
20 non-public record data that's filed, and these are
21 some of the things we're looking at as to what
22 should be public record, and maybe what should not
23 be public record data. Or maybe some of the things
24 that are there now should be changed.

25 But this is all now required by the

1 Bankruptcy Code for things like bank account
2 numbers, identifying numbers, social security
3 numbers, are all in there, credit card numbers,
4 home address. So, we're looking at those issues as
5 to how to -- how we might change that. But in the
6 banking and credit reporting context, we notice
7 that these types of -- this type of information is
8 confidential, but it's not in the bankruptcy
9 context.

10 In the past, access to public record data
11 basically for all practical matters, it was very
12 limited. You would have to go down to the court
13 house and you would have to talk to a clerk for a
14 couple of minutes, get them off the phone or
15 whatever, and maybe get a file. And then you would
16 have to go to a copy machine, or maybe they
17 wouldn't allow you to copy it. That clerk would
18 copy pages that you said you would like.

19 But now, with electronic databases, and the
20 Internet access to bankruptcy records, you can sit
21 in the comfort of your home and perhaps get
22 information on bankruptcy files, on debtors all
23 over the country.

24 So, now this might improve bankruptcy
25 administration, it might help us find people who

1 are using wrong social security numbers, but also
2 it might allow one to easily steal the identity of
3 a debtor. So, we are looking into those matters.

4 And to be brief, because we are almost out
5 of time, I'll just say that the privacy study
6 that's been commissioned by the President is --
7 we're looking at the types of information that are
8 being presently filed, the current and future
9 practices, the needs for the information that's in
10 the bankruptcy cases, of course the privacy issues,
11 and the effect of technology on all of this is a
12 big issue.

13 We're looking at business and governmental
14 models, and also, we're trying to come up with
15 principles, fair information practices, notice,
16 choice, access, security, enforcement, those are
17 the things we're looking at. And as I say, we have
18 a -- 41 comments so far, 300 or so pages. We also
19 have a website, if you go into the main Department
20 of Justice website, usdoj.gov, and go to United
21 States Trustees, you can see our financial privacy
22 study. The comment period has closed, but I tell
23 you, if you come up with a good idea, we would
24 listen, definitely, but the comment period closed
25 in September.

1 MS. CROUSE: And not surprisingly, one of
2 those comments was provided by the Bureau of
3 Consumer Protection here at the Commission, that
4 formal comment is in the back, if you care, if
5 you're interested, you may pick one up as you
6 leave. Not surprisingly, the bureau is concerned
7 about the publication of such private data on the
8 Internet as courts move to accessibility or making
9 such data more accessible, and given what we heard
10 this morning in John Arterberry's panel, with
11 respect to the potential for identity theft, and to
12 me that answers the question that I always get,
13 which is why should we care about this private
14 information being provided within bankruptcy,
15 because these people have no credit to speak of,
16 and the answer is, that not everybody is trying to
17 take identities and use them for credit purposes,
18 they have maybe more nefarious purposes.

19 Let's take a few questions, there's one
20 back there, if you can grab the mike.

21 MS. NEWHOUSE: My name is Joan Newhouse,
22 I'm a private investigator, I identified myself
23 earlier. I would counsel that you not take too
24 much of that information out of the bankruptcy
25 filing, and not make it unavailable to the public.

1 I was party to a particular investigation
2 where someone had been convicted in the civil court
3 system of a significant insurance fraud. When his
4 seven-figure judgment was rendered against him, he
5 then filed bankruptcy. He used, I found that he
6 was using multiple social security numbers. He was
7 using an address in one state, but primarily
8 resided in the other state. If I had not had that
9 detailed information in his bankruptcy filing to go
10 by, in which he said this totals all of my assets,
11 and had not been able to find out his other address
12 in a different state, I would not have determined
13 that he had, say, just in rough figures, he had
14 said that he had \$150,000 in assets, when he
15 clearly had over \$4 million in assets. And we were
16 able to break the bankruptcy.

17 Now, we had to do that through civil
18 litigation and through private investigations. The
19 bankruptcy court had not picked it up. Yet had we
20 not had an initial sworn document filed in a court
21 stating that this was true, we would not have been
22 able to then break his bankruptcy by providing
23 certified documents in the bankruptcy court showing
24 that he was perpetrating a fraud, not only on my
25 client, but all of the other people that had

1 extended credit to him.

2 MS. CROUSE: May I jump in? She's exactly
3 right that there is attention here and there is a
4 fine balance that needs to be struck, and what the
5 bureau did not counsel in our formal comments is
6 completely restricted access but limited access and
7 protections of certain information within certain
8 parameters and models and such.

9 I saw a question here.

10 MS. FRANK: Can I just say one thing? In
11 California what we did is we limited certain things
12 like in a divorce proceeding, you can't have the
13 social security number on there. There are certain
14 things that are filed with the court that are
15 public record, and then there are certain things
16 that are kept confidential. So, it could be -- you
17 could do it that way.

18 MS. CROUSE: I see a gentleman here who had
19 a question.

20 MR. MEISSNER: Just a quick one. I've got
21 to leave, and unfortunately I love what you're
22 doing. I wanted to defer to the technology part,
23 where someone has got to be accountable. And then
24 I want to defer back to the underlying issues, and
25 God bless all of you, but it's back to Mr. Graves'

1 underlying issue, and that is what ties me to the
2 information.

3 We can sit here and create this camel all
4 day long, but the horse is what ties the
5 information together. We're in the information
6 age, we need information to progress. Joan has
7 made the point, everybody has made the point. What
8 ties Mr. Graves' son to that information?

9 MS. CROUSE: And that's a question that was
10 more thoroughly addressed and discussed this
11 morning, but it's a very good one and one that we
12 will have to wrestle with going forward in this
13 arena, most definitely. One more question, then
14 we'll have to finish.

15 UNIDENTIFIED AUDIENCE MEMBER: Can I ask a
16 quick just a very -- can I ask a quick variation on
17 that, and perhaps this question is for Cliff White.
18 If I understand what happened, Robert Graves, a
19 phony petition was filed for Robert Graves with his
20 name and social security number, and somehow that
21 affected an automatic stay on Jane Smith's
22 eviction. How does that happen?

23 MR. WHITE: Well, because that's the --
24 it's in the bankruptcy code. A major purpose of
25 the bankruptcy filing is to stop creditors from

1 collecting. In 99.9 percent of the cases, this is
2 a good thing. Somebody here in the instances of
3 the victims we're talking about, it is a problem.
4 It is being misused.

5 Let me also say, too, and Jeanne referred
6 to this a little bit before with regard to places
7 along the process where identification of the
8 perpetrator could be uncovered, that the people who
9 are perpetrating the frauds, the kind that Tom
10 described, the scenarios I described, what the
11 victims during this conference have described.
12 People are not trying to complete the bankruptcy
13 case, they're filing, getting the automatic stay.
14 They're not going forward later on in most cases
15 where the investigation will be done by the private
16 trustee, et cetera.

17 Now, when you -- when it is uncovered that
18 there is this serial filing and the automatic stay
19 keeps being imposed defeating the creditor. When
20 that's uncovered, there are remedies, civil and
21 criminal. And someone referred a minute ago, I
22 think it was Mari, with regard to something was
23 done in a civil violation, most of these things
24 we're talking about, these scenarios, they're not
25 just civil violations where we can try to bring

1 about civil remedies, they're almost always also
2 crimes. They're crimes under 18 USC 152 and 157
3 that Tom described, and it's serious business, and
4 it is in more recent years that we are becoming
5 more aware of this and I think we have actually
6 made a lot of process in being sensitive to the
7 fact patterns to pursue, John Arterberry ought to
8 get some credit for the working group he has which
9 brings federal agencies together, what the Federal
10 Trade Commission has done with its database and so
11 forth.

12 So, we don't have all the answers up here,
13 but I think we can take some solace in the fact
14 that there is a lot going on and a lot of progress.
15 And the problem is not going to be solved before I
16 get back to my office in Greenbelt.

17 UNIDENTIFIED AUDIENCE MEMBER: I'm sorry,
18 maybe I could request a clarification. Maybe my
19 question wasn't clear, I'm sorry.

20 MS. CROUSE: We have run way over.

21 UNIDENTIFIED AUDIENCE MEMBER: What I was
22 asking was how does a bankruptcy petition
23 fraudulently filed in the name and number of Robert
24 Graves stop an eviction of Susan Smith, who is the
25 one who is filing?

1 MR. WHITE: Because what you have, is you
2 would have the property address listed.

3 MR. GRAVES: Can I interject something?
4 Just for the facts, it was -- he used my son's
5 name. He had the same person's name, my son's
6 name, and the social security number.

7 MS. CROUSE: He had the same name but he
8 used your son's social security number to file the
9 petition?

10 MR. WHITE: But the property listed on the
11 petition will be the property they're trying to
12 stop the foreclosure on, and I apologize if I
13 didn't understand the question the first time
14 around.

15 MR. GRAVES: But it also goes to the
16 address that the person was getting this applied to
17 was not our address, it never had been.

18 MS. CROUSE: That's right, because that's
19 the address that was listed on the petition.

20 MR. GRAVES: Can I just emphasize the fact
21 of ID?

22 MS. CROUSE: Right. I know that all of my
23 panelists are thrilled that you all are so
24 interested in the topic and we're here, so, please,
25 we have run over. I thank you so much for your

1 attendance and for your interest, and these are
2 very difficult issues as we move forward. Thank
3 you.

4 MR. STEVENSON: Well, that was the last
5 word on that panel, but not the last word in
6 general. We now have the break-out groups to go to
7 to follow up on some of the issues that we have
8 raised here. There are four break-out groups, four
9 rooms. In this room the discussion of
10 technological solutions. In room 332, directly
11 below this room, an open mike for workshop
12 participants. In room 532, directly above this
13 room, more discussion on the standard fraud
14 declaration that we talked about yesterday. And in
15 room 481, which is basically at the other end of
16 this floor, discussion of the one-stop shop
17 concept.

18 This will be an opportunity for people to
19 further make comments. This will all be
20 transcribed in all of those sessions, so if you
21 have further comments, we would encourage you to
22 participate there. We would ask you to come back
23 here at 12:45. We will summarize the break-out
24 sessions and we promise to close up very promptly
25 after that. Thank you.

1 (A brief recess was taken.)

2 MR. STEVENSON: We'll try to take a back
3 end approach to this and give you a brief summary
4 of the various breakout groups, at least as we
5 experienced them, and we will start with the
6 discussion of the standard fraud declaration, and
7 Helen will fill us in on that.

8 MS. FOSTER: Joanna.

9 MR. STEVENSON: I'm sorry, I'm sorry,
10 Joanna.

11 MS. CRANE: We had representatives of the
12 consumer advocates, the National Retail Federation
13 and a bank and the New Jersey DA's office at our
14 breakout session, and even with that few number of
15 people, we still only got through question 21, so
16 we still have work to do.

17 I did get a lot of valuable feedback and
18 insights on how the form can be more clear to
19 consumers as to its purpose and its potential uses.
20 We tried to discuss in more detail how we could
21 apply additional confidentiality to it. We didn't
22 resolve that issue.

23 We are going to streamline the document so
24 that only the information needed by a particular
25 creditor would go to that creditor to resolve the

1 dispute with that creditor.

2 What I plan to do at this point is to work
3 with the identity theft team and post it back on
4 the web site within let's say two weeks. Then we
5 would look to participants who would like to give
6 us feedback on our revised version to do so moving
7 toward a document that we could put out there for
8 throughout the trade associations or independent
9 entities, banks, major banks or whatever, to adopt
10 on a trial basis and see how it goes.

11 But again our goal is to provide victims
12 with a more easier way to report and to clear their
13 names with particular institutions, and we still
14 have that goal. We still believe it's reachable.
15 We're just going to have to spend quite a bit more
16 time doing it.

17 MR. STEVENSON: Okay. Now, let's talk
18 about one stop shop, and this time I got it right,
19 Helen.

20 MS. FOSTER: Our session was well attended.
21 We had representatives from the consumer reporting
22 agencies. We had least one creditor represented,
23 and many other interested parties as well as a
24 victim.

25 We expanded on the themes started

1 yesterday, identifying some hurdles to this
2 process, both technical hurdles and procedural
3 hurdles or whether or not the idea will actually
4 work in practice.

5 I have six listed on my pad, so we are
6 going to roll up our sleeves here at the identity
7 theft program and get back to the drawing board.
8 The most important thing that we did get was a
9 reaffirmation of the commitment that Stuart Pratt
10 made yesterday that this is an idea we should still
11 be working on, so we are going to try to keep
12 talking about it and moving forward, so it was a
13 very positive meeting.

14 MR. STEVENSON: All right. And, Don, tell
15 us about the technological solutions?

16 MR. BLUMENTHAL: The technical solutions
17 breakout was primarily for people in the private
18 sector to present some of their thought, some of
19 their solution, and we had a good cross-section, a
20 representative of the International Biometric
21 Industry Association, someone from the National
22 Fraud Center, someone from a company called
23 Pragmista which is introducing a product called ID
24 Guard and someone from Image Data. It's a photo ID
25 based system.

1 And it was a good cross-section. We heard
2 issues about self help. We heard the issues about
3 self-help merchant based systems, databases, pretty
4 much all the possible tools that are out there for
5 victims to take advantage of, both helping
6 themselves in protecting themselves in advance but
7 also helping them afterwards.

8 There were a lot of questions. I think
9 there could have been a lot more. If nothing else
10 with all technology solutions, it was obvious from
11 the discussion that this is an evolving area, and
12 particularly as ECommerce picks up, there's going
13 to be a whole lot more issues to address and a lot
14 more technologies to consider.

15 MR. STEVENSON: Betsy, what news from the
16 open mike?

17 MS. BRODER: I was tremendously gratified
18 that only three people showed up for the open mike
19 indicating to me that everyone felt that their
20 voice was heard over these past day and a half and
21 that they had an opportunity to share their
22 thoughts with us, so I was very pleased.

23 MR. STEVENSON: Good. Thank you. And
24 thank you all for coming on behalf of the entire
25 identity theft team. We really appreciate the

1 feedback that we've gotten and the very thoughtful
2 comments, the participation from all the different
3 groups involved in this process, and I specially
4 would like to thank the victims who attended, and I
5 think people would agree that that was a very
6 helpful perceptive to have spelled out here.

7 We would also appreciate the feedback we
8 have gotten from people in finding this a useful
9 dialogue from whatever their perspective has
10 happened to be.

11 What we try to do here in the victim
12 assistance workshop, this obviously follows the
13 treasury summit that occurred earlier which sounded
14 some of the great themes, and here we are trying to
15 work more at the goal focusing on the practical and
16 what we could get done in the near term and what
17 the challenges were that we all needed to rise to.

18 Someone yesterday who I think said, Well,
19 no one person causes the identity theft problem,
20 and there's no one person who is going to solve it,
21 and I think what we've heard are challenges that we
22 all in our perspective roles have to rise to, and I
23 would like to just touch on some of those
24 challenges as we heard them.

25 The challenge to the credit bureaus

1 involved figuring out ways to be more responsive to
2 the consumers when they were experiencing this
3 being an identity theft victim and making the
4 process for them, to improve that process as much
5 as possible.

6 We talked quite a bit about the idea of the
7 one stop shop for fraud alert notification. We
8 originally raised this issue shortly after the
9 legislation establishing the FTC's role in this
10 area in 1998. We appreciate that, as Joanna said,
11 what we heard yesterday and today, the commitment
12 of the credit bureaus to work with us on the issue
13 of identifying the potential obstacles, the one
14 stop shop fraud alert, and to seeing what we can do
15 to overcome those and to that end, we will be
16 inviting the credit bureaus in to meet and follow
17 up with the nuts and bolts and logistics and the
18 various other issues.

19 And we're going to invite them in for a
20 meeting to happen within the next 20 days. We
21 would really like to move on this, figure out what
22 needs to happen and try to take the next steps, and
23 there are obviously a number of steps to take
24 there.

25 The challenge for creditors, the challenges

1 for creditors that we have identified here is
2 working on streamlining the process to the extent
3 possible of reporting this problem, and we talked
4 quite a bit about the standard fraud declaration
5 and whether there's a way to do that in a way that
6 makes it easier for victims to deal with this
7 crime.

8 I sat on part of that breakout session. I
9 think it's fair to say that there was no criticism
10 whatsoever of our form for being too short, so we
11 heard you on that one, and we are going to take
12 that on and rework it, but I think what we also
13 heard was that it was an undertaking that is worth
14 pursuing, and we will take the next step. We will
15 put out another draft for comments as Joanna is
16 suggesting.

17 Another challenge here I think to banks and
18 creditors and those people involved in this process
19 is to recognize the need that victims have for
20 information, and one practical instance of that, I
21 think we heard an example at the leadership of some
22 entities in really making it a very clear incentive
23 practice to send information of fraudulent
24 applications and fraud statements to identity theft
25 victims and law enforcement, and we think it's a

1 challenge there that creditors can help meet by
2 making that a more standard prevailing practice and
3 not making it like pulling teeth to get that
4 information.

5 The victims we heard from, and I think also
6 really sounded a strong note on the theme of
7 responsive consumer assistance, the need to be able
8 to speak to a live person, a well trained person,
9 someone who can help them through the problems that
10 they have.

11 At the breakout session on the one stop
12 shop, they put it well I thought when they said,
13 "When your identity is compromised you want to talk
14 to someone, you want it now and it's a real
15 problem." They find it difficult to make that
16 connection and that is something that we pose as a
17 challenge.

18 Then there's law enforcement and the
19 challenge for law enforcement, including local law
20 enforcement, the challenge of taking the reports
21 from identity theft victims, and one of the things
22 we saw from the statistics are there a lot of
23 people who are victims who have a problem here and
24 who are counseled by various people that you need a
25 police report and then they encounter great

1 difficulty in getting one.

2 And a real challenge for the police
3 agencies generally is to make this the norm rather
4 than the exception that people can get through that
5 step and get through it without a lot of
6 aggravation and extra work.

7 What are some ways that that process may be
8 further smoothed out? Well, there are, and I think
9 one person made a point yesterday that the
10 challenge of passing the difficulties or dealing
11 with the difficulties of dealing with regional and
12 state law differences or dealing with law enforcers
13 who are located in different places and dealing
14 with a crime that in a sense occurs in several
15 different places, you can have the victim in one
16 place and one instance of identity theft that is
17 located in one part of the country and perhaps a
18 second one that's located somewhere else hither and
19 yonder, and indeed perhaps even outside the borders
20 of the United States.

21 One of the challenges and inside -- someone
22 said people don't know where to go first. It would
23 be helpful for people to know where they can go and
24 to have procedures to ease the process so people
25 can find the right place to report the problems

1 that they have.

2 We also have a challenge to law enforcement
3 to make sure they're using the tools available to
4 them including the tools that we have been
5 developing. The identity theft clearinghouse has
6 collected a large number of complaints since we
7 started in November of last year.

8 We've made this available through an
9 encrypted password protected site to law enforcers,
10 and this is a part of a larger project called
11 Consumer Sentinel which deals with consumer fraud
12 generally, and one of the things that we've done
13 there is we signed up over 250 agencies and offices
14 to use that system, to use the data that's there as
15 a tool to really get, as Jim said yesterday, that
16 sort of first 80 percent of the legwork done so
17 that people can focus on what they have -- to focus
18 on the strength of the value that they add to the
19 process as law enforcers.

20 And we have -- we would make it a challenge
21 generally to law enforcers to sign up and use the
22 system, and for all of you to help to make people
23 aware of this because I think Mari raised
24 yesterday, that part of this is making people aware
25 of what's out there to help them work on this.

1 On the subject of awareness, there's also a
2 challenge for all of us to raise awareness, and to
3 that end one thing I would like to mention is the
4 No Fraud Project. Some of you may be familiar with
5 the No Fraud Campaign from last year which focused
6 on telemarketing, and the project this year hopes
7 to focus on raising public awareness of identity
8 theft.

9 There's a flyer out in front. We have
10 worked with the Postal Inspection Service and a
11 number of other government agencies on this
12 project, and this is an opportunity for various
13 people in the private sector and creditors and
14 banks and everyone to become involved in raising
15 awareness and helping people become aware of the
16 information that's out there and help them to
17 become aware of the toll-free number that we have
18 that we've got discretely right up here, and we see
19 that as an important way.

20 There's also a web site,
21 consumer.GOV/NOFRAUD where we posted the
22 information discretely out there on the Internet as
23 well, and we invite you to take a look at and
24 consider the challenge to participate in that
25 project as a program.

1 The FTC and the identity theft
2 clearinghouse project, we have challenges that we
3 have to meet as well, and we are -- I would like to
4 go over those where we are committed to assisting
5 and working with the consumer reporting agencies in
6 further pursuing this idea of the one stop fraud
7 alert and seeing what can we do there, what can be
8 done to smooth that process so that people can get
9 those alerts put on quickly.

10 We are also committed to continuing to
11 facilitate the process of the standard fraud
12 application. We've gotten feedback there. We've
13 gone back to the drawing board. We will issue
14 another version, and we invite you to comment on
15 that, and it's been -- while it maybe doesn't feel
16 maybe great at the moment you get that feedback, it
17 actually is very useful, and I think that we end up
18 with a document that serves everybody's purposes
19 better when we get that kind of very direct and
20 constructive feedback.

21 We also are committed to further developing
22 the data sharing capabilities of the identity theft
23 clearinghouse and working with people who may have
24 information that they would like to share through
25 that system.

1 Bear in mind that it can be a vehicle, a
2 cyber tool for sharing information that you may
3 have in whatever capacity you operate that may be
4 useful to the people on the ground who are doing
5 this law enforcement work, and we urge you to think
6 about that, whether you have some kinds of consumer
7 complaint information of this sort, whether you
8 have other information that you would like to see
9 posted there, whether you have best practices you
10 would like to make available to local law
11 enforcers, national law enforcers. We invite you
12 to share that with so that we can share that with
13 that group.

14 We also would like to take up a challenge
15 that was mentioned by Shane on one of the panels
16 earlier of the notion of what kinds of protocols
17 there may be for coordinating law enforcement on
18 the subject of helping victims, and we would like
19 to continue the dialogue that we've already had
20 with a number of government agencies on this
21 subject, and we found it very helpful when we were
22 setting up a database to convene a group of law
23 enforcers to get their feedback on what could be
24 done there, at the very nuts and bolts level, and
25 we are committed to continuing that process.

1 That's the end of our challenges, but we
2 also have a challenge for our friends and
3 colleagues at the Social Security Administration,
4 and that is simply to continue the dialogue and the
5 workshop tomorrow so to sort of remind you of that
6 project which we think is also helpful in focusing
7 on prevention.

8 As I said, I think it captures the point to
9 say that there's no one entity here that causes the
10 problem, no one entity or person that's going to
11 solve it, so we all, in whatever role we're
12 playing, have our work cut out for us.

13 Thank you very much for coming.

14 (Time noted: 1:10.)

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1 C E R T I F I C A T I O N O F R E P O R T E R S

2 CASE TITLE: ID THEFT WORKSHOP

3 HEARING DATE: OCTOBER 24, 2000

4 WE HEREBY CERTIFY that the transcript
5 contained herein is a full and accurate transcript
6 of the notes taken by us at the hearing on the
7 above cause before the FEDERAL TRADE COMMISSION to
8 the best of our knowledge and belief.

9

10 DATED: NOVEMBER 7, 2000

11

12 SALLY BOWLING

13

14 DEBRA L. MAHEUX

15

16 C E R T I F I C A T I O N

17 O F P R O O F R E A D E R

18

19 I HEREBY CERTIFY that I proofread the
20 transcript for accuracy in spelling, hyphenation,
21 punctuation and format.

22

23

24 DIANE QUADE

25