

>> Thomas B. Pahl: Well, good morning, everyone. I'm Tom Pahl. I'm an assistant director here in the FTC's Division of Financial Practices. And I want to welcome you to our "Debt Collection 2.0" technology workshop to look at changes in debt-collection technologies and our policy responses to them. I also want to welcome both the folks who are in the room here, as well as many people who are joining us on the Internet. This event is being Webcast, and so our proceedings today will be seen by many people beyond those folks who are here in the room today. Before we get started, I need to go through a few administrative things. First is that we are gonna try mightily to stay on schedule today. We've got a lot of material to cover, and so we are going to be very exacting when it comes to starting panels on time and ending them on time. So after breaks, after lunch, et cetera, we'd appreciate it very much if you would be back in your seats at the time indicated on the agenda. If you leave the building for any reason during the day, you're gonna have to go back through security. So bear that in mind and plan ahead. Plan a few more minutes than you might otherwise have planned for to get back into your seat. If you do come back once one of our sessions is already started, I would ask that people come in either through the doors on the two ends of the room. It's less distracting to the panelists, in the midst of the discussions, to have people come in from the wings, rather than from the center of the room. The other thing is that during our breaks and while panel sessions are going on, I'd ask people to try to avoid having conversations in the hallway directly in front of me here. Two reasons. One is that the background noise carries over into this room and sometimes disrupts the discussions we're having. The other is that there are pretty sensitive microphones that we are using to Webcast this, and so some of the conversations that are had in the hallway sometimes are picked up by the court reporters or the Webcasting. And I'm sure, particularly those of you who are private attorneys would prefer that your legal advice not be broadcast to all the world. So I'd ask you to be very careful about your conversations and not have them directly in back. To avoid interruptions, I'd ask everybody to turn off the ringers on your cellphones at this point. Each of our panels today is a moderated discussion. For each of the panels, as time permits, we're going to ask questions that people in the audience here and people online have that they'd like posed to the members of the panel. We are on very strict time constraints, so we may well not be able to get to all of the questions that people have, but we'll do our best to pose the ones that we can. Even if we don't get to your questions, we certainly

will consider them as part of our record of this proceeding. So definitely, even if you think we may not get a chance to pose your question, definitely ask it, because they are very valuable to us in thinking through the issues. For those of you who are viewing this event on the Webcast, you can submit questions to the panelists to dctech@ftc.gov. For those of you who are in the audience here, just write the questions you have on the cards that are included in your folder and hold them up. And we will have folks that will come around and collect them from you and pass them along to the moderator to be asked to the panels. Public comments. We are accepting public comments until May 27, 2011. We appreciate the comments we have received already from people, and we would appreciate receiving any additional comments. That's something that... The discussions that we have here are very valuable, but we are very, very interested in any sort of underlying empirical information, data, or other kind of views that can be conveyed. And a lot of times, those are best conveyed in written comments. So I would ask that you submit public comments if you can.

Security issues. In the event of a fire or an evacuation of the building, please leave the building in an orderly fashion. Once you're outside the building, you're supposed to go across the street. Look carefully both ways before crossing the street. [Light laughter] Go over to the sidewalk in front of the front steps of Georgetown's law school. And at that point, the security people will let us know when it's safe to return back to the building. Bathrooms, which is a very important piece of information on this list, are located out in the center lobby, behind the elevator banks. And so if you go out to the guard's desk, it's hard to your left. Finally, if you have questions that come up during the day about the proceedings, the events, how things are done, feel free ask any of the people you see with FTC staff badges or ask out at the registration desk, and we'll be glad to help you. So, let us begin our event in earnest. We're fortunate to have here today David Vladeck, who's the director of the FTC's Bureau of Consumer Protection. And David is gonna provide us with some opening remarks about debt-collection technology. So please join me in giving a warm welcome to David Vladeck. [Applause]

>> David C. Vladeck: So, good morning, everyone. For all of you here in our conference room in D.C., as well as those tuning in to our Webcast, welcome to "Debt Collection 2.0: Protecting Consumers as Technologies Change." I'm David Vladeck 1.0 According to my staff, I'm still in beta. And I'm the director of the FTC's Bureau of Consumer Protection. So, today we're hosting this workshop to discuss how technological developments are affecting the business of debt

collection. How do technological advances influence how debt collectors communicate with consumers and how do debt collectors obtain and process information about consumers and debts. The particular technologies we will discuss range from the relatively new, such as smartphones, to the not so new, such as landline telephones, and include everything in between, such as social media, mobile phones, e-mail, voicemail, various information-gathering tools, software platforms, autodialers, databases, and payment portals. These technologies are constantly evolving, some quite rapidly. In the area of debt collection, as in other areas, advances in technology have the potential to increase efficiency, accuracy, and convenience. However, they also may raise consumer-protection concerns. Press reports now suggest that debt collectors are sending consumers text, e-mails, and social-networking friend requests. Debt collectors may also post messages on the social-networking sites of consumers, friends, and families. While using these communication media to collect debt isn't, by itself, necessarily illegal, the potential for harassment or other abusive practices is apparent. Modern technology enables collectors to send messages easily, inexpensive, and immediately, at any time, day or night. With mobile phones, consumers could receive collection messages constantly, at home, while driving, at work, in the middle of meetings, or even at their kids' soccer games. With social media, a consumer could find a post on his social-media site saying, "Hey, deadbeat, pay us the money you owe," a post that could be broadcast on a newsfeed to his friends, family, and co-workers. A collector could be viewing pictures of the consumer's family, finding contact information for friends, and determining where the consumer works and where his children go to school. The consumer's colleagues may start complaining that debt collectors are sending them texts and e-mails about the consumer's debts. These kinds of practices were unimaginable back in 1977, when the Fair Debt Collection Practices Act was enacted. However, the FDCPA's prohibitions against harassment, abuse, and false and misleading representations do not only apply to a collector with an old rotary phone. And I suspect I'm one of the few people in the room who actually used a rotary phone. Rather, the act applies to all forms of technology, including, as we'll discuss, e-mails, instant messages, texts, tweets, friend requests, and Wall posts on social-media sites. The FTC is committed to ensuring consumers in the debt-collection process are protected, no matter what forms of technology -- new, old, currently in existence, or yet to be developed -- are used. At today's roundtable, we will focus on a number of important questions. How can collectors use advances in technologies in ways that comply with the law? What consumer-protection concerns are raised by the use of these technologies? What

can industry, government, and consumer advocates do to ensure that consumers' rights are safeguarded? I tried to find an answer to these questions on my smartphone, but apparently they don't yet make an app for that. So, instead, we will rely on the considerable knowledge and expertise of our panelists today to answer these questions. And we are fortunate to have here today distinguished experts from the collection industry, the consumer-advocacy community, the technology field, and academia. Thank you to all of you for sharing your expertise. We will have five panels, each focusing on a particular type of technology used in debt collection, and then a final wrap-up panel. Our first panel will look at technologies used to find information about consumers, such as their location, their identity, and their contact information. How can the underlying information about consumer debt be made more accurate while, at the same time, safeguarding data security and protecting privacy rights. Next, we will examine the numerous issues presented by telephone technology, such as the use of predictive dialers, voicemail, and contacting consumers on their mobile phones. Our third panel will address the various platforms and data systems involved in the flow of information about consumers and debts. How much of this is automated? How can these systems be used to improve compliance with consumer-protection laws? Fourth, we will address collectors using e-mail to contact consumers. Here, we will explore the prevalence of this practice, consumers' attitudes, privacy issues, and how the Fair Debt Collection Practices Act applies to this practice. Our fifth panel will deal with social media. We will discuss how collectors use social-media sites to research consumers and their debts, as well as collectors' communications, via social media, to consumers and their friends and their families. We will conclude the day -- and it's gonna be a long day -- with a panel focusing on future directions in this area. Panelists will consider emerging technological trends and whether any changes in law or policy may be necessary. We're looking forward to a lively and informative discussion. The knowledge and expertise shared through this workshop will be useful to us in our law-enforcement decisions and to policymakers in developing sound, informed, public policies. And I've been asked to say this by our press office. If you are on Twitter, please consider using the hashtag "#FTCdebt" in your tweets when talking about the workshop online. The FTC will actually tweet some of the key points throughout the day, as well, from our Twitter account, www.twitter.com/ftcgov. Thanks again to our panelists, as well as to the audience attending here and those of you watching on our Webcast. And I want to give special thanks to the staff of our Division of Financial Practices for the hard work that they engaged in, in putting this terrific panel

and roundtable together. So thanks so much. And we look forward to a really informative day. [Applause]

>> Thomas B. Pahl: Thank you, David. And with that, we're going to move on to our first panel, which is a panel that's gonna look at skip-tracing and other technologies that are used to locate and identify consumers. And the moderator of this panel will be Tony Rodriguez, who is from the FTC's Division of Privacy and Identity Protection.

>> Anthony Rodriguez: Thank you, Tom. Welcome, everyone. Glad to see everyone is here. And we look forward to having an informative discussion on skip-tracing and information that's used to locate, identify, and contact debtors. On our panel today, we have a number of distinguished panelists, including, on my far left, Denise Norgle, vice president and general counsel at TransUnion. Next to her is Conor Kennedy, an appellate advocacy fellow at the Electronic Privacy Information Center, EPIC, who focuses on a variety of consumer-privacy issues. To my immediate left is Angela Horn who's vice president and general counsel at Forte LLC, where she specializes in probate law and debt collection. To my immediate right is Len Bennett, who's an attorney in Virginia. He is the founding partner of Consumer Litigation Associates, and he's a board member of the National Association of Consumer Advocates. And on my far right is Joseph Beekman, who's an associate partner in sales and client development at the Intelitech Group. I'd add that each of them has a more detailed bio in your materials. Rather than go through all their bios, I think it's more efficient to just refer you to those if you'd like to know more about them. They all have quite distinguished careers, and all of that information is available there. What we'd like to do now is focus on the substance of the discussion in this panel. And with that, I'd like to begin with asking Joseph, if you will. Could you tell us a little bit about... Let me backtrack a little bit. In terms of this panel, the discussion is going to focus on information used to locate, identify, and contact debtors. There's a traditional skip-tracing involving landlines, white pages, and so forth, but all of that is giving way to new sources of information that's being used to contact and locate debtors. Larger amounts of data are available. There are trigger lists that provide information in real time about when it might be a good time to contact the debtor. There's also batch-based products that involve voluminous amounts of information that's layered and updated and compared to provide information about debtors, all of which is being used by debt collectors

and others to locate consumers, locate debtors. Also, the data sources are just more and more voluminous. We have data from the Internet, data from credit-reporting agencies, data from public records, all of which is being used to identify and locate debtors. And there are numerous consumer-protection issues that relate to this information and how it's used and who it's used by and how are consumers protected when this information is used to track them down and try and have a debt collected. We hope our discussion today will address how the availability and the use of this information and new technologies, including the layering and analysis of such data, affects accuracy, privacy, data security, and compliance with the FDCPA and other laws, including the Fair Credit Reporting Act. Finally, we hope to conclude with some recommendations that the panelists want to suggest to protect consumers to ensure that accuracy and efficiency is maintained in this system and that debt collection is done both effectively and in compliance with federal laws. Also, at the end of this panel, 10 minutes before conclude, we'll hope to have a 10-minute question period. So if you have any questions, I think there are cards that you can write them down on, and there will be FTC staff who will be collecting the cards and bringing those questions up to me. Now back to Joseph. If we could, if you could sort of talk to us a little bit about the skip-tracing technologies that have been used in the past, those that are being used now. What information and technologies are you relying upon in your business to do analytics of information, in terms of tracking consumers down, being able to identify those consumers that are more likely to pay, and could you give us a little bit of detail about that?

>> Joseph S. Beekman: Sure, Tony. Thank you. I think we all might agree that we could speak for 45 minutes just on that question, so I've been asked to maybe refine that down a little bit. But to jump right in there, certainly new and old technologies is a big deal. We're ever aware of what the newest trend might be and what's available to the collection entity or the hospital or the body that's charged with collecting debt. And that's really what I'd like to focus on, is where that direction is headed, specific to, especially, the arena of analytics and scoring. And so to get in there, I guess the basic premise here is that we need to make contact with the consumer in order to collect. And that's just inherent to our business, right, at the most simple case? So, how best are we to determine the course of action or the treatment for any individual account, when considering the voluminous aspect of a portfolio? And that's what I'd like to get into here. Certainly, there are trends moving toward addresses and phones and how to find those addresses and phones. And we heard a little bit

of that in the preamble here, as far as social media or the discovery of that information. through the Internet or through other services. We still have to find that information, and it's always been that way -- the addresses and phones. However, it's the way that we go about that and how it's presented that's changing. And so, to get in there, some of the things that we're finding that are new in technology is that, when data is received -- as far as addresses and phone numbers, specifically, or that contact information -- it's not just raw data anymore. And that's one of the new trends we're seeing. It comes with information -- various message detail that suggests, "Hey, this is an address, but it's not just an address, it's a P.O. box," or, "It's not just an address, but it's a rural address," or, "The rate of mail return from this address is higher." And so that promotes the efficiency of the collection agency to be more accurate in its pursuit, as far as lettering. It might also say, "This is a prison address," or, "This is a hospital address," or something to that end that legitimizes or perhaps denotes that information is less or more valuable. Where phones are concerned, some of the new trend that we're seeing is the identification of the type of phone, even the presence of how long that phone number has been established. So, is this a landline, the length of term for this landline being associated with the name that's categorized to it? Or is this a mobile phone? Of course, with the TCPA, that's an ever-present discussion that I'm sure will go on today. So, we have better information about the information we're receiving. Now, all of those sorts of things then could be pushed to us or batched away for. Some of the technologies that we're seeing are trigger-type technologies that suggest, "If I subscribe to a service, and there's something that happens on this consumers file or the warehousing aspect where this data is collected, then send that to me, and so, that way, I don't have to be as vigilant in terms of going out and rebroadcasting a search over and over and over again on this consumer, which limits to some degree the amount of exposure that I'm making toward investigating this person, if you will." All of that then plays into the analytics. And really analytics is all about how we handle that data, how we process that data and roll it into, considering the volume, what are the best steps or the best treatments for any individual account. And so that's where predictive modeling comes in. And as Tony alluded to, modeling and scoring, if you will, is a big part of the industry today. And to what end that becomes invasive, I suppose, starts with the type of data that is being utilized within that scoring algorithm. So you should know that, in most cases, the trend of scoring hasn't changed in a large space, as far as new and old technology, over the last five or six years. It's really mostly public-record data that's utilized to some end. Then we get into a consumer file or a credit-bureau file and weigh in those attributes.

But some of the new technology that we're looking at today considers social media. It considers the presence of social-media sites and information that could be, potentially, scraped from a social-media site. Still beyond that, does a consumer subscribe to certain magazines? Really interesting linear correlating information that is present. Or does the consumer service their vehicle at, you know, a maintenance shop that registers that information as public record. Still, beyond that, you don't... What type of affiliations or organizations does a person make part of? Those types of things may not always promote a linear relationship between the debt and the likelihood of collecting on that debt. However, in some cases, they might. And it's the modeling engine that's necessary to refine that data, to understand what those corollaries are. And so, as we consider the modeling and the pursuit of data, certainly we're aware of the privacy of the consumer that's required to be in focus, which the FDCPA largely governs over. But as these new technologies come about, it's interesting for us as we consider, as an entity, what data to consider, what data not to consider, what might be invasive, and what may not be invasive. And so, just as a large scale, we see that we're certainly moving in the direction of becoming a little bit more online-savvy, as far as figuring out what people are doing out there, still while considering the corollary nature of whether it would be to the benefit of the agency while still not being against the consumer to use that data.

>> Anthony Rodriguez: And, Denise, at TransUnion, what new products or resources are you relying upon to provide to debt collectors or others who are trying to track down consumers, including trigger lists?

>> Denise A. Norgle: Of course, triggers lists. At TransUnion, most of the data that we leverage in support of the collection industry is consumer-report data that is regulated under the Fair Credit Reporting Act. Our customers will be vetted and certify that they have a permissible purpose to use the data in collection with the debt. So, you know, within that framework, we have to operate. And as Joe mentioned, we do have trigger solutions, which is one of the results of technology. Historically, a collection agency who wanted to check a consumer report had to request it. And they would either request it when they were working a collection file or, as technology advanced, more years ago than I'd probably like to remember, we started having more batch-type account monitoring, where a collection agency could send us a whole portfolio and have us monitor that

portfolio and deliver updates to them on some periodic frequency -- quarterly or every six months or something like that. Triggers have enabled us to turn that around and push the data to the collection agency at the time when it's most relevant. So, for example, if one of the trigger criteria on the portfolio that's being monitored is a new address, hits a consumer's credit file, that would trigger us to push the consumer's report to the collection agency. Other types of triggers are an indication that the consumer has been reported as deceased by one of his creditors. That's obviously useful information. Angela can talk a whole lot more about why that's important. Or even the fact that a consumer is out seeking new credit could be the type of trigger that a collector would find useful and interesting, because it might suggest that the consumer is in a frame of mind where he might be willing to pay his obligation. And that plays into some of the analytics that Joe was talking about. Our industry works very hard with the collection industries to try to understand what type of behavior is indicative of a consumer who is able and willing to pay his collection accounts, because those are the consumers that are most important to contact. A consumer who has no intention of ever paying or no ability to pay, it's not a good use of anyone's resources for the collect agency to keep pounding those consumers. So I think those are examples of some of the technologies that we're involved in that have made the collection market operate better today.

>> Angela Horn: So, I'll pick up on Denise's point about the deceased contacts. My expertise comes from the probate contacts. And to contrast traditional or what we might refer to as "old-fashioned" debt-collection techniques with newer technologies, currently, folks that are working in deceased debt collection may be using traditional techniques which include sending a letter to the courthouse, making a phone call to the courthouse, and these techniques are very costly, for one, but also largely very ineffective. And the reason is that there are more than 3,450 probate courts in the U.S. and that an estate can take up to three years to open after the consumer passes away. In addition to that, we find that more than 15% of the estates that we locate are actually in a location other than the debt collector or the estate creditor has of record. And so Forte's Probate Finder OnDemand is one instance, or one example, or a technology that can actually create a win-win for both the consumer and the debt collector. What it does is, it collects and aggregates that probate case information -- that public information -- from all those 3,450-plus probate courts into a single location which the debt collector or estate creditor can use to identify an estate that matches their debt. What it does is put them immediately in touch with the right party -- the person they should

be communicating with. And it tracks very closely to the commission's proposed policy statement on deceased collections, which is that we all want to make sure that the debt collector is, first and foremost, locating an estate and finding that right party who has petitioned the court to be appointed to administer the estate and who's taken on the responsibility of dealing with debt collectors. And what it does for the consumer then, also, is it avoids unnecessary contact with the surviving family members who are going through the grieving process and who may not have gone to the court and asked to be appointed.

>> Anthony Rodriguez: Len, as attorney who represents consumers, what new products or technologies do you see being used with the consumers that you engage in?

>> Leonard A. Bennett: Thank you, Tony. I think that, stepping back, just as an overview, you would need to understand -- and the folks in this room certainly do -- the developments in the data industry. And to break it down into three categories, you have had, over the last five years, 10 years, the development, or the move, of what I'll call "conventional consumer reporting agencies" -- the big three -- Denise's company, Experian, Equifax -- out of simply their traditional credit-reporting function and into information sale, not simply for debt collection but for purchasing or for a company called Talx. It's an Equifax affiliate that gathers -- does work verification. When an individual applies for a job, Talx will help verify their previous employment history, but then resells that data for individuals that want current -- debt collectors that want current work information on potential debtor targets. So you have the development of conventional consumer-reporting agencies entering into this industry in that direction. You have the previous powerhouses within the data industry. For example, LexisNexis and Axiom have moved wholesale into the consumer reporting agency, as they now sell background checks and rental reports and various other products. And then you have a third category, which are entities that have not been regulated or don't acknowledge any regulation under the Fair Credit Reporting Act, that are developing different products in their own way, focused most heavily on skip-tracing or exclusively on skip-tracing. Some of those include companies that gather information from payday lenders, who submit all of their records, or subprime car lenders, that don't report to TransUnion or the conventional consumer-reporting agencies. That information is gathered not for later credit-reporting purposes but for collecting from that otherwise-challenged segment. You have entities

that track UPS information. You have merchants, when you provide your check information, that they resell the checking-account information that is used at a merchant level to verify that you have a bank account. And then it's resold and used as a specialty product to find debtors that have a targetable bank account -- companies, of course, debt collectors that will sell portfolios where judgments have already occurred. And their sole purpose, or the marketing pitch, is that all you have to do is garnish, and they will sell with that suggested bank-account information. Those are really the industry developments -- the boutiques -- separately birthed but also the larger entities, either directly entering the field -- the larger companies -- or spinning off and restructuring. LexisNexis uses the Accurint product, which it pitches as not Fair Credit Reporting Act-regulated, through structural changes in its corporation, selling the same data that it also is successfully selling as background-check information for employment verification.

>> Anthony Rodriguez: And does the use of this information... And this is to the whole panel. Does the use of this information vary by the size of the debt-collection agency or the size of the company that's holds the debt? Is this new technology being used across the board, or is it being used in specific areas by specific actors? Anybody?

>> Joseph S. Beekman: I'll touch on that. I think, without an empirical study, sitting here just with reference to doing consulting and working with hundreds of agencies over the last decade or so, if there is a trend, it would likely be the case that the smaller entities, in most cases, would take advantage of information that perhaps would not be regulated or that, in some cases, would perhaps fall under the radar, as Leonard has expressed. Whereas the larger entities or even the midsize, perhaps have in-house counsel or have a compliance officer and so adhere more largely to what we know as practices that are acceptable. That's not to say that all small agencies do that, however. In some cases, where you've got a particular collector that could be in the large or the small agency, it's just that the large agency has monitoring in place a little better. But the smaller agency who is charged, from a submission-based perspective, to do what he or she can to find information on a consumer, and so that's why we hear tell of going out on someone's Facebook page and posting something and being a little bit more invasive. And so if there were to be a trend that I've seen -- and the panel certainly should comment, as well -- it would be that the size of the agency does have something to do with the practices used.

>> Anthony Rodriguez: Conor, did you want to say something?

>> Conor Kennedy: Yeah. So, when we consider the impact of skip-tracing technologies on consumers, which is my specialty, we can't really consider the technologies in a vacuum. That is, we need to consider them in light of the other emerging technologies that they are interoperable with or commingled with. And to illustrate, I'll use a recent criminal case that just wrapped up this February out of Buffalo, New York. The DOJ went after two directors of a 2,600-employee skip-tracing firm that had transferred the personally identifiable information of a number of consumers to bad actors who were operating a full-scale, fraudulent debt-collection scheme. And they were approached specifically with requests for profiles of individuals who had already paid off their debts -- names, addresses, telephone numbers, account information, Social Security numbers, credit-card information. And the way that this information was taken out of the building was, the directors accessed the profiles, they copied the information into a spreadsheet, loaded that up to an iPod, took the iPod out of the building -- and this happened at least 20 times -- and then synced it to an offsite third-party computer. It happened for three years. And while the directors were busy at work, during the day, their colleagues were contacting these individuals and fraudulently claiming to be deputy sheriffs executing bench warrants related to the underlying debt which these consumers had rightfully believed that they had paid off. At the end of this 3-year scheme, they had arrested more than 1,000 individuals and netted \$6.8 million. When the DOJ brought charges, the only charge that they brought was selling the stolen property of a bank. At the end of the day, these two directors got parole -- or probation, rather -- two years and three years. The three years had six months of house detention. And the court itself noted that there are no criminal penalties under the FDCPA. Now, I think that that's something that Congress should address. I'm more focused on FTC enforcement, because under existing FTC rules, the firms should have deleted those profiles ahead of time and they should have logging access to that information from the get-go. And that doesn't matter whether we're talking about a small firm, a medium-sized firm, or a large firm. The FTC does have rather flexible standards. You incorporate the size of a firm, you incorporate how complex the operations are, you incorporate whether you're mitigating identifiable risks, and also giving firms the opportunity to control costs. Two points on that. When it comes to cost, one of the costs that needs to be injected into that calculus is the cost to consumers who have

to deal with identify theft and heightened risk of identity theft. And then, secondly, data leaks from inside sources, at the highest level of authorized access, now clearly represent concrete identifiable risks that every skip-tracing firm should be legally required to directly address.

>> Anthony Rodriguez: I think that's an important point. Data security certainly is a big factor in all of this, given the amount of information that's available, the ease with which it's distributed. But in addition to that, there's also a question of accuracy with all of this information. And does the use of all of this information and all of these new technologies result in better tracking or locating of debtors? Does it allow you to better identify who the debtor is and where they live and how they can be contacted? And also does this new information and technology allow you to better track the debt itself? I mean, what's your experience, both, I guess, Denise, with TransUnion, and, Joseph, with your experience and, I guess, also from the consumer advocate's perspective? Does all of this information, and does all of this new technology, result in better or more accuracy?

>> Denise A. Norgle: That's a challenging question. I think that the technology certainly presents the opportunity to improve accuracy of the data. As Joe alluded to, either there's data from more sources that can be triangulated, if you will, to verify its accuracy. If you get data from more than one source, there's at least an argument that it's probably more reliable than data that's only sourced from one place. So I think that that technology is there, as well. I mean, in terms of the security, I agree with Conor that the technologies enable the bad actors, as well as the good actors, to do more than they ever could before. So that's a challenge, as well. But I think that the technology exists that allows better control over the quality of the data, more rigorous scrubbing for accuracy, looking for inconsistencies in data that would suggest it's not accurate, as opposed to more accurate. And technologies exist today that enable companies who choose to invest in it to better track what is getting downloaded from their systems, what is going out the door, to whom it goes. And any reputable company, in my experience, does make those investments because the exposures are very significant. Certainly, there's civil penalties, as well as the criminal penalties -- the types of examples that Conor gave. So, again, any technology can be abused or misused, but it can also be used in a positive way to improve accuracy, do better data hygiene, and ensure the security more effectively.

>> Joseph S. Beekman: Perhaps just to echo two points from Denise. The triangulation of data is key, and part of that comes with the scrubbing-versus-skipping philosophy. To skip, is to, find the need for data after an original attempt, perhaps, or because of the absence of data, where scrubbing is an up-front sort of cleansing process of the data to triangulate, to understand best that this is the most accurate information. And so that comes with some of the new technology out there, where we triangulate data by saying, "Hey, this matches what you've got on file," or, "What you've got on file matches with multiple sources, and so go ahead and pursue on this." And so, just from a protection perspective and making sure that we're being concise on our efforts, certainly the scrubbing effect, while perhaps seen as less cost-effective on the front end, is being adopted by more agencies just to make sure the data is as clean as possible on the front end.

>> Leonard A. Bennett: Sure, sure. Two points. And I think Denise presents the theoretical possibility that, with the developing information technologies, debt collectors theoretically could use it as a surgical scalpel, as a way to hone in on and target the absolutely correct debtor and avoid wasting resources on similarly named individuals, neighbors, or others that aren't the subject of their collection effort, in theory. But if you look at the way that technology has developed, at the same time that it's become easier and less expensive to get information, it's become easier and less expensive to contact consumers. Now you have robo signing, significant outsourcing, and the movement -- hate to say "movement" -- it's almost accomplished -- of means of debt collection is almost all debt buying, where the actual cost of the debt -- the risk that the debt collector has at stake -- is pennies. And so you add to that the major entities -- those that do large volume -- can purchase these products from TransUnion, from all these other companies, on a batch basis, where they pay at a volume level, and they don't have to pay more if they use it, or overuse it. And so the real question is whether or not these technologies, which theoretically could be used as a surgical scalpel, are instead being used to widen the net. And as that net widens, you now have the names of cousins, when you previously only had the name of the spouse, to contact. You have their work histories, you have their social organizations and various other places to try to reach the consumer, but you bring in not simply the debtor consumer in that process, you bring in other individuals who can easily be confused with that person -- that consumer. You bring in neighbors and family members and others. I also think the second point -- maybe Conor's point to pitch, I guess -- is we have to consider what the value is. The core part of your question is, "Is this a good thing because

it does a good thing?" That is, it improves our ability to find and target debtors. The Fair Debt Collection Practices Act doesn't assume that as the end-all value. But there are certain restrictions that we placed on a consumer's privacy that a consumer is not to be contacted at work, is not going to be subject to certain forms of contact, and even has the right to stop that contact. And I think that you accept the premise that even if a consumer may have a legitimate debt, that there should be a limit to how far into that consumer's life you can encroach. Then we need to certainly factor that, instead of overvaluing the possibility, you can find when this person sleeps, what bed they sleep in, and the brand of their pillows. [Light laughter]

>> Joseph S. Beekman: Tony, if I may, just to comment, two points there. I think it's important to note that the collection agencies are not interested in contacting the cousins or the neighbors. It's the interest of the collection agency to contact the consumer -- the person responsible for the debt. And so, certainly, while some technologies have trended in the direction of nearbys and associates, as we often refer to them, we need to keep in mind the spirit of their intent, and that is to, in fact, collect the debt. And they know that they can only do that through means of contacting the right party. That said, still, and to counter my argument, would be to suggest that that's always going to happen in a vacuum, and we know that doesn't, just based on what's out there in the news and what we hear about. But, still, it's important to note the intent. And so technologies are trying to adapt in a more concise manner to make sure that it's a shorter approach to making right-party contact. And the second point is, from a cost perspective, in the 400 agencies that I work with on a routine basis, they would argue that the cost of collections has gone up, even despite the purchasing of debt. And as I look around the room and see former executives of Arrow Financial or people who have purchased large, large portfolios, I'm sure they would argue that the cost is not so slight that they can be flippant or arrogant with their attempt to make those approaches, as far as collections are concerned. They would all agree that cost of collections has, indeed, gone up because of regulatory conditions that are now imposed on the agencies.

>> Anthony Rodriguez: Could you talk a little bit about what, if any, controls are there that limit the use of such information in terms of contacting family members or others that the names might appear as being associated or affiliated with the actual debtor? What, if any, controls exist on the use of that information to contact someone other than the debtor? I mean, are the debt collectors

just making mistakes, or is it sort of a conscientious practice to try and locate them through friends, relatives, and using that information to do that?

>> Joseph S. Beekman: Well, I think that's an operational question and a training issue mainly. But even answering it in its most simple term, the core collection platform that the information is stored in, in most cases, lines up with making sure that you're making the right-party calls. For instance, you've got a primary guarantor or responsible party. And then noted differently would be subsequent relatives or nearbys or associates still denoted as not the primary. And so then, if calls are to be made because there's interest or permissible purpose to do so, then it's noted -- and it should be known prior to a phone call, if loaded correctly -- that, "Hey, this is not the consumer or the right party that I'm attempting to contact. Instead, I'm attempting to contact this person in order to make contact secondly with someone else." And so I think that goes directly to the software technology as a base platform as much as anything.

>> Anthony Rodriguez: Denise?

>> Denise A. Norgle: Tony, I'd just like to add onto that. I think one of the things that we've seen -- and this goes to a point Len made -- the contacting a debtor at work, obviously, Fair Debt Collection Practices Act addresses that. The technologies are better now at identifying whether an address is a work address or a commercial address, as opposed to a residential address. And that's a challenge because I'm sure there are people in this room who have, for example, certain bills mailed to their work address, particularly those of us in the corporate world who have corporate expenses. And there is definitely a risk that that business address can end up in a collector's file as contact information for a consumer. So it's very important to use the technologies, if a collection agency is intending to comply with the FDCPA, to, as Joe said, scrub their data and identify, "All right, we have to be careful. This is a work address, or this is a work phone number, as opposed to a home number, when we're gonna be contacting a consumer." So I think that's a challenge, but the technology makes it available for the collection agencies to meet it, if they are, indeed, going to comply.

>> Anthony Rodriguez: Conor?

>> Conor Kennedy: So, from a privacy-advocacy standpoint, I would say that the silver lining of hearing about all of these technologies is that, with an increased accuracy, the industry can stop using Social Security numbers as primary identifiers, because the Social Security Administration has specifically said that SSNs should only be used for tax-collection purposes and social-service provision. Every other systematic use of an SSN, the agency has specifically said, constitutes a misuse. With increases in accuracy, it would seem to me that that would be the natural next step, from a regulator's perspective, how to make sure that we balance accuracy with mitigating the risk of identity theft.

>> Anthony Rodriguez: And do you see any downsides to not using the SSN?

>> Denise A. Norgle: I absolutely do, and I'll bet Mr. Bennett could comment on that, as well?

>> Leonard A. Bennett: Well... [Light laughter] Is this recorded? [Light laughter] Yeah, I think that... Again, going back to the dichotomy, or the categories, I tried to set up, in all fairness, I think that TransUnion and the other big three, or what we'll call the established data sources -- have long histories of attempting to comply -- attempting, sometimes, but often complying. And I think that that isn't really the risk you're talking about. The availability of Social Security numbers is a problem when these established companies -- compliant companies -- are engaged in resale business in which the data is then sold downstream to other entities or made available to other entities that manipulate or use the data -- credit-header data or other information that is then muddled within a system over which nobody does have any tracking or control. So, again, theoretically -- and I do think that TransUnion, Experian, Equifax records are better because they can match Social Security numbers to credit accounts -- that's true -- but the use of Social Security numbers past those narrow and limited purposes -- I do agree with Conor -- is very problematic. There was my high-level research. I think Joel Stein had a "Time" magazine article on data mining a month ago, in which he was able to buy a Social Security number from a data-mining company. They were able to track it within an hour. That's true for almost all of us. The Social Security number is now... It's almost, unfortunately, too late, because all of our Social Security numbers are readily available to both the good and the bad.

>> Conor Kennedy: If I can just, one little comment there. I would say that my preference, as a privacy advocate, would be to have regulators make sure that the industry's informational practices are tighter, because when you use the Social Security number to make up for a lack of control -- quality control over information as it gets passed from individual to individual -- you're essentially using a shortcut that is imposing costs on the consumer, as I said earlier, when it comes to costs of identity theft. That cost is something that needs to be included in the calculus when we consider how much money the industry needs to spend on making sure that its information is accurate.

>> Angela Horn: I just wanted to chime in, from the probate context again, in terms of protecting consumers and follow up on something that Joe said earlier. He contrasted the idea of skip-tracing with the idea of scrubbing. And in the probate context, that includes both deceased identification and probate identification so that debt collectors and estate creditors are proactively identifying individuals who've passed away and also have estates. Of course, there's the obvious fraud-prevention aspect of identifying proactively consumers that have passed away. But then there's also the consumer-protection aspect of identifying the right party at the earliest possible opportunity and timely presenting your probate claim.

>> Anthony Rodriguez: It sounds like you have a niche area that you're dealing with. I guess my question would be, to what extent can that be expanded to other areas beyond probate and estate?

>> Angela Horn: I think the closest analogy is probably -- we're talking about the future and the future of technology -- I would actually have to look backward, in terms of a comparison, to the bankruptcy context -- another area where you have public data that are in dispersed locations and debt collectors are able to access that information and present claims and identify right parties. I think bankruptcy would be the closest analogy.

>> Anthony Rodriguez: I'd like to move on now to the issue of analytics and scoring and to what extent that it's being used in the debt-collection context. What information sources are you relying upon to do those analytics or scoring? And what the effect of such scoring is on consumers. And

then, finally, to what extent consumers have any ability to question whatever scoring or analytics is done by any of your companies. Joe?

>> Joseph S. Beekman: Sure. Analytics, I think, is probably a key topic in most discussions anymore in any collection agency. It's just to figure out, now that they've got their dialer or their IVR or their best phone system and I.T. infrastructure in place, what next will leverage their efficiencies. And that's typically analytics. And analytics most commonly points to data mining of some sort and then, ultimately, relying upon a score that's created. And a score could be really anything, not just a FICO score, as it once was. You know, that's really all that was available. Instead, the new technology trend is pointed more towards a behavioral presence, really just to give a slight definition as far as scores would be concerned. And of course, Denise would be able to go into this in detail, as well. You've got scores that are created from data or public record. You've still got other geodemographic or socioeconomic databases or warehousing of information. And then, still, you've got historical behavioral aspects. And that's where scoring has moved toward... It's the complement of taking the consumer information that's available through various aspects of data collection, putting that into an algorithm or a model, and then comparing that to previous instances. And what I mean by that, in most simple terms, without reducing it to something so simple, is to suggest that if I'm a collection agency and I've got hundreds of thousands of accounts, or even millions of records or even a smaller number, but relative to my sample moving forward, I should be able to look at the linear relationship between context of data or presence of certain types of data or even previous accounts for the same consumer and how those cured, the length of time it took, the types of payment histories that came in, were they payment plans or payment in full or settlement, more apt. How is it that I can look at that data, put it into a modeling solution, and then work forward with that? So, in simple terms, when the new account comes in, I can lend from the historical information that's been available, coupled with new data that I scrub or skip for, and combine that into a score that single use is to determine the least intrusive and the quickest way to collect. And then the strategies to go about that would be use of other technologies, like IVR mailing or certain types, various methods of making contact, even to the extent that we've touched on in previous discussions about matching the type of account or the intended or expected behavior of that account, with a particular collector or a skill-set within an organization. If the account, whether it's market vertical, medical versus utility, and I've got a collector that performs one way

versus another way successfully in those market verticals, then I should match them up with the most successful environment. So, certainly, analytics -- the use of data to then compile into an analytics model -- has been growing and becoming more impressive in terms of its ability to predict the capacity of payment.

>> Anthony Rodriguez: Denise, TransUnion, do they have scoring products that are used for debt-collection purposes?

>> Denise A. Norgle: We do. And I think all the large consumer-reporting agencies do, as well. And the purpose of the scoring is really to rank-order a collector's debt portfolio to identify the consumers who are most likely to pay and/or able to pay. So, when you're scoring a consumer's credit file, for example, you're going to look at things such as the currency of the address. Is the address we have for the consumer being currently reported as the consumer's active address? You going to look at the deceased indicator. Obviously, those consumers are not going to be at the top of your collection efforts, or they're going to be treated differently. They're going to be using the tools that Angela's company offers. And then you start looking at the credit accounts. And I think Joe alluded to some of the things that you look at. You look at, does this consumer have a history of becoming delinquent but then, ultimately, paying his debts, or does he become delinquent and never pay them? Those are the types of attributes that go into the scoring algorithms that enable the collectors to focus their collection efforts on the consumers who are able to pay and most likely to be willing to pay. And in terms of the benefit to the consumer, the consumer who has no income, no assets -- the things that you can deduce to some degree from the data on the credit file -- there's no point in calling those consumers, and it just makes it much more difficult for them. I think the other technology aspect of the analytics is the interplay with the real-time access. So, for example, technologies exist today where a collector may, through the phone or through the mail, invite a consumer to visit a Website, and that allows some real-time interactive communication with the consumer, where the consumer logs onto the Website, authenticates himself. The collector's technology is able to look at the information they have on the debt, as well as information from the credit file or whatever other data sources they're using, go through their analytics, and offer the consumer an appropriate payment plan or appropriate settlement offer. And these things are able to happen real time while the consumer is online and has expressed an interest in being willing to

settle his account. So I think that's another example where analytics benefit the consumer, because they help the collector and the consumer arrive at an appropriate settlement of a debt.

>> Anthony Rodriguez: And what about consumer rights with respect to such products and services? If they, for some reason, find out what their score is or how they're being pursued because of information that TransUnion has provided, what rights are associated with those products, if any?

>> Conor Kennedy: I think the real concern here is safeguarding these very sensitive profiles, once they're actually completely constituted. The FTC has previously clarified the Safeguards Rule under the Gramm-Leach-Bliley Act and came out with 50 or so rudimentary privacy measures that firms should undertake to safeguard data of this kind of personal nature. And I think what the FTC should do is clarify that these measures are absolutely obligatory for all skip-tracing firms, especially in the context of the kind of behavioral and analytic products that they're now coming out with.

>> Anthony Rodriguez: Denise?

>> Denise A. Norgle: Certainly, we also support safeguarding of consumer information. I think, to your question, Tony, about consumer access to the information, certainly, under Fair Credit Reporting Act, consumers have access to the underlying data that goes into the analytics. If there's something inaccurate, they have a dispute-and-correction right under FCRA. In terms of access to the analytics themselves, there's no single collection score out there. We certainly don't offer a single collection score. I think sometimes the term "score" is a bit of a misnomer, because it often is more attribute-driven. So when you're looking at a portfolio, you're ranking consumers based on a number of attributes, as opposed to a specific numeric indicator. So there is no collection score that's made available -- at least, by my company -- to consumers. We, of course, make credit scores available to them. But in terms of a specific collection score, that's not something that's available at this point.

>> Anthony Rodriguez: Len, you have any comment on that?

>> Leonard A. Bennett: If you limit me to discussing scores, not much. The offense I would take, for consumers, is the collection of the data. Once the data is in hand, manipulating the score, it's sort of the inverse motivation I would have to help the consumer from a credit score, because in a credit score, if your score is inaccurate, such that it says you're unlikely to pay your bills, you don't get credit. In a collection context, certainly, if I were to represent a downtrodden debtor, if the score inaccurately said that my client is unlikely to pay their bills, and thus the debt-collection industry left that person alone, there wouldn't be any impetus or motivation to try to correct that. But the larger picture -- and this is not true... Again, not to compliment TransUnion all morning, but this isn't true for TransUnion. If you have an inaccurate credit item, TransUnion will provide a mechanism the consumer can find out what's in the report and correct it. With respect to other products and the Axiom or LexisNexis or the large data-information brokers, that's not true. You have an accurate report, you have no means to dispute it to try to say that I'm not that Joe Smith. And particularly, once you leave the conventional credit bureaus, you do not have Social Security number matches. So you have huge pockets of inaccuracy around individuals who have common names, or family members that have similar names, and there isn't any mechanism at all. Once you leave the conventional big-three credit bureaus, there's no mechanism to either find out what's in your files or to correct it and do anything about it. And again, in this instance, we would be largely talking about consumers who do not owe any debt, who are being accused of owing a debt. Or just as often now, the collection mills that litigate these, will use these for current service information. And so you will have the wrong Joe Smith sued, subject to litigation, not merely harassing phone calls. And there's no mechanism for that, In our case, a gentleman named Willie Graham had his phone number scored as a high score letter, as a possible target. He has no connection with the three different people that the -- I would say -- a rogue's gallery of established debt-collection companies have assigned obligation for the debt. But he has received calls from, I'd say, at least half of the top 10 debt buyers, all because there's an inaccurate Accurant file on him. And he has, for a long period of time now, tried to find out who they're selling it to, which isn't provided -- unlike TransUnion providing a mechanism to dispute it, which, again, unlike the conventional credit bureaus, is not provided outside those three -- and to put a block or a limitation on its use. And none of those rights have been provided or established outside of the conventional big three.

>> Anthony Rodriguez: And, Joe, in terms of the analytics that you do and the information you rely upon, is it all FCRA-governed information that you're relying upon, or are you relying upon other sources, as well? And if so, what consumer protections are in place to make sure that the information you're relying upon is accurate?

>> Joseph S. Beekman: Sure. The information that we use is largely from consumer files, so from one of the big three -- at least, that portion of the score and so regulated therein. Additionally, we use public-record information, like census information, that's published. And still, beyond that, we will use internal information. And by "internal," I mean from the collection agency itself, having previously worked with this consumer, and their experience with that consumer. And so those are combined, in that regard, to ultimately determine a score. Now, interestingly, on the score, the score isn't, say... Just as Len had expressed here, the score isn't a work-versus-don't work philosophy. So, in the case of analytics, there are certainly anomalies. We concede those anomalies. And everyone that uses score has to understand that, that in rank-ordering or in propensity scoring, there would be such anomalies. But scoring is really left to the agency, as far as a "work everything out of due diligence, minimum-work frequency" requirement first. And so even if we had someone scored off of their true complexion, they'd have the opportunity to still get an opportunity to pay that debt instead of being left alone. So, really, the use of the types of data is still under regulation. And per previous conversation, we've been approached by a company, about saying, "Hey, we'd like you to add in -- or would you find it valuable to add in -- our social-networking scraping?" as a part of our scoring, and that's been in the last year. We opted not to, and that's not a concession to say that that data would be inappropriate as far as its use. But at that point, we decided, at least, that we weren't ready to be on the leading edge of the utilization of that data as far as its incorporation into scrubbing, skipping, or utilization and scoring.

>> Anthony Rodriguez: Just in terms of the terminology "social-network scraping," you're talking about companies that go out and have Web crawlers or some other technological capability of going to social-network Websites and other Websites on the Internet and sort of gathering information, scooping up information?

>> Joseph S. Beekman: Sure. So, the example would be Facebook. On Facebook, you've got the ability to publish your information and make it known to anyone perhaps. In some cases, you've got the ability to refine it to friends only, if you will. And I've leave those definitions for you to investigate on Facebook. But some of the data that can be available to the public is phone and e-mail address, even employer name. And so there are technologies that businesses provide that scrape that information off of the site and then pull that information into a warehouse, aggregate it, and then make it available for sale. And I believe, Tony, there's an entire panel about just that topic later today.

>> Anthony Rodriguez: Yes, there's a social-network panel that will talk about that in quite detail later on in this program. All right, I'd like to move on to sort of any other consumer-protection issues that any of the panelists see with respect to the use of these new technologies for debt-collection purpose. And then also, if you could, provide whatever recommendations you would suggest, in terms of addressing some of those consumer-protection concerns, both the privacy, data security, accuracy, access, and transparency, with respect to the information that's being used. If anyone has any additional comments and recommendations, I'd certainly be interested in hearing your thoughts, and I think the audience would be interested, as well.

>> Conor Kennedy: Great. So, I would say that when we consider how we're treating this information, we need to realize that criminal networks are targeting skip-tracing. And the example that I used in the beginning of the panel isn't the first time the FTC has encountered this. In 2008, it entered into a consent decree with Reed Elsevier, the parent company of LexisNexis, for providing unauthorized access to the sensitive information of a number of consumers without authorizing the individuals who were trying to access it. There was an identity-theft ring in Europe that was exploiting a security failure. And now, with this recent case that I discussed, we know that they're not just trying to enter in as customers, but they're also trying to access any kind of links to internal employers. So when we think about how the FTC needs to handle it, from EPIC's perspective, we really like the model that the FTC adopted in its Google buzz consent decree. By enforcing the rules proactively, the FTC is going to be able to prevent this kind of access across the board. So, with Google, Google was found to have violated Section 5 of the FTC Act with the Google Buzz product. Rather than just focus on Google Buzz, though, the FTC expanded the scope of its

enforcement. And in this consent decree, Google had to submit to biennial independent privacy audits across the board. Moving forward in this space, it would seem to me that, given the risk of identity theft and how serious data leaks can be, when you find that firms are not complying with the guidelines that are set out -- and as I mentioned before, the guidelines that the FTC set out for the Safeguards Rule under Gramm-Leach-Bliley -- skip-tracing firms should have to abide by those. When you find firms that are not abiding by the law, there should be, across the board, preventative measures to ensure that they don't become liabilities for thousands of consumers. And if the Consumer Financial Protection Board ends up taking jurisdiction over this area, I think Elizabeth Warren should do the same thing. [Light laughter]

>> Anthony Rodriguez: Denise, do you care to comment on that?

>> Denise A. Norgle: Of course, of course. No, I actually agree with much of what Conor said. I think that consumer privacy and identity-theft prevention is an important goal. And as I said earlier, technology can be used to the advantage of the bad actors as well as to the reputable companies. So it is important to understand both sides of that equation. With respect to identity theft, consumer-identification information is a very valuable tool to authenticate a consumer at the front end, make sure you're dealing with the person -- that the person you're dealing with is who he says he is. But misuse of that information can be used to commit identity theft. So there are always two sides to this coin, in terms of the data. It can be used to prevent, as well as commit, the crimes. I think, in terms of recommendations, our view is that the existing framework of FCRA, Gramm-Leach-Bliley, and the Safeguards Rule, as well as the FDCPA, provide a framework for both regulatory enforcement as well as private rights of action to enforce the act and punish the bad actors. We've also got myriad state laws that protect consumer identification information and privacy. So I'm not sure that new legislation is in order, rather than maybe a more comprehensive look at enforcing the existing law. And the fact that there are private rights of action under FDCPA can go after a lot of those abusive actions that seem to always make the headlines.

>> Anthony Rodriguez: What about the reliance on data that's not subject to the FCRA? It seems like there are more and more sources of data out there that are being relied upon.

>> Denise A. Norgle: You know, Tony, it's interesting because I think if you look at a lot of these data sets that are collected and the way they're used, I'm not sure that they're not subject to the FCRA. And I see Mr. Bennett nodding his head. But it's a bit frustrating because, being one of the big three, we're always in the spotlight and we're required to play by the rules and follow the FCRA. Some of these smaller niche companies that play on the fringes, I don't know enough about their businesses to opine one way or the other. But those might be some of the companies that before we decide we need new legislation, maybe we ought to be looking at it and determining whether, in fact, they should be covered under the existing laws.

>> Joseph S. Beekman: And to follow up, I agree absolutely. And again, to use TransUnion as the theme, the Federal Trade Commission took, in the in re TransUnion privacy cases, it took a very aggressive and correct -- from our perspective -- view of what a consumer report is. In that instance, it was prescreen data sale. Contrast that with the in re Reed Elsevier prosecution, where, up front, the Federal Trade Commission concedes that LexisNexis is not a consumer-reporting agency. And it's wrong. It's patently false. The Courts have held otherwise. And from maybe just not even consumer protection. We get the competition side of your commission in here. It disincentivizes compliance by TransUnion, by Equifax, Experian. It puts them in a position where they are having to comply with the Fair Credit Reporting Act, which is a very expansive remedial statute that governs significant chunks of the data that industry believes -- or is pretending, at least - - is unregulated. And it should be incumbent upon the Federal Trade Commission to push a much more expansive view of what the Fair Credit Reporting Act, what a consumer report is, or what a consumer reporting agency has done. And I think that would resolve a significant number of the problems that we would have discussed.

>> Anthony Rodriguez: Angela? Go ahead.

>> Angela Horn: All right. If I can comment again briefly, from the probate perspective, the legal and policy concerns. In the specific context of decedent collection, the commission, as I mentioned earlier, has published proposed guidelines. And it recommends, first and foremost, that every entity that is going to collect on deceased debt, first and foremost, search for an estate and find that right-party contact. Secondly, if a debt collector is able to find the estate and find that right-party

contact, they're also able to identify the 70% of cases, in the estate context, where that debtor is represented by counsel, which is another concern under the FDCPA. And finally, the privacy concerns for the consumer and the survivors that, by finding that right-party contact who is administering the estate at the earliest possible point, you're also avoiding unnecessary contacts with the surviving family members.

>> Anthony Rodriguez: I'd just like to add that we have a few more minutes before we wrap up the discussion, and then we're gonna have some questions. If you have any questions, please provide them to FTC staff that are in the room, and they will collect them and we'll try and answer as many as possible. Conor, you wanted to comment?

>> Conor Kennedy: I just wanted to follow up on something that Denise mentioned. It is important to note that there's is a private right of action, under the FDCPA, to allow individuals to pursue their rights with respect to preventing harassment. But the 8th Circuit has held that there is no private right of action with respect to the Gramm-Leach-Bliley Safeguards Rule, and that should change.

>> Anthony Rodriguez: Joe, do you have any comment on the consumer-protection issues and issues relating to accuracy and any other consumer rights with respect to the data that's being used?

>> Joseph S. Beekman: I suppose, just as a reminder and overview statement, would be to say that, inasmuch as we hear about the one-offs and the bad actors, we should be reminded that most agencies out there, in the 6,000-some collection agencies in the U.S. of any size, are taking due process and due action to make sure they conform to the regulations out there. And so it's certainly of consequence to consider the bad actors to make sure that we've got statute in place and legislation in place. But as Denise commented, under current FDCPA and FCRA statute, and even the TCPA, we've got, certainly, a lot of legislation out there to protect the consumer at this point, to make sure that the entity -- the collection agency itself -- is working within those guidelines.

>> Anthony Rodriguez: Len, any other comments on consumer protection and...

>> Leonard A. Bennett: I would say one benefit -- and the suggestions I offer assume a reality that any consumer protections will have to come from the Federal Trade Commission or from the Consumer Financial Protection Bureau -- the second real and reasonably possible task the Federal Trade Commission and other regulatory agencies could start with is to at least begin an inventory of the products that are gathered and compiled and sold about all of us and about the consumers that we would represent, so that it's not a surprise that if you don't attend the ACA International conference, that there are these hosts of products that are sold -- everything from your UPS mailing history to your work verification -- as a debt-collection database. I mean, that is, the Federal Trade Commission could start by eliciting, voluntarily, from the very skip-trace product sellers, the ranges of products that they actually sell. And that will begin to start a process of at least helping consumers who want to be empowered, empower themselves. They can learn this information. They can take action to worry about or correct problems that they may see.

>> Anthony Rodriguez: Okay, any other comments before we move on to questions? All right. So far, we only have two questions. If anyone else has questions, please give them to the FTC staff. I'll begin with the first question. And the question is, "Would prohibiting the assignment or sale of debt from the original creditor to a third-party debt collector reduce the risk to the consumer?" Then they also add, "Would the original creditor be damaged by this prohibition?" Joe, do you have a response to that?

>> Joseph S. Beekman: Sure. I think that goes to some of the basis for why we have collection entities today, and it's just that it's a separate set of business with its entire governing bodies. And so the original creditor, whether it's a hospital or utility company or a video store, is certainly not versed well with the knowledge or the infrastructure to govern the process of collection. And so that's why the collection agency is there. And so, inasmuch as anything, I think it would probably promote violation of current statute versus protect the consumer, only because you would have people that aren't certified, aren't capable, and aren't well-read in terms of the processes in accord with appropriate collection activity.

>> Anthony Rodriguez: Anyone else? Denise?

>> Denise A. Norgle: I would agree with Joe's comments. I think it would tend to promote more problems and more abuse as you decentralize. I mean, a lot of the examples that Conor has given us -- well, not all of them -- some of them have come from these smaller players who just don't have the in-house legal or compliance teams that understand the process. They don't have the technology investments to make the communications with the consumer in appropriate fashion. So I think we would see more abuses. And I also think we would see more costs to the consumer public, and it would have an adverse impact on those companies. You know, hospitals aren't in the business of collecting. They're in the business of providing medical care. And they have enough challenges in that space without having to add a whole nother space around collecting bad debt.

>> Anthony Rodriguez: Okay, the next question, I think, is probably more appropriate for the social-networking panel. I'll ask the question, but I think it might be better addressed there. And so if we don't answer it now, I think it will be answered eventually. And the question is, "How accurate is the use of social-networking sites to locate consumers?" The question... The comment is, "It seems very imprecise with the partial matching for many people who have the same name or may be the same age?" And the question was, "Is there a threshold for determining a good match?" I think the answer is that use of such information is difficult. It is a challenge. And I think the experts who are on the panel social-networking site can probably answer that better than I. If anyone else would like to comment, please feel free.

>> Conor Kennedy: I'll give it a shot. I think, just more largely on social-networking sites, that it would probably be almost impractical for skip-tracing companies to actually comply with the FDCPA if they were to start actually actively seeking individuals on social-networking sites, because the FDCPA specifically prohibits using any logos or symbols when you're communicating to a consumer social network. It's a privacy issue. You don't want the people that you know -- your friends, your family, your co-workers -- to have information about the fact that a debt collector is pursuing you. At the same time, Facebook has a policy that specifically prohibits making fake profiles. So that tension actually, to me, makes it seem as though it's pretty much prohibited, under the FDCPA, for skip-tracers to be using social-networking sites. And there is one way to alleviate that tension, but that only raises further questions, which is to commandeer a skip-tracing firm's employees' Facebook profiles while also mandating that they not put any employer

information on their profiles. So that tension just seems to really complicates social-networking sites in this context.

>> Anthony Rodriguez: Okay. One last question. "What is the instance of inaccurate telephone numbers for consumers found in background reports, such that a stranger gets calls from debt collectors for debts they do not owe?" Do we have any data or information on the instance of inaccurate contacts with consumers who don't owe the debt?

>> Joseph S. Beekman: I don't any empirical information to that end.

>> Denise A. Norgle: I get calls all of the time, at home, for somebody else, so I don't know. [Laughter] I've asked them many times where they get my number, and they usually hang up. So that's one of those practices that...

>> Male Speaker: How about a show of hands in the room, how many people receive calls intended for another party?

>> Anthony Rodriguez: Question was, "How many people receive calls for..."

>> Male Speaker: Specifically, from debt collectors. [Laughter]

>> Anthony Rodriguez: Or unintended parties, yeah.

>> Leonard A. Bennett: And the rest of us are the debtor ourselves. [Laughter] They're calling you.

>> Joseph S. Beekman: All the people that call me are Foti-compliant, and so they make sure they have right-party contact first. [Laughter] I wouldn't know if it were a debt-collection agency.

>> Leonard A. Bennett: It's very frequent. I mean, we see it all the time that we have... And in fact, the FDCPA provides a remedy for the wrong party who's subject to the collection. So we

litigate it on behalf of those individuals. But it's common. And in fact there are products that are sold, like LexisNexis -- a large, very heavily utilized Accurint product -- that scores the likelihood of a particular phone number, using a letter-grade system. And you can work your way down, depending upon how committed your collector is, to locate that person. But it's very common. And in fact, if you had... If the creditor had sold the account with a confirmed valid telephone number, confirmed valid address, confirmed valid employment, then they probably wouldn't be buying skip-trace products. So you're talking about the purchasing of numbers. And phone-number products is, itself, an indication of uncertainty as to the accuracy and correctness of those phone numbers.

>> Anthony Rodriguez: Okay. Good point. Well, that concludes this panel. I'd like to thank all the panelists and remind everyone that immediately following will be the next panel. So there is no break between the two panels. And thank you, everyone, for your questions, as well. [Applause]

>> Male Speaker: If everyone in the audience could please stay seated, and the folks who are gonna be our telephone communications panel could come forward.

>> Male Speaker: Got to go that way. [Indistinct conversations]

>> Thomas B. Pahl: Okay, thank you, everyone. Let's begin with our next panel. And this is really a panel that we divided up into three subparts to deal with telephonic communications. Telephones, as we all know, are not a new technology, but they are technology which is very, very prevalent in the debt-collection area. And so, therefore, we wanted to give a lot of focus today on some specific issues related to telephonic communications. Three particular issues we're gonna be taking a look at. The first is looking at dialer technologies. And Julie Bush from the Division of Financial Practices will be moderating that portion of this panel. And then we're gonna turn to looking at messages that collectors leave on answering machines, and I will be moderating that portion of the panel. And, finally, we're going to have a short presentation by Aaron Smith of Pew about data related to mobile-phone use. And then follow that up with the panelists talking about collectors communicating to consumers on their cellphones or via text message. And so, without further ado, turn it over to Julie Bush, who will be moderating this panel.

>> Julie Bush: Thank you. I'd like to say that since we're having three subpanels, we're gonna have questions at the end of each subpanel. So keep your questions flowing to the outside aisles, if you have them. I am delighted to welcome a very experienced and distinguished set of panelists. To my extreme left is Don Yarbrough of his own firm in it Fort Lauderdale, Florida. Also with us is John Watson, who handles operations for ARS National Services which is a nationwide collection firm. Then we have Aaron Smith, who is with Pew Internet and American Life Project. To my right is David Schultz who's with Hinshaw & Culbertson in Chicago. Then Cary Flitter, who is of Lundy, Flitter, Beldecos & Berger, who is a self-proclaimed consumer-rights attorney. And... [Laughter]

>> David M. Schultz: We all recognize consumer rights, okay?

>> Julie Bush: Yes. And finally, Brian Cutler, who is with Ontario Systems, a major software platform for collectors. So, we're gonna be talking about telephone dialers. And, first, I'd like to ask Brian to briefly describe what a dialer is.

>> Brian Cutler: Well, for sake of this conversation, we'll be discussing predictive dialers, autodialers, power dialers. Pretty much all the same, different functionality and, basically, where a collection agency is using these technologies where a dialer is out making phone calls, looking for an available collector to send the phone call to.

>> Julie Bush: Okay. I'm wondering how commonly predictive dialers are used in collection calls by collectors.

>> Donald A. Yarbrough: I can answer that. They're used very widely -- unbelievably widely. If you look on the Internet now, you'll see dialers are advertised for sale that will make 250,000 calls a month, and they're \$500 and \$600, the purchase price. And with Internet Voice over IP dialing, they can get long-distance calling that basically costs a fraction of a cent per contact. Compare that to the postage cost and the handling costs for letters, and you can see why the dialer volumes are exploding. I regularly depose debt collectors on the frequency of their calling. And the largest

debt collectors in America will routinely admit that they call in excess of 500,000 -- or in some instances, in excess of one million calls -- per day. So the dialers are very widely used, and I believe most of the debt collectors are now using them.

>> Julie Bush: Does anyone have anything to add to that?

>> Brian Cutler: Well, the dialing technology, as we've discussed, it's like any technology out there. The cost of the dialers have come down dramatically. And actually the future probably, as far as dialers goes, there will be no dialers in collection agencies. So a lot of companies are currently out there hosting dialers, et cetera. So that whole industry is really changing. The dialer industry is changing. Hardware will probably become a thing of the past. So you'll basically be using a lot of hosted dialing, like Mr. Yarbrough said about the VoIP technology. So you use VoIP over those systems. So a lot of the functionality capability in that will be kind of outsourced to a company that will be hosting dialer technology. So it's gonna become even more and more prevalent as time goes on.

>> Julie Bush: Okay. So, the numbers that are fed into the system can be fed into a hardware system or a software system? Is that correct?

>> Brian Cutler: Yes. Basically, you're looking at your collection accounts, what accounts need to be called that day, how many contacts need to be made that day, and that list of accounts would be uploaded into a dialer system.

>> Julie Bush: Okay. Perhaps John can tell us a bit about variations in dialer types that might depend on the type of debt or the size of the collector.

>> John Watson: Sure. I think there are various technologies available. I think the differentiators range from... The biggest ones that we've seen are sort of the predictive algorithms. So, how fast does a dialer make outbound calls in an attempt to locate somebody to talk to? There are also differentiations as regards sort of answering-machine detection -- what ability do they have to detect an answering machine versus live a person versus a disconnected phone number. So, really,

I mean, this technology has really exploded, I'd say, over the last five years. It's evolved mostly to a software environment, whether it's hosted or owned by a collection agency. And so the fact that it is software, there's tremendous opportunity to, through code, enable various protections to ensure that the right number of calls are made and we can maximize the protection to the consumer.

>> Julie Bush: Okay, and we'll be talking about features of dialer systems that are important in that regard in just a moment. But I'm wondering, David, did you have anything to add to that?

>> David M. Schultz: Maybe it goes on to the next issue, but what I am seeing, more because of the TCPA, is some of the larger agencies developing a component of their predictive dialer that has a human-intervention element. So some of these are homemade varieties. I think some of these are things you can purchase. Refer to them different ways -- click and dial, preview dealing, other terms that have been used. But, again, I'm seeing that at the higher, larger agency level, not the smaller agencies.

>> Julie Bush: So, you're referring to a device whereby the caller has to intervene before the number can be dialed?

>> David M. Schultz: Right. They'll click a button, and the number is gonna be dialed, as opposed to just numbers going out there. And whenever a collector is available, the call will pop through to the collector. So, they're setting up systems like that. Maybe they'll keyboard them in, and it will still go through the same phone system, but there's a level of human intervention being put into play there, again, more because I think of the TCPA and issues of calling cellphones with predictive dialers, autodialers.

>> Julie Bush: Okay. I'm wondering about the... There are a whole variety of features that are associated with dialer systems, and some of them can be used -- are designed to improve compliance with laws -- various laws. And I'm wondering if Brian would like to start detailing some of the features he's familiar with that can be used as a part of, or in conjunction with, dialers.

>> Brian Cutler: Well, yeah, most software vendors have coded in the basics. You've got state regulation you've got to look at. You've got the federal regulations. So, you've got FDCPA, where no call can be placed before 8:00 a.m. or after 9:00 p.m. And certain states have even reduced that calling time, so the caller needs to know what state it's calling in, et cetera. And then transportability of phone numbers makes that even more complicated, because you're calling a specific area code but that person's in a different state. But, again, a lot of that software has been developed to be able to keep the agency compliant with state regulations. Certain states have, you need to call home number before attempting a work number. So, again, systems are built for that purpose. You may be able to make a million phone calls a day, but that's not really necessarily the goal of a collection agency. It's really contacting the right individual at the right time. So, therefore, you're looking at when to have those accounts specifically called. So you're really trying to gauge the best time to call that specific party. So, a lot of software that's built in, when, again, if I'm making a million calls a day but I can only call my debtors once a week or once every two weeks or whatever my contract may require from a client -- you know, all that capability, functionality is built within the system. Same thing with TCPA now. You've got the cellphone scenario where you're really not supposed to call an account on a dialer that's a cellphone that you've identified. So, again, our software and other softwares have the capability of screening out cellphones and putting those into a different work environment where there is manual intervention. So just like Dave was talking, it's a preview mode, for instance. So if it's not... I explained earlier, when I said we're talking about power dialers, autodialers, I was explaining the collector is sitting there waiting for a phone call, et cetera, so the dialer is really out there making the phone call, doing all the work. And the collector gets a screen pop, sees the information, and starts the talk-off. When you're dealing with a cellphone, you need the manual intervention. So, for instance, on our system, we would build what we call a work queue, where a collector would bring up the account and then manually dial that. So they've actually got to put the phone number in on a system or indicate what number it wants to call. So you've got that manual intervention with the cellphone. So that's really the compliance issues. And that's one of the main functions. And one of our goals, as a software provider, for our client is to give them the tools and capabilities to be compliant.

>> Julie Bush: Could I ask what you meant by the term "power dialer"? And can I remind people to please speak into the microphone so our Webcast audience can hear?

>> Brian Cutler: Power dialer, you've got different modes of dialers. So it's all the same dialer, but you can work predictively, you can work what we call "power dialing" or manual dialing. So, you know, the difference? Predictive is, there's an algorithm within the dialer that's looking and saying, "Okay, I've got 'X' number of collectors. A collector spends 'X' number of time on a call. I have no available collectors at this point, but I should have available collectors within the next 30 seconds." So it knows how long it's taking to get a contact. It predicts basically when a collector would be available for that phone call and then makes the dial. So, that's predictive. So it's predicting, basically, when the next attendant, and it produces the next call for that collector without him waiting. So he's pretty much sitting there speaking all the time. Predictive mode, especially in a collection environment, I think it's very good in the sales environment. So, sales environment, you know basically you've got a speech. Your speech takes a minute. The computer knows it takes a minute, and it's very easy to predict. In our environment -- a collection environment -- it's a lot more difficult because a collector is working an account differently. So he may be looking at a credit bureau, he may be reviewing notes, he may be... So you can't say a collector is gonna be on account for 30 seconds, a collector is gonna be on account for a minute. He could be on it for five minutes. He can have a talk-off that can last 10 minutes. So predictive, necessarily, in a collection environment, may not be the best tool. So a lot of times, again, the collection environment, power dialing is, the system basically looks for when collectors are available and then begins dialing. So that's the difference and it's not predicting. It's really just going out, dialing the numbers, but it knows it's got available attendants.

>> Julie Bush: Okay. And I believe someone on this side... Yes, John, did you want to...

>> John Watson: Thanks. Just a couple more things to add as it relates to sort of emerging technologies that are available, not necessarily from a predictive-dialer sense but they're part of the phone systems, are some pretty neat stuff as it relates to voice analytics. So once a call is connected, sensing voice inflection, tone inflections, key words to help collection agencies monitor the quality of the interactions that are happening with customers, so that so if, for instance, you hear somebody say "garnish" on a non-garnishment-eligible account, there's a technology available to take over that call by a supervisor, a manager, things like that. So they're are -- not necessarily

related to the predictive algorithms and the dialing functionality, but part of the phone systems -- some great new emerging technologies that will help the industry further protect consumers and ensure quality interactions with customers.

>> Julie Bush: I understand that omissions can be detected, as well?

>> John Watson: Omissions?

>> Julie Bush: For...

>> John Watson: Oh, so, if a Mini-Miranda isn't said or something like that?

>> Julie Bush: Something like that -- if a Mini-Miranda is not spoken.

>> John Watson: I would imagine so. I haven't heard that specific, too, but I would imagine that would exist.

>> Brian Cutler: Yeah, there are. Yeah, we do have voice analytics that can look for omissions and, just like John was talking about, different language, threat of legal action, or if you're looking for something to be said, whether it be the Mini-Miranda, or if you're looking for "balance in full" versus "settlement," et cetera. So you can program... These systems are very flexible to be able to do the analytics and help in the compliance-issue area. So we're seeing a big trend towards this now, actually. So, we just started selling it ourselves probably within the last 60 days, so... But it's a very hot topic in the industry, and the agencies that are looking for compliance -- because, again, when you have a compliance officer looking at recordings, et cetera, it's very time-consuming. It takes a lot of time. And whether it's a large, small agency, finding good quality conversations, because a collector may talk to 20 people all day out of an 8-hour day. So to find those quality calls that you can really look at and make sure that there's compliance there, it's very time-consuming. So with new analytics, it really helps allow the agency to become much more compliant, to really look and make sure, and even from a training aspect, help collectors that may be not using the right terminology, not handling an account correctly, et cetera. And, again, when

you're looking at the analytics, you get to the point where, actually, a call can wind up set up where it can actually get transferred to a supervisor, real time, if you had a situation that got agitated.

>> Donald A. Yarbrough: Julie, I wanted to point out something about omissions. We had a...

>> Julie Bush: Please speak into the mike.

>> Donald A. Yarbrough: Pardon me. We get about 10% of our cases in a consumer-law practice are persons who do not owe the debt at all. They have nothing to do with the consumer that purportedly owes the debt. And one of the problems they have are what we call "truncated messages." And that is where the person gets messages on their voicemail that omit part of the intended message. For example, they'll omit the name of the debt collector. It's not recorded. Or it will omit the phone number. So the person can't even find out who's calling them, for example. And this is a big problem with people who don't owe the debt, because they want to contact the debt collector and say, "Hey, stop, you've got the wrong number," or whatever. And sometimes they can't, unless they're pick up the phone directly. And maybe they're at work during the day and these calls are coming in to their home during the day. So it's a problem that we see in about 10% of our cases, which seems statistically kind of high because I would think if you went to a doctor and 10% of the time you came up with the wrong diagnosis, or you got your car fixed and 10% of the time it was wrong, that would be a problem. But I believe it's related to what the earlier panel said about background information. And that is, debt collectors get this background information that's of questionable integrity, and they use that to call persons. And unless they hear back that, "Hey, this is not the right person," the calls may continue. We had trial testimony in two separate cases where 183 calls to a consumer was... The debt collector testified that's their normal calling volume. And another one where they testified that 178 calls was their normal calling volume to a particular person to collect a \$200 debt.

>> Julie Bush: Okay, thank you. I'm gonna mention a couple of other things, and I'm just gonna ask whether the panelists are familiar with them. Call recording -- recording all calls.

>> Brian Cutler: Yes.

>> Julie Bush: Yes?

>> Brian Cutler: Yes.

>> Julie Bush: Okay. Interactive voice recording or using artificial voices? Yes?

>> John Watson: Sure, yeah, that's all available.

>> Julie Bush: Okay. And what about frequency controls?

>> John Watson: That's... From my experience, that's emerging, but, yes. Given the fact that, to a large part, dialers are mostly software-based now, it's just writing code that you can code in those volume controls, absolutely.

>> Julie Bush: Okay.

>> Brian Cutler: Yes. And, I mean, I can go... Most softwares have that capability. We call it "work flow," so, where you say, you're going to call a consumer 178 times on a \$200 debt. Not really one of the smartest things in the world for any agency to do. They're not gonna make... They're not making any money. So, I mean, that's not really a way to be profitable. So, in our system, again, a standard work flow would be to set up an account, determine, whether it's a contractual liability or your work-flow procedures, how many times you want to call that account. So that account will wind up on the dialer once a week, once every two weeks, once a month. Again, it gets very complicated because you can then bring in scoring and analytics and all different types of things. So that capability is out there, so...

>> Julie Bush: Okay. If people have questions, please pass them to the aisles. I'd like to ask the panelists, starting with Cary, about any consumer-protection issues that are raised by these technologies.

>> Cary L. Flitter: Specifically the predictive dialers?

>> Julie Bush: Mm-hmm.

>> Cary L. Flitter: Well, of course the Telephone Consumer Protection Act problems are well-known but to some extent beyond what we're here to talk about today. Calling the wrong debtor is a pretty widespread problem. I mean, there are many that we could talk about. But I find calling the wrong debtor -- that is, someone who has no contractual relationship with the underlying creditor -- is a pretty pervasive problem. And I think that what we've heard about the volume of calls that can be made very economically, that's attractive on the one hand because it's very efficient. But there's... Of course, the price of that is that a lot of calls come in to people that just don't -- you know, they have someone else's phone number. That is to say, the real debtor moved and the phone company's recycled the phone number. Or for a variety of reasons, in one of the databases, they just have this person -- this nondebtor -- in there. So it seems to me that there's got to be some counterbalance here. Maybe the first contact has to be by a human being to make sure that's the right person. And once they know it's the right person and there's a proper disclosure made, then knock yourself out if you're going to make predictive-dialer calls within the bounds of the laws. And you're free to do. And that's still very cost-efficient. But I think where you get a lot of the tension is the interest in, obviously, whether the debt is \$200 or \$2,000. Making 200 calls on that is a very expensive proposition. So the predictive-dialer technology, coupled with the data that underlies it, that gives you the phone numbers, is a real challenge.

>> Julie Bush: Okay. Actually, I have a question here which dovetails with the next panel, but it deals with call frequency. And it asks what the panelist views are on caller I.D. and customers' harassment complaints. So if a lot of... If the caller I.D. shows that many calls came from the same number, is that a legitimate reason for the customer to complain of excessive calls under the FDCPA?

>> David M. Schultz: Well, call-volume cases are, I wouldn't say, the trend, but there's been a heck a lot more of them in the last few years, and it's probably because of this technology. And you'll see many complaints, and they'll have a similar allegation. "I was called by the agency daily

for many months. I was called --" next paragraph -- "I was called more than once many days during that period of time, and I was called up to four times a day by that agency." Now, there are complaints -- probably a couple thousand like that that you'll see. My experience in defending them, oftentimes those allegations aren't correct. They have many calls perhaps, but it turns out they're not from this agency. But the technology, though, allowing multiple calls, you're now seeing, certainly, a lot of call-volume cases. So, that's one of the issues, and we talked about it. I know Don also talked about truncation a minute ago, and I think that's an offshoot of the technology. But my experience has been a little different. What I've had, as far as a few different lawsuits -- a dozen or more -- are the technology is meant to say one thing if it gets an answering machine. And if it gets a live person picking up, it's designed to say a different thing. And so what sometimes happens is, the technology is inaccurate. I'm not quite sure why. Most of the time they are, in my experience. I've investigated this. And they say, "We're accurate 98% of the time." But the problem then, for a Fair Debt case, what develops is, they got the live person -- they think they have the live person -- and they don't leave -- they start talking till they get the person to click a number to go to a collector. They don't say who we are or that "We're a debt collector." They're expecting a live person to push number 7 and talk to somebody. If they got the right person, push number 9. If they got the wrong person, they can eliminate the call. The consequence, they think they got a live person. They don't. The message then is left on a machine, as opposed to with a live person, and that doesn't have the FDCPA-compliant, ACA-compliant message, so then you have a lawsuit. That's a small percentage, but you're seeing that as a consequence probably of the technology.

>> Julie Bush: Okay, unfortunately, we have a very short time for each topic. But I'd like to ask each panelist to say very succinctly what is the most important change, if any, that should be made in law or policy with respect to dialer technologies. Don?

>> Donald A. Yarbrough: I think Cary's suggestion is correct, that there needs to be an absolute verbal or verifiable contact on the first call before the barrage of automated calls is unleashed on a person that possibly doesn't even owe the debt or may not want to get them or may have some other reason that they can't or don't want those calls.

>> Julie Bush: Thank you. John?

>> John Watson: I'd say, some sort of guidance on what constitutes harassment under the FDCPA, in terms of call volume. Certainly, I don't think any reputable collection agency's intention is to harass people. It's to contact them and engage them in conversation, to help them resolve the situation they're in. Unfortunately, it's left up to various courts to legislate what is or what is not harassment. And so some clear guidelines on specifically the number of calls per day to either an account or a particular phone number, I think, would help.

>> Julie Bush: Okay. Aaron, I understand you're not able to opine on policy today.

>> Aaron Smith: [Chuckles]

>> Julie Bush: You're here to give us information. David?

>> David M. Schultz: I'd say, as far as this subject is concerned and because of the, I call it, "rash of call-volume cases," I'd probably echo what John said. I know the FTC had a letter, gosh, probably a couple decades ago now, about how a certain number of calls a day is not harassment. And could be harassment, though, if the call is made after the person hangs up. So, that's helped and that's been used as guidance to some extent. But right now, with the number of lawsuits being filed, trying to find the parameters of what is an appropriate number of calls a month, a day, a 6-month period, there's a lot of ambiguity out there. And the courts are kind of developing these parameters with case law, but it would be nice if there was... And I've had clients say, "If the FTC or somebody would just tell us -- if they pass a law, just tell us how many times we can call, and it'd be great. We'd do it." [Light laughter] So I think that's one of the clarifications that would be helpful.

>> Julie Bush: Cary?

>> Cary L. Flitter: What they said. [Laughter] I mean, the problem, of course, with a bright-line rule on the calls, it's attractive on the one hand, and the business community always wants that. But

it's so dependent on the party being called. You have someone who's disabled, and they're in bed or they're in a wheelchair or something, if they have to get out or manage their way over three times a day, it might well be excessive. And if the... If there's an institutional knowledge of that fact, then that has to be taken into account.

>> David M. Schultz: Not an easy solution. I'd say it's something that people ask for.

>> Julie Bush: Okay, and thank you. Brian?

>> Brian Cutler: This is just a bad day when I've got defense attorneys agreeing with plaintiffs' attorneys. [Laughter] So me being...

>> David M. Schultz: It doesn't happen that often.

>> Brian Cutler: I wish it never happened. But, anyway, me being a collector at heart, I would just say we really can't afford for there to be a law passed where we have to make contact before we can start autodialing. Probably 80% of the accounts in an agency never get a contact. So it would be extremely cumbersome for an agency to have to manually call every single account and almost impossible to do before we made an actual contact on an account. So that would be... That would be a step in the wrong direction for the agency to make that kind of change.

>> Cary L. Flitter: Julie, may I ask... Can I ask? Well, what did y'all do 15 years ago?

>> Brian Cutler: I used a rotary phone.

>> Cary L. Flitter: I mean, there was all human contact with all the calls. I used to be a collector, in a past life. Every call was dialed up, and you called and you talked to the person.

>> Brian Cutler: That's correct. No, you didn't talk to the person. You made calls and you continually made calls, et cetera. So the volumes have changed. The technology has changed. Because I did something 15, 20 years ago doesn't mean I should be doing it today.

>> Julie Bush: Okay. And now I'd like to welcome Tom Pahl, who's gonna moderate the next portion of the panel. [Indistinct conversations]

>> Thomas B. Pahl: All right, thank you, Julie. First, I would like to ask all of the panelists to move their mikes closer to themselves. We continue to have problems with people on the Webcast hearing people. So I ask, if all the panelists could move the mikes closer and speak directly into the mike, it'd be very helpful. Thank you very much. We're gonna turn to now an issue that I know is very controversial in the debt-collection area, and this is an issue that involves collectors leaving messages on answering machines. And a lot of this has been the by-product of case law that's developed interpreting the FDCPA over the last half dozen years or so. To get us started, I'm gonna try to summarize what I think the case law has been and then ask the panelists if I've correctly stated the issue and sort of the state of the law and see what people's views are on that. And essentially, what the basic fact-pattern issue of a debt collector who thinks they know who the debtor is, they call that debtor's telephone number, no one answers, and then the debt collector decides to leave a message on the answering machine. My understanding, historically, there was simply a message saying, "Please call me back at some number." About a half dozen years ago, there started to be a development of case law, particularly under a case named Foti -- and many people have heard of this as the Foti issue -- which indicated that debt collectors would be liable under the FDCPA if, in these kind of telephone messages that they were leaving, they did not identify themselves, they didn't say the communication was from a debt collector, and if it's the first time that a consumer was being contacted, the Mini-Miranda warning would have to be given. That is, the consumer would have to be told this is a debt-collection call and information they provide may be used in connection with collection of that debt. So, essentially, after the Foti decision and similar decisions, it appears that collectors who did not leave this kind of information on voicemail messages could be liable for violating sections 806 and 807 of the FDCPA. The next challenge that arose, however, is that there are other cases where that information, when left on an answering machine, if it is overheard by a third party -- for example, a consumer's roommate, maybe a child living in the household -- that that would be considered a third-party disclosure of information which would violate Section 805(b) of the Fair Debt Collection Practices Act. And so the way this has been posited is that there is a purported dilemma that debt collectors face. If they

include this information in messages, they may be liable for disclosing it to third parties. If they don't include it, they may be liable for not providing the information that 806 and 807 require. And first of all, I know there has been a lot of cases decided on this issue over the last half-dozen years, and I just wanted to check with the panelists before we start our discussion in earnest to see whether that is an accurate characterization what the fact pattern is and where folks understand the law right now to be.

>> Donald A. Yarbrough: I think it is, I think it is, your characterization.

>> John Watson: Yeah, I agree.

>> David M. Schultz: I disagree slightly. I think it's still a little undecided. And the question of Foti was whether or not the message was a communication, so they're talking about the definition. They denied a motion to dismiss. Most of the cases out there have been denials of motions to dismiss. They have, certainly, summary-judgment rulings in favor of debtors on this, but there are no Court of Appeals opinions on it. So I still think the issue is up in the air. I believe there's a case that's on its way to the 9th Circuit on the issue of whether a particularly benign message was considered a communication. So I still think there's some gray area in the law on that and, hopefully, for the defense, some room fight it and get the Foti -- I don't know what you want to call it -- "rock and a hard place" case overturned. [Laughter]

>> Thomas B. Pahl: Okay, well, let's assume, for the sake of this description, that the description I gave is generally accurate. One question that I have is that a lot of courts, in looking at the FDCPA and explaining why this purported dilemma is not something that should be problematic, have pointed out that collectors have other options of reaching consumers. They don't have to call, or they don't have to leave a message. Interestingly enough, ACA has done some empirical work, done some surveys of its members, and I believe it's something like 85% of debt collectors say that calling people is the most effective way of collecting, and 85% of collectors who call say they leave messages. So one question that I have at the outset is, why is calling and leaving messages apparently such an effective way of engaging in debt collection? And is the suggestion that many

of these courts have made, that there are alternatives out there that collectors can use, is that really a viable alternative for debt collectors?

>> Donald A. Yarbrough: Well, I think the alternatives are, of course, mail collections, which are historically the basis of collections. Also there's credit reporting and there's lawsuits. The debt collector can arrange to have a lawsuit filed against a consumer. And I think the reason that the telephonic communications are so successful is the consumers want the calls to stop, and they pay to get them to stop.

>> John Watson: From my perspective, I think there are certainly a number of various contact channels that either exist or are emerging, like text and Internet, things like that, all of which I think we're talking about a lot today, a lot of which -- almost all of which -- were not contemplated when the FDCPA was written. And so it's unclear sort of how to engage in those interactions in the context of the FDCPA, which, again, I know is why we're here. It could be, the reason that telephonic communication is so valuable is that it's the most effective in that what a collector is trying to do is create a relationship with somebody, engage in a transaction, or get them to feel comfortable engaging in a very sensitive matter which has to do with their personal finances. And sometimes many folks feel much more comfortable interacting with somebody on a real-time basis, versus through the mail, if they are talking about something as private as their financial situation and wanting to make sure that if they do pay this amount, that their account will be resolved or reported back on their bureau, and so forth.

>> Thomas B. Pahl: Okay?

>> Donald A. Yarbrough: Another reason these telephonic communications may be so effective -- and we don't really know -- is because, in many states, like Florida, where I'm from, it's illegal to record a phone conversation -- one party to know of the conversation and record it. But we don't necessarily know what takes place in the conversation between the consumer and the debt collector. We know that there's a huge amount of lawsuits that come out of the telephonic messages that are left on consumers' voicemails and answering machines, which the courts have consistently, on many of those issues, have consistently held that those are violations. But in the context of the

interpersonal communication between the consumer and the debt collector, we don't necessarily know what's taking place, what's being said, what threats may be made, what implications may be made, what vulnerabilities may be being exploited in that conversation. So it's hard to say, without that empirical data, what is the reason for the success of telephonic communications.

>> John Watson: I would just add that the majority of reputable, large collection agencies that I know of in the states employ 100% call recording. So it's very easy to figure out what's being said in those conversations.

>> Cary L. Flitter: I don't think it's a great mystery why interpersonal contact is more effective in trying to accomplish anything than an e-mail or a letter or something like that. That's just the nature of human affairs. If you're trying... If someone owes a debt or a portion of it, the collector is trying to persuade them it's in their best interest to pay it or work out a payment plan. If they don't owe the debt, well, there's still a lot of persuasion going on to try and get the cash register to ring and make a payment. I do think that there's been some talk about allowing recording of these calls by the consumer. Because I'm in Pennsylvania, for example, which is a 2-party state. You need both parties to consent to a recording. That's a minority, but it's a large minority. It's something, I think, in the teens of the states. And I think that would be a useful amendment when that comes up, because right now, someone just said there's 100% call recording. That's only by the collector. And that's... You know, then I'm sure there's a purging of those calls after a certain period of time. And I don't know, maybe it's just my bad luck. Frequently, they're not available for a variety of reasons. [Light laughter] And so I think that would be a useful amendment to kind of supersede state law, with regard to debt-collection calls, to permit the recording by the consumer.

>> Thomas B. Pahl: Let me go back to one of the concerns that apparently underlies the FDCPA here and find out if any of you have thoughts as to how often do third parties overhear these kind of messages left on answering machines?

>> Donald A. Yarbrough: We found that it's relatively frequent. You have, for example, babysitters or other people working in the home that will hear the answering machine go off, because the volume is on the answering machine and it goes off during the day when the

homeowners aren't there. We've had cases where -- the Berg case, where Mr. Berg would come in, he'd be with his friends or something, and hit the answering machine, and all of a sudden, they're talking about, you know, "You owe a debt." So I don't think it's a huge percentage of these calls are overheard by others, but there is some of that.

>> Thomas B. Pahl: Okay, anybody else have any information or thoughts about how prevalent third parties overhear these messages?

>> David M. Schultz: I'm not aware of any statistical analysis, obviously. Just look at the lawsuits that you see out there, there's a heck of a lot more Foti lawsuits for not saying they're debt collectors than there are third-party lawsuits for having said you're a debt collector.

>> Brian Cutler: That's pretty simple, because the Foti suits would be class action, versus the third-party disclosure is gonna be a single case. And that's really a business decision we had to make. When I was with Arrow, we had to make a business decision. Foti, which we knew would be a class-action, or do I go and pay \$5,000, \$10,000 for all these individual cases that's some third-party disclosure. So there's no real true statistical data, because, again, somebody's gonna hear it and not even know about the third-party rule and just go on. So, there's suits out there, but it's a business decision.

>> Thomas B. Pahl: Sure. Let me try to see if folks have thoughts about one proposed solution that has been suggested as to how to deal with this dilemma. And that's the American -- excuse me, the ACA -- has suggested to its members a particular disclosure to leave on answering machines to try to comply with the FDCPA. And let me read this quickly. And then I'd like to ask the panelists whether they think that this kind of a message is something that allows effective collection but at the same time adequately protects against improper disclosure to third parties. And here's what ACA recommends that its members disclose. "This is a message for Mary Smith. If it we have reached the wrong number for this person, please call us at --" telephone number -- "to remove your telephone number. If you are not Mary Smith, please hang up. If you are Mary Smith, please continue to listen to this message." And then there's a pause. "Ms. Smith, you should not listen to this message so that other people can hear it, as it contains personal and private information."

Again, there's a pause. The message finishes with, "This is Bob Jones from ABC Collection Agency. This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. Please contact me about an important business matter at --" and a phone number is given which is different than the phone number given above for the wrong -- for if the caller has reached the wrong person. Is that a viable alternative for complying with the law and for allowing collection but, at the same time, trying to avoid third-party disclosures?

>> Donald A. Yarbrough: It would be if the technology was such that you could guarantee that the person would hear this entire message. But you can't, because the dialer technology is such that it doesn't necessarily sense when to leave the recording. What I mean is, the person has an outgoing message that says, "Hi, you've reached the Smith residence." Okay? If this message starts playing as soon as that phone is engaged and doesn't wait for the beep, then the person that hears this message misses the first part. Another problem with this is it's a nice theory, but in practice, it doesn't work, because we have cases all the time where the person says, "Listen, I'm not Mary Smith. Don't call here again." And they keep calling and calling and calling. And then, when we sue them, we get their notes, and it says, "She says she's not Mary Smith. Stop calling. She says, if you call again, he'll sue us." And it's right in their notes. They know it's happening, and they don't do it. So the theory of the message is good, but I don't think, in practice, it's working. But I do credit the debt-collection industry that we do see some cases where we have lawsuits and we see that they have called other third parties that didn't owe the debt, and that person will say, "I'm not Mary Smith, don't call here again," and they'll stop. But we do see variations where there will be continued calling, even though the person says, "This is not the right number."

>> Thomas B. Pahl: Thank you. Any other panelists have thoughts about what ACA has suggested?

>> David M. Schultz: I think what Don has talked about is not necessarily a condemnation of this message, though, for what it's trying to do. And what it's trying to do is comply with e(11). And for that purpose, it's probably about as good as we're gonna get. Unfortunately, it's a long message. I'm guessing, more often than not, people hang up before they get all the way through, which is bad. It costs money to leave that kind of message, as opposed to a much shorter message.

>> Thomas B. Pahl: Unfortunately, people here are a captive audience. They had to listen to the whole thing.

>> David M. Schultz: That's right. Well, it was entertaining, too. But I think Don's point, there certainly are some aberrations in connection with -- not maybe aberrations. It happens, where the message isn't left perfectly or picked up right away. That happens. That's a technology issue. But I think, for what it's meant to do, and what the industry is basically forced into having to come up with something to do, it's a pretty good fix.

>> Brian Cutler: Yeah, and I would say the technology is much better than 90% answering-machine detection and being able to leave the full message. So, again, when systems first came out, we did have that problem, where as soon as the answering machines picked up, the recording would start. So now the technology is there, where it can detect that it's an answering machine, wait for the beep, leave the entire message. So that's all there. And, again, going back into the previous conversation, when we were talking about voice analytics, you've got that capability. And some of the things you can look at is, if a debtor says, "This is not my bill, I don't owe it, I'm the wrong person," you take those recordings and you analyze them. And then you take a look and you see what the collector does with those calls. Because, again, a collector is trying to get to the next account, so he doesn't want to deal with a dispute a lot of times, so he may just put that in for call-back again. And then another collector may have to deal with it. So by having the voice analytics and looking at those types of issues, where somebody says, "It's not my account," you can really look and see and make sure your collectors are doing what your company policy should be, which would be put that account into a dispute-resolution queue.

>> Cary L. Flitter: I think it's... If I may, I think it's probably a reasonable antidote to Foti, but I don't like it until after the first live call and see you have the right person.

>> Donald A. Yarbrough: Also, we don't see 90% compliance in the sense of full messages being left 90% of the time. It's much lower than that in reality. And when we depose these defendants, we ask them, "Did you test your system to see if it left the full message that you intended?" We've

had many of them that have said, "No, we never tested it at all, or, "Yeah, we tested it one time, but, by the way, we make 500,000 calls a day." But they tested it one time -- a single time with a single phone. And the equipment is not that reliable. From the consumer side, the failure rate on these messages is a lot higher than 90%.

>> Thomas B. Pahl: Okay, let me try to turn to, in the remaining time we have, to a couple of questions from the audience. This one is, "With the high number of robocalls to wrong persons today, what are the problems with limiting to a number of three robocalls to a specific number and no response for a period of one year?" Apparently, someone is proposing this as a limit on the overall number of questions -- excuse me, number of calls. And this may relate more to the prior discussion, but if anyone would like to speak to that, please do.

>> David M. Schultz: What was it? You could dial a number three times, and if the person didn't respond, then you can't dial anymore? Is that it?

>> Thomas B. Pahl: For one year.

>> David M. Schultz: Yeah, that's...

>> Male Speaker: No response. They didn't get a response. That was my question.

>> Thomas B. Pahl: [Chuckles]

>> Male Speaker: No response, then you stop the call.

>> David M. Schultz: I think that's way too restrictive.

>> Male Speaker: But why? What are the problems? That's what I suggest to compromise. Do you believe pounding away is going to get the guy to respond?

>> Donald A. Yarbrough: I would add one point to your question, and that is, suppose... Most of these debt collectors that we sue, their caller-I.D. information does not come on the person's telephones. And from what I understand, that's somewhat within the control of the debt collector. So, for example, if they're calling repeatedly and it says, "Information unknown," "Call number unknown," or "0000," the consumer can't even tell who they are. A lot of consumers don't answer calls unless they know who it is. So the idea is, there should be a limitation. Debt collectors shouldn't be allowed to just call an unlimited number of times to a person's phone simply because that person exercised their right to not answer. You don't have to answer a telephone. You're not obligated to.

>> Male Speaker: The problem is with, say, Mr. Cutler, with if you took that approach. Do you really believe, if I pound him 172, he's finally gonna call me back? Is that...

>> Brian Cutler: No, no, no. I mean, you're basically... The goal is not to leave a message, as you know. I mean, in our business, the goal is to reach the consumer and talk to him. So, as we were talking earlier, the personal contact is the key. So if somebody is calling 170 times, they're assuming...

>> Male Speaker: And asking for Mark Twain, and I'm not Mark Twain?

>> Brian Cutler: Well, if they're...

>> Male Speaker: [Inaudible]

>> Brian Cutler: But that wasn't... The question was whether or not, after three calls, we stop. So I think that's pretty restrictive.

>> Male Speaker: But he's asking for Mark Twain, and I'm not Mark Twain. And instead of making all these calls, all this effort, you stop and now go try to find Mark Twain by some other method.

>> Donald A. Yarbrough: Mm-hmm.

>> Brian Cutler: Well, most agencies would do that.

>> Donald A. Yarbrough: No, they wouldn't, no, they wouldn't. They would keep calling.

>> Brian Cutler: I'm not gonna keep calling the same phone number. I'm gonna eventually go to skip-tracing if I'm not getting a response.

>> Thomas B. Pahl: All right, very interesting discussion we're having here, and I've got about a dozen questions. And unfortunately, we're not gonna get to them. I guess I would just like to give each panelist an opportunity to offer any thoughts as to what they think would be good public policy in where we should proceed with regard to collectors leaving messaging on answering machines. And I guess, why don't we start down at this end this time? Any final thoughts as to what would be a good policy development in this area?

>> Brian Cutler: I think the policy, again, when we used to just leave the generic message and get the phone call. So, I mean, we really need to have a final decision whether it's the ACA recommendation, which I do think is a little wordy, but, I mean, you need to have the ability to be able to leave a message and be compliant. So at the end of the day, we just really need to know, is it Foti, is it not Foti? We should not have to be between a class -- make a decision between a class-action suit and an individual suit. There just needs to be clear direction, whether it goes back to leaving the generic message or Foti-compliant. But we just do need direction one way or the other.

>> Thomas B. Pahl: Cary?

>> Cary L. Flitter: Well, the two suggestions I raised, I would stick with, because I don't think they're... I think they're valuable but not really onerous. And that is, permitting the consumer to record a call, and a live-person first contact to see you have the right individual. That's gonna cut down on a ton of the Foti issues and the calls to the wrong party.

>> Thomas B. Pahl: Okay.

>> David M. Schultz: I'd amend, at the end of e(11), and just add "and telephone messages" to exempt those from the e(11) disclosure requirement. So address Foti by saying, "Do what was done for 30 years, which is just leave a benign message."

>> Thomas B. Pahl: Okay.

>> John Watson: I think consistency in what the requirements are would be paramount, whether it's to leave a non-Foti message, to leave a Foti message, and guidance on whether we're required to leave a message, because in addition to the Foti-versus-non-Foti issue that you outlined, there is also a peril for agencies in not leaving a message at all, because that's considered to be a communication with no meaningful disclosure of the intent or of the conversation or who the caller is. So when it comes down to Foti or non-Foti message, the Foti message is wordy and certainly, in a consumer-protection environment, costs are not -- should not be the paramount thing, but they are a realistic thing that you have to consider. So, that message takes 50 seconds, as I was listening to you read it, as opposed to about 5 to 10 seconds for a non-Foti message. And there's part of human nature, too, that when you tell somebody not to do something, they do it. [Light laughter] And so, in the interest of protecting consumers from third-party disclosure of a debt that's owed, once you leave that information on the message machine, it's out there regardless of what you've told somebody to do or not do.

>> Thomas B. Pahl: Thank you. And, Don, you get the final word.

>> Donald A. Yarbrough: Yes, sir. The robocalling technology can be oppressive, and it is oppressively used in this country by debt collectors. And there should be limitations on it -- limitations on the number of such calls, a requirement, as Cary mentioned, that there be a verification that the debt collector even has the right number.

>> Thomas B. Pahl: Okay, thank you, everyone. Julie bush and I are gonna switch yet again, and she's gonna be moderating the rest of the panel, which is going to deal with calls to cellphone and

text messages. But before we get started, Aaron Smith is gonna give a brief presentation of some statistics that relate to the demographics of cellphone use.

>> Aaron Smith: I'll move up here. I'll try to keep us going fast here. So, how do I...

>> Julie Bush: [Inaudible]

>> Aaron Smith: Oops, sorry.

>> Julie Bush: [Inaudible]

>> Aaron Smith: Okay. So, Julie, is this on the desktop somewhere here, or do I need to get my little USB dealy out?

>> Julie Bush: I'm sorry. It should be on the desktop. Did you get out of what we were in?

>> Aaron Smith: Oh, yeah, that's what we were in. I didn't know if it was...

>> Julie Bush: Okay, and you have the clicker?

>> Aaron Smith: It's over there. I can just use the little...

>> Julie Bush: Okay, because it's all folded in there.

>> Aaron Smith: Ah. Ah, perfect.

>> Julie Bush: Fix it.

>> Aaron Smith: Yeah. Okay. I always forget where... There we go. Awesome. So, I don't know if debt collectors like pictures of cats. [Laughter] Internet geeks just love pictures of cats, so I always include one to start off. So, my name is Aaron Smith. I work for an organization called

the Pew Internet and American Life Project. And everything I know about debt collection, I've learned in the last hour and a half. [Laughter] So I'm not necessarily going to talk about debt collection here. But what I am going to talk about is some of our research on the mobile-phone adoption. So, my organization is a survey-research firm located here in D.C. Our goal is to collect data on technology usage. We do that using nationally representative telephone surveys. So while I don't know much about debt collection, we deal with some of the same issues in terms of how to reach people on cellphones. And as we'll see in a little bit, we face some of the same challenges, I think, although we sort of operate under different rules than some of the folks in this room are facing. So, all of our surveys include both landline and cellphone respondents. And if people have questions for how we, in our world, deal with cellphones, I can talk about that. But what I'm gonna do is I'm just gonna spend about 10 minutes here talking about some of our findings for cellphone adoption and usage, and, hopefully, that can inform some of the discussion that we will be having for the rest of the half-hour here. So, just to kind of go through things fairly briefly, basically, the upshot, when you look at the last sort of 5 to 10 years in technology trends, is that cellphones have sort of become -- and I don't think this will surprise anyone -- the ubiquitous consumer communications device more than probably anything other than televisions, if you want to consider televisions to be a communications device. But over 8 in 10 American adults own a cellphone. When you stack that up against any other sort of communications device -- the desktop computers, laptop computers, even landline phones -- cellphones are really sort of the ubiquitous kind of communications technology. And it's not only ubiquitous when you look at the overall population, the real sort of interesting thing happens when you sort of break out the demographics. So, one of the things that we can do, by conducting sort of large, nationally representative surveys, is we can sort of separate out different subgroups and look at men versus women, low-income versus high-income, young versus old, and see how people break out. And more than any other technology that we look at -- probably, again, with the exception of televisions -- cellphone ownership is quite widespread within a very broad range of demographic groups. So it probably will not surprise anyone in this room when I tell you that when we look at people between the ages of 18 and 29, almost 100% -- 96% of those folks -- say that they have a cellphone of some kind. But what's interesting is when you look at groups that historically have not sort of adopted digital technologies in great numbers. So, when we look at people like seniors over the age of 65, rural residents, low-income consumers, communities of color, a lot of those groups have, for instance, Internet adoption

rates of 50% or lower. Every one of those groups has cellphone adoption rates of 60%, 70%, 75%, or more. So, when you look at -- just to use a good example, which I always like to use -- seniors -- people 65 and up -- when you look at their Internet-adoption rates, about 40%, 35% of them say they use the Internet. 6 in 10 say that they have a cellphone. And actually a surprisingly large number of those folks, they're not downloading apps. They not checking in on Foursquare or anything. But a lot of those older cellphone users are text-messaging, for instance. So a surprisingly large number of those folks are doing things in addition to using their cellphones for voice calling. So, this is the part where I think my part of the world and your part of the world tend to intersect, is in the growth of mobile-only households. So, about two or three years ago, my organization sort of realized that we could no longer just call people on landline telephones and expect to have an accurate representation of what's going on in the world. And that's true. We couldn't do accurate election predictions in our political shop. We didn't get good findings for technology ownership in the organization that I work for. And basically what I've got here is a chart. This is from the CDC. They are sort of the gold standard for identifying the incidence of what they call "wireless substitution" -- basically, people who have a cellphone and no landline telephone within the population as a whole. They do a big survey called the National Health Interview Survey, and they look at people who live in wireless-only households. And basically, as you can see, sort of the blue line here is the important one. In early 2003, about 2% to 3% of all adults were wireless-only. By their most recent work that they did, in 2010, that number had basically risen to a quarter of all adults in the country have no landline telephone -- are wireless-only.

>> Male Speaker: Why do they care?

>> Aaron Smith: Basically, they are, for an organization trying to get out public-health information and reach people with health messages -- you know, information about there's a flu breakout in your neighborhood, there's an anthrax attack, whatever it is -- the CDC obviously needs to know how to reach people and get those sort of really high-impact, high-urgency messages out to folks. So we love that they do this. We rely very heavily on their findings in this field. So, the first point here is that a quarter of the people you guys are going to be trying to reach do not have a landline telephone. And what's really interesting is when you look at sort of the breakouts of who those

wireless-only people are. And I think, in our world, there was sort of an initial assumption that people who have sort of gotten rid of their landline telephones are sort of very tech-savvy, higher-income, well-educated kind of executive-level folks who just sort of rely on their BlackBerry to do everything. And what you find is actually very much the opposite. The folks that I mentioned just there tend to be dual landline and cellphone. The people who are cellphone-only primarily are young, not surprisingly. For people in the 24-to-29 age group, more than half of those folks -- so double the overall population level -- do not have a landline telephone. So they're young, they tend to be fairly low-income, they tend to be Latino or Hispanic, they tend to be renters. We see a lot of, like, single mothers, for example. So the profile -- the demographic profile of the wireless-only population -- is, I think, very different from what the popular conception of the totally untethered person is. And so when you look at, in our world, people's technology habits, people's voting habits, not including those people in our surveys really changes the flavor of our findings. And so that's why we do it. And for the folks in this room who are doing debt-collection stuff, I suspect that the profile of this group is probably a lot of the folks that you guys are trying to contact in your work. You can see sort of the same demographic breakdowns when you look it at the geographic breakdowns. So, the states in red are states for which wireless substitution or wireless-only households represent more than 30% of the overall population. And so you can see that they tend to clustered in the South and the sort of Lower Midwest, whereas what you would think of as very sort of affluent tech-savvy populations in the Northeast and West Coast actually have fairly low levels of wireless substitution. So it's an interesting comparison, and I think runs a little bit counter to what folks might naturally expect from the popular conception. So that's sort of the story of wireless substitution. One of the other things that, again, we see in our work and I think everyone in -- a lot of people in this room have something like this and are well aware that phones don't just make phone calls anymore. You can use them for text messaging, you use them for Internet access, you use them for E-mail, you use them to look up maps and send pictures and do all of this different stuff. And I'm not gonna get too deep into our findings on that, because I know it's a little bit tangential, but I just wanted to point out that, much like the wireless-substitution numbers we discussed earlier, you see groups using wireless nonvoice features that I think you might not expect to use those features at such a high rate, given sort of popular conceptions. And the group that I always point to are people of color So African-American and Latino cellphone owners are much more likely to use their cellphones or their mobile devices to do things like text message, like

access the Internet. And for many of these folks, their cellphone is, if not their only source of Internet access, it's certainly a major or primary source of access. And so this is something that we've seen very consistently over a lot of our work, is that this particular demographic group has very high levels of reliance on the nonvoice features of their cellphones. We've only got one sort of point-in-time measure for sort of how often people use their phones for calling and texting purposes. But I just wanted to highlight a couple of things here, just to give you a sense of how sort of consistently and ubiquitously and constantly people are using their phones to interact with the world around them. So, we asked people sort of how often they make voice calls and text messages on their cellphones. And so kind of ignore the part at the top. I'm gonna not necessarily focus on that. But the numbers at the bottom are the ones that are really interesting. So, the typical cellphone owner, which is the median number down at the bottom, makes five voice calls and 10 text messages each day, which kind of sounds about right. When you look at the average, that rises to 13 calls and 39 text messages a day. And basically what that means is, sort of the middle user is pretty modest, but there's this whole group out there that's sending just an enormous quantity of voice calls and hundreds and hundreds of text messages each day. And that group has, again, a very interesting demographic flavor that I can talk about here a little bit during the Q&A, once I've wrapped things up. Just a couple other things to hit before I sit down and let us move on with the next set of discussions. We had talked earlier about sort of calling people on the cellphone -- or calling people while they're driving -- obviously, that's an issue for us, as well -- issues of spam, of sort of when you can call people. And so I think this is an interesting chart in terms of fleshing out some of those issues. And so I'll read this, since I don't know if everybody in the middle can see them. But we asked people who had cellphones some of the things that they had done with those cellphones or some of the experiences they had had. So, three-quarters said that they had talked on their cellphone while they were driving. Two-thirds said that they slept with their cellphone next to their bed. [Laughter] So, again, thinking about when you're calling people, you may be waking them up with a cellphone buzzing in their ear while they're trying to get some sleep. Almost 6 in 10 said that they had received unwanted or spam text messages on their phone. And half had said that they sent or received text messages while driving, which, obviously, there's safety issues there. In our world, we always have to put in information about, for our interviewers, if someone is on the cellphone while they're driving, we get a number, we call them back. And I threw in the last one about one if five cellphone owner has run into somebody or an object while they were using their

phone. [Laughter] [Chuckles] So, not only are they sleeping with it next to them, they're so focused on it that they will -- like, not only will they run into something but they will admit to running into something to an anonymous interviewer in a telephone survey, which was awesome. So, just to kind of wrap up here, this is just sort of a quick set of cellphone attitudes. Basically, safety and convenience are the two primary reasons that people use their cellphones. And I always like to kind of wrap up on this one, which is basically, we asked people a question, "How hard would it be to give up the devices in your life?" And people are willing to say -- they're willing to chuck their e-mail, they were willing to chuck their landline phone, they were a little bit less likely to chuck their television, a little bit less likely to chuck their Internet, but over half of them said it would be very hard for them to give up their cellphone. So when you stack it up against all the other sort of consumer information devices out there, the cellphone is the one that you will be sort of prying from people's cold, dead hands. [Laughter] So, that is a very quick summary of some of our cellphone findings. I'm happy to discuss any of this during the Q&A or after, in the milling-about portion of the day. And if you would like to see this, I'll have this presentation posted on our site either today or tomorrow. So if you'd like to visit our site and get any of these data points, please feel free to do so. And I thank you for your time. [Applause]

>> Julie Bush: Okay, I think we're going to move forward, but if people have questions specifically for Aaron, they can submit them, as well. We are now talking about mobile phones, which, as Aaron so astutely showed us, can be used for voice and for text. We've already talked about how collectors love to use the telephone to try to contact people. And I was wondering if anyone in the panel can speak to the rough proportion of collector contacts that are made by phone and, of the phone contacts, the rough proportion that go to mobile phones today.

>> Donald A. Yarbrough: We had a statistical study in a case, where we did what's called a cell scrub on 1.6 million telephone calls that a certain debt collector had made. And the results were, if I recall correctly, something like 34% or 37% of the calls that the debt collector placed had been placed to cellular numbers. And this was for a one-year period, and it occurred in 2008.

>> Julia Bush: Actually, I should just add something, which is that we are not focusing on the TCPA. I've received a couple of questions about the TCPA, and that's under the auspices of the

Federal Communications Commission. And because we don't have any jurisdiction over it, we are basically focusing on FDCPA and other consumer-protection issues that have to do with phones.

>> John Watson: I don't have sort of hard numbers about what percentage are cellphone calls. What I do think is that, obviously, telephone conversations are a predominant communication medium between collection agencies and customers. I would say the proportion of calls to cellphones is relatively low, primarily due to the prohibition of calling them in a predictive-dialer environment and the cost of the significantly relatively higher cost of calling them manually. I would say it's lower than one may expect.

>> Julie Bush: So, would you say that... Does your company endeavor to find out whether a number is a cellphone number or a non-cellphone number?

>> John Watson: Yeah. I mean, given the prohibitions of the TCPA -- and I know we're not discussing that, but of not putting cellphone numbers on a dialer -- I think most agencies, including ours, have multiple scrubs that happen before a dialer list gets placed, because of the prohibition.

>> Male Speaker: I'm sorry. Can we just clarify? I know we're not talking about TCPA, and I know we're submitting comments, but there's been a couple of comments made about the prohibition under the TCPA. There is a consent kind of exception to the ability to use an autodialer to send a -- to call a cellphone. So, it seems like I've heard a couple of references to almost a start prohibition. And then let's just clear up that that's not the case.

>> Brian Cutler: That is true. So, I mean, for instance, we've got a software program built into our system that we use with our dialer, where we scrub for cellphone numbers. Any cellphone numbers that get indicated are marked so that they don't get loaded to the autodialer. But then, once a collector gets consent that they can call and communicate with that debtor on the cellphone, it then gets updated and then that account can actually go to the autodialer.

>> Thomas B. Pahl: Excuse me. I just want to remind folks, try to write your questions on the cards. It's not just because we like to make you produce written work, but what happens is that the

people who are listening to the Webcast, they can't hear the questions that are posed by the audience. So all they hear is the answer. But if you can give your questions to us on cards, the moderators can read it, and, therefore, there will be a Q&A that will make sense to the people who are listening to the Webcast. Thank you.

>> Julie Bush: So, again, there's the issue of previous consent -- prior consent -- that's been given under the TCPA. And there's also an issue of a potential rule change under the TCPA. But those are not the focus of our discussion today. In terms of charges incurred by consumers on mobile phones, I'm wondering how frequently that happens, how much money, and whether it depends on whether the person has a monthly plan or one of those pay-as-you-go phone plans. Can anyone speak to that?

>> David M. Schultz: Well, I could... I don't know if I have any... I don't have any data on it, but I would say that, from defending Fair Debt cases for a long time, and a lot of them, I don't think -- I can't think of a case that I've ever had where anybody has complained that they were called on their cellphone and, as an item of damage, they're claiming the charge they incurred due to the call. I just don't think it's ever happened. I'm not aware of it. I don't know if anybody is.

>> Brian Cutler: Yeah, I think the costs are very minimal. And again, we're dealing with FDCPA, which is 30 years ago, which, 30 years ago, we didn't have 800 numbers really that prevalent. And collectors would then -- back then -- make collect calls. So that was really where the cost.. And that was expensive, actually, when did you a collect call, because I think you were paying for an operator to connect the call and then you were paying probably a very large per-minute cost. So that's really where those costs came in. And today, a cellphone bill is a cellphone bill. It's like any other bill. And I don't think the consumer is really looking and going, "That collector called me and it cost me 5 cents, 10 cents, 20 cents per call." That's not really an area they're looking at.

>> Cary L. Flitter: Well, I'll just add that, of course, most of the plans are flat.

>> Brian Cutler: Right.

>> Cary L. Flitter: But especially with some of the lower-income consumers, they're not flat. And they're very inexpensive plans, and there is a, if not a per-call charge, a per-text charge. Yet there's not a... I don't know any competent consumer lawyers that would dream of injecting a \$10 charge into an individual case. So the fact that you don't see, pled as an item of damage, \$10 in text or roaming charges that were assessed to the consumer isn't necessarily, I don't think, a good barometer of the fact that the charges aren't being levied. And believe it or not, with some of the populations, \$10 is a lot of money in a particular month. I'm surprised, it's easier... It may be a little bit difficult for us to spot, but, a lot of populations, \$10 or \$15 out of a month is not insubstantial.

>> Brian Cutler: No, but to run up \$10 would a lot of phone calls to that cellphone. So it's not been an area that's been really addressed, as far as the cost, at that point.

>> Julie Bush: When the FTC suggested, in its 2009 report, that charges might be a reason to be cautious about contacting consumers on cellphones, we were told about something called Free to End User technology. I'm wondering if anyone can describe that here, if anyone here uses it.

>> Brian Cutler: Well, the capability to do Free to End User, from a text standpoint, is definitely out there. But, again, texting is another arena in itself, because you've got -- now you've got Fotti. Ad trying to get the Fotti disclosure in a text message is just not going to happen. But, I mean, if you want to send several text messages, et cetera. But there are data plans out there where the person sending the text can send that at a cost-free scenario for the consumer.

>> Julie Bush: Okay, thank you. And... Okay, right now, we're gonna assume hypothetically that the TCPA does not require consumer consent for placing a call or text to a mobile phone. I'm wondering what we can say, sort of bottom-up, about whether consent should be required before a collector contacts someone on their mobile phone and how commonly -- what kind of consent should be required, if any, and how commonly it is today for collectors to seek consent.

>> Donald A. Yarbrough: We don't see collectors seeking consent at all. I've never seen a case where a collector has sought consent -- not one. Hearing the presentation by Aaron here about the

proliferation of the cellphones, and then thinking back to the way telephones were in an earlier age, where there was one phone for a family and everyone used that phone, and now it's sort of like there's subsets. Everyone has their own phone. So calls for really any purpose, that are to a person's phone, are more intrusive. They're a little bit more intrusive than a call might have been, in an earlier time, to a home phone which might have been more like a switchboard at a hotel or something. So it does seem like it's a little more intrusive. Also, you have the idea that when you're traveling, you have the cellphone with you. You might be in an office setting or a work setting or something where you have the cellphone and you don't really want to get calls. You leave it on in case your child calls or something, in case there's an emergency, but you don't want to hear about debt-collection calls at that time.

>> Julie Bush: Thanks. Thank you. John, did you have anything to add?

>> John Watson: Yeah. Certainly, those are challenges. A lot of people are moving to cellphones for convenience's sake. I don't think the trends that Aaron shared are going to reverse themselves in the near future. So I do think cellphone-only households specifically are going to grow. And certainly, it can be inconvenient to receive a cellphone call at any point sort of in your day. There are ways to avoid that, like we've all got our ringer turned off right now. So I do think that people are going to have more cellphones. And the ability to use them as a way to contact people to resolve their accounts is going to be valuable. Predictive dialers provide a very efficient way to do that. And if the only ability outside, without having consent, is to have to manually dial a cellphone, it does drive costs up pretty dramatically. It could inhibit communication with a customer and ultimately prevent them, to some extent, from getting an opportunity to resolve their account.

>> David M. Schultz: I think a lot of agencies are trying to get consent to call cellphones, though.

>> John Watson: Yeah.

>> David M. Schultz: It's part of their talk-off now. The collectors are being trained, "If you do get the contact, you ask the person, 'Is this a good number to call? Do you have another number which we could call?'"

>> Cary L. Flitter: That's not quite consent, is it?

>> David M. Schultz: They're trying to get the... "Is there another number we can call? If that's your cellphone, is it acceptable for us to call it?" And they're trying to notate that, typing it into notes, but also recording it as consent. They're obviously concerned, with calling cellphones, about consent and the exposure they face as a consequence of that. So that's something that I think it's a learning curve. They're learning to do it now. It wasn't done a number of years back, but I think you're gonna see it done much more in the future, like getting consent in other ways. Certain clients that you have, as an agency, you know you have the numbers from them with consent. The medical field is probably the best example of that. Most of the time, those numbers... You know, the agencies I've been involved with are doing the first round of collection on the medical bills, so it's not that old. And they're not skipping it. They've got good information, and they're not getting updated information. So there's probably consent in that area. So the agencies are concerned about it to the extent they can get numbers. In their cellphone numbers, they want to make sure there's consent.

>> Brian Cutler: Yeah, and I would also say I disagree with Mr. Yarbrough. I think a cellphone call is... I mean, it's less intrusive, because that's the number I want to be reached at. That's the number that the consumer would give in most cases, and that's the number I want to talk. And I can manage that. So to say, like, you're in a business meeting, et cetera... And again, technology. You've got caller I.D. And if an agency is using an unknown number, you don't take the call. Actually, my office -- my home office -- when I get calls in -- and it's not a collection agency, it's a software company -- it shows up on mine as unknown. So if I don't want to speak to somebody in my office, I know I'm not gonna answer that call. So it's that simple. So, if my kids are calling, their number pops up, their picture pops up. So you can manage that phone better than any home phone anybody's ever had. And I think, again, that call is coming to you, versus the switchboard scenario of my daughter having to answer a phone that's a collection call for me, my wife having to

answer a call that may be a collection call for me, or anybody in the house answering my phone. So, again, I think it's actually less intrusive. I think, again, it's the manner most of us prefer to be contacted in, so...

>> Julie Bush: So, Cary, maybe you can speak to what consumer-protection issues, if any, come up.

>> Cary L. Flitter: I was thinking, is there a technology to answer -- the cellphone call come in, and if it's a debt collector and the consumer doesn't want to hear from them, obviously, if there was a cease-and-desist statement made, then that should be the end of that if it was a live individual. But is there a technology available for kind of, "A," "I'm busy right now, call me later," or "B," "Don't ever call me again," or "C," other?

>> Brian Cutler: From just an agency, to identify a collection agency?

>> Cary L. Flitter: I'm just saying that there's a... There's got to be something in between "We can call as often as we want and whenever we want, and if the person doesn't want to hear from you just because it's a cellphone and you, in theory, can just press the 'ignore' button," versus a call that somebody wants to be engaged in, the intrusiveness of the cellphone call can't be ignored.

>> Brian Cutler: Again, I just -- it's easy. It's no different than a landline, though. I mean, that's what we're talking about. So a landline, if the agency is gonna call, they can call. And you either answer the phone or you don't answer the phone. So it doesn't matter if it's a landline, cellphone, et cetera. That's a decision you've got to make. You're either gonna handle the phone call or not handle the phone call. And the easiest way is actually to handle the phone call, because then if you're talking to somebody and you resolve the debt, don't resolve the debt, or tell the agency not to call, that just seems to be the easier way to deal with the situation.

>> Cary L. Flitter: I just think there's an intrusiveness to the... They both are, obviously. So if the consumer doesn't want to take the call and doesn't want to negotiate it, assuming it's even the right consumer, there's got to be a means to deal with that. The answer isn't just keep calling and keep

calling because there's been no answer previously. I think that's really what the question raises. What are the technologies that are available to kind of hit that sweet spot where you can make the calls or the person wants to be reached. If they really don't want to be reached, then they stop.

>> John Watson: I think we've talked about whether it's call-volume limitations and things like that, that we can implement and a lot of folks have implemented. But I agree with the previous point that was made, which is that a lot of what agencies are trying to do is to engage a customer in a conversation. Right? And that... If a customer would contact the person or respond to the contact attempts that are being made, a lot of the third-party contact, third-party disclosure, all those things go away because now you have engaged in an interaction -- a transaction where you don't have to make all those calls to try to engage somebody. And so I do agree, the best way to eliminate a lot of the things that we're talking about today, in terms of sort of harassment or consumer protection, is just to engage with your creditor or their agent.

>> Donald A. Yarbrough: But the consumer has no obligation to talk to a debt collector at all. They don't ever have to say a word. And they may not want to. And they shouldn't have to have their friends and neighbors contacted because they just don't want to talk.

>> David M. Schultz: But they have a right to exercise their "cease" in that...

>> Donald A. Yarbrough: Maybe they can't pay the bill.

>> John Watson: They can engage and say, "Please do not ever call this number again," put it in writing.

>> David M. Schultz: They can exercise their "cease" rights then.

>> Donald A. Yarbrough: Mm-hmm.

>> Julie Bush: Okay, I have a question from the audience, and it says, "On cellphone calls, why aren't FDCPA rules that allow consumers to prohibit calls at inconvenient places sufficient to deter calls to the cellphone?"

>> David M. Schultz: Inconvenient places or times? Places?

>> Julie Bush: It says, "inconvenient places," but you can interpret it...

>> David M. Schultz: Be tough to know where the person is.

>> Julie Bush: Yeah.

>> David M. Schultz: It's gonna be tough to know where the person is on their cellphone. I don't know if they're in the car or not. So it's hard to track that. That's a difficulty in passing that kind of legislation, it seems like.

>> Julie Bush: Does anyone think that the rule that has to do with inconvenient times and places would work in this instance?

>> David M. Schultz: I suppose a debtor could tell them, "You know, all I got is a cellphone, and from hours of 8:00 a.m. to 4:00 -- to 3:00 p.m. or something -- it's really inconvenient. Don't call me on my cellphone." And if they continue to do so, I suppose you could have a harassment claim -- you know, that the act perhaps addresses it that way.

>> Julie Bush: Mm-hmm. Okay, I'd like to ask each member of the panel, starting with Brian, what you think is the most important change, if any, that should be made in law or policy regarding mobile contacts. And I'd ask you to be succinct, please.

>> Brian Cutler: Well, I think one of the important things is, you know, landlines are gonna be gone soon. And most consumers are gonna have the cellphone and will be the only way to contact. And when they open up applications, et cetera, for credit, that's the number you're gonna have.

And that's gonna be the one contact number you have. So I would look at cellphones, going into the future, as being no different than a landline. And even if we can't take it to that level, at least let that consent, once they put that number as their contact number on the credit application, then that consent should automatically pass down to third-party collectors.

>> Julie Bush: Okay.

>> Cary L. Flitter: I'd like to see a disclosure that the consumer has the right to cease the further contact -- an affirmative disclosure, rather than just requiring the consumer to know that the right to cease contact exists. I think that would stop... I really think that would stop a lot of these issues.

>> Julie Bush: Mm-hmm.

>> David M. Schultz: I'd treat... Probably, as Brian said, treat landlines and cells the same. There's a distinction that it's gonna be gone pretty soon. Landlines aren't gonna be around, probably. And even cellphones are gonna be replaced soon. So if we continue to try to change the laws and try to keep up with those changes in laws -- in the technology -- it's gonna be very difficult to do. I think, soon, people are just gonna be using, I don't know, texts or e-mail or Facebook or something. You know? [Chuckles]

>> Julie Bush: Okay. John?

>> John Watson: I would agree. I mean, I think, specific to cellphones and predictive dialers, removing the prior-consent provision. And just to clarify my other point about the prohibition. So, right now, you have to have consent -- prior consent -- to put the cellphone on a dialer. Once you have the consent, which you've gotten theoretically through a verbal conversation, the need to put a cellphone on a predictive dialer dramatically goes down. It usually gets worked in a manual environment at that point, because now you have engaged in that conversation, and you can have a collector manually pick up the phone, dial that cellphone, because they've given you consent and you don't have to use the predictive algorithms that allow you to gain more efficiency when you're

trying to locate the correct number for somebody. You know what it is, so you can dial it manually.

>> Donald A. Yarbrough: I agree with Cary that most of the problems we've talked about here today could be completely eliminated if the messages were required to disclose, for example, "If you no longer wish to receive calls at this number, press 6," or whatever -- you know, that they tell the consumer that they have the right to stop the calls, which they do. They have the right to stop them. And let them stop them right there, and then you don't get all of these problems.

>> Julie Bush: And I think, Cary, you were talking about the right to send a letter, right? The right as it is in the act? And it sounds like you're talking, Don, about an oral communication.

>> Donald A. Yarbrough: In telephonic communications, it should be disclosed.

>> Cary L. Flitter: Right, right.

>> Julie Bush: Okay. Thank you very much. This has been a long panel, and we really appreciate our panelists for all their contributions. [Applause]

>> Thomas B. Pahl: Thank you, everyone. We're gonna break now for lunch, and we're gonna reconvene at 12:30 and start the panels at 12:30 sharp. So please plan ahead for time you have to spend in security, and we'll start at 12:30. Thank you.