

>> Robin Thurston: Okay. Hi, everyone. My name's Robin Thurston. I'm with the Federal Trade Commission, and this is "Panel 2: Military Consumers and the Online Auto Process." I think some of the audience has gone to get coffee, but we're gonna go ahead and get started and let them trickle back in. Let me introduce our panelists. Starting on my right is Dwain Alexander, who is an attorney with the U.S. Navy JAG Corps and the Navy Legal Service Office, in Mid-Atlantic Region. To his right is Jeremy Anwyl, the C.E.O. of edmunds.com. Next is Tom Domonoske, who's Of Counsel at the Legal Aid Justice Center. And finally, at the end of the table is Steve Hall, the president and founder of driversselect. So, I -- as I was mentioning to the panelists right before we started, if you'd like to speak, just turn your name up like this, and I'll call on you in turn. So, to get started talking about the online auto process, I'd like for you all to describe the process by which a consumer could purchase a car or initiate the purchase of a car online. What sort of things can you do online?

>> Jeremy Anwyl: I'll start it off, if you like.

>> Robin Thurston: Jeremy, go ahead.

>> Jeremy Anwyl: Just by way of background, edmunds.com has about 15 million consumers... Physically, they're coming to the site to do research about which vehicles...

>> Robin Thurston: I think you need to press the button on.

>> Male Speaker: Just press that green light. And you're okay.

>> Jeremy Anwyl: How's this? [ Crowd murmuring ] Okay. That sounds a lot better. All right. So, as I was saying, Edmunds has about 15 million car shoppers coming to the site every month. And they tend to focus a lot of activity on looking at editorial -- which cars have which features. Pricing is a very popular feature. I think the idea of buying a car online is a bit of a misnomer. The -- There is still a very big disconnect between the ease with which information about vehicles is

generally available online and then connecting through to a retailer, a dealer who can actually wrap up the sale. It's an area that's still very, very, very kludgy.

>> Robin Thurston: Dwain, go ahead.

>> Dwain Alexander II: Watch that fall over. We see a lot of the servicemembers who will go online and they'll identify vehicles. One of the issues with shopping online is just knowing who you're shopping with -- whether it's a car dealer or a private individual. When you're making application for financing to buy a car, there are several sites that will solicit information for financing, but you don't really know when you're the consumer whether it's a bank or a credit union or an individual collecting information that will then sell that or use that with the bank or with a credit union to get you financing and then take you to a dealership, which is a whole nother set of problems that occurs. So, identifying who you're dealing with when on the Internet is a major concern and problem.

>> Robin Thurston: Mm-hmm. So when consumers go online, what are they most likely to be looking for, in terms of car purchasing and financing? Tom?

>> Thomas D. Domonoske: Well, what the consumer is looking for is always information. They want information so they can make an informed decision, and by making that informed decision, then their life can be better and maybe they can have that fun car-buying process that we heard about earlier. Unfortunately, what they will find a lot of is advertising, and there's a difference between information -- information that's reliable, information that you know to be true, information that you can make decisions on -- and the advertising. And the problem is people not being able to tell the difference between information and advertising and people affirmatively lying about what is there, what will happen. And their Internet does not allow the person to check that. For instance, some car dealers will say on their sites, they are a no-haggle place. The price that is available is the price that they will sell the car for to anyone. That's a perfectly fine business model. It would be really great, I think, if that was the business model in the entire car industry. However, if you just see that on someone's online Website, you don't know if that's true. There's really only one way to know whether that's true. And that's to walk in to that car lot, see a car, see

it listed at \$15,000, and offer the car dealer \$13,000 cash. And if the car dealer says, "Oh, you know, I'll sell that car to you for \$13,000 cash, then that statement that, "We do no-haggle pricing," wasn't true. If the car dealer says, "I'm sorry -- you misunderstand. When we say we don't do any haggling, we don't. The price of the car is \$15,000," then you know that that's true. There's no way to know that just by looking on an online dealer's site when they list a price and when they say that it's a firm price. And a lot of people don't understand that. And it's that difference between advertising and information. Advertising is interesting. Advertising sometimes is fun to watch. Sometimes, the commercials are more interesting than the television shows. But information is what we want to make decisions on.

>> Robin Thurston: Steve, go ahead.

>> Steve Hall: At driversselect, we are an online retailer of used vehicles. And we do about 300 units a month, all online. And the leads come through the Internet. We're seeing a dramatic shift, actually, in consumer behavior on it. We're seeing that consumers are going online primarily to take control over the buying process. There's several things that they do when they're online -- as Tom mentioned, more information. They know that the amount of information online far exceeds the information that's available through a -- one salesperson at one dealership. The consumer also wants to be independent in the purchasing decision. They want to be selective in who they do business with. They have -- They find that the Internet gives them access to so much more information, not just about the vehicle, but they have access to blogs, e-mails, online newsletters, buyers guides, "Consumers Report," social networks and search engines on it. All of this is starting to begin more and more decisive factors in who and where they purchase. We also see consumers now have immense choice out there on the Internet. They like that. In fact, CNW Marketing Research did a study that showed that, in the automotive space, consumer loyalty has dropped from 80% back in the early 1980s to 20% in 2009. And what that does is, it gives the consumer enormous control when they have options on it. And then they're conducting real-time price comparisons in the marketplace. So the Internet is a great tool for consumers to be able to make much smarter decisions, to be able to use it to simplify the automotive transaction and get the product delivered faster, cheaper, with greater ease.

>> Robin Thurston: Tom, go ahead.

>> Thomas D. Domonoske: Yeah. I'd like to respond to the one comment about real-time price comparisons. Until there's a marketplace where everyone is advertising a price at which they will sell the product, like the gas station -- when you see that sign on that gas station about they're selling gas for \$3.699, you know you're gonna get gas for \$3.699, or the supermarket -- when the milk is priced at, you know, \$3.99 a gallon, you know you're gonna walk up there and they're gonna charge you \$3.99 a gallon. That allows for price comparison. Because the car industry is not that industry -- and I'm not saying it should -- but the reality is, the car industry is not that industry -- online price comparisons don't really exist. What you have is online advertisement comparisons. So, sure, you can compare, "Oh, this one car dealer is advertising that car for such and such a price. This other car dealer is advertising it cheaper." That doesn't tell you who is gonna sell you the car cheaper. The only way to tell you who's gonna sell the car cheaper is to walk on the lot, see a car, and ask the car dealer, "Give me your best price on that car," and walk off. 'Cause when the car dealer knows you're gonna buy the car and that you want the best price and you're walking off, then the marketplace can work, because now you're gonna walk to another car dealer, look at a similar car, and ask that car dealer, "Hey, can you -- what's your best price?" You don't actually have to negotiate with the car dealer, "Oh, you know, I really want your best price," and spend hours haggling. You just have to be a legitimate buyer, ready to buy a car, ready to pick out a car, ask the car dealer for the best price, and walk off. And when the car dealer lets you walk away, they will have given you their price that they're either gonna sell that car to you for or they're willing to let you go elsewhere. That's how you comparison-shop. I don't believe comparison shopping online, prices, can be done in an industry that negotiates the final terms. It just doesn't exist. What can be done is a tremendous wealth of information. I was looking at buying a used Prius a few weeks ago. I was able to look at a Prius. Then I was able to go online, and I could read all about the 2008 models and how they were different, and I could pull up an NMVTIS report on that used car for \$3.99. I could read reviews of the car. I could read reviews of that car's model maintenance history. All that's really important information for the buying process. But if I want to know what that car dealer is gonna sell that car for me, I've got to walk on that lot and get a price and walk off or make them an offer and see if they'll take it. I didn't do that because I'm here today,

instead of buying a Prius in Harrisonburg, Virginia. So the FTC owes a car deal to car dealers in Harrisonburg. [ Laughter ]

>> Robin Thurston: Put it on the expense report. Jeremy, go ahead.

>> Jeremy Anwyl: Well, regarding that Prius, right now, prices are pretty high. You might want to wait a couple months until inventory's built. [ Laughter ] So, actually, this is doing you a favor. But I think you raised a couple of interesting points. It actually is possible for a consumer to fully negotiate a deal before visiting a store and actually go in and take delivery of the vehicle and be in and out of there in 30 minutes or 60 minutes. It's rare. It doesn't mean it can't be done, but the tools are out there. And I think this is what's raising -- it really raises an interesting point. It's one that we struggle with at Edmunds all the time, and that is that there is so much information out there, and yet many, many consumers are choosing not to avail themselves of information that, logically, you would think that they would want to be aware of. So if you think about it, what originally put Edmunds on the map was we were the first site to put invoice pricing up on the Internet. This was back in 1994. Drove a huge amount of traffic, created a lot of tension in the industry -- a lot of dealers obviously weren't very happy that that information was out there way back when. And at that point, pricing was what really drove the traffic to the site. There was a lot of tension in consumers' minds. They didn't really know what they should be paying for the car, and invoice price was a rough guide -- didn't really help that much, but it was better than nothing. And since that time, there are tools on the site now where you could actually look at the cost of ownership over a five-year period and compare every model -- every vehicle and every model that's out there, down to the zip code where there's localized information about labor rates and repair costs, insurance, taxes, license, depreciation, down just to where you live. If you took the time to actually check it out, you could be comparing three or four cars, find out which one is actually gonna be the cheapest to own over a five-year period. There are tests being done on how many grocery bags will fit in the trunk. There are tests being done in terms of child visibility -- if there's a child walking behind the car, how far back do they have to be that you can see them in the rearview mirror? And I can go on and on and on. It's not really a question of information. I think it's actually more of too much information, and, really, how do consumers become aware of all of the information that's out there, all the tools that are out there, and then use it, so that when they are

negotiating and when they are ready to buy a vehicle, that they are making sure that the price they pay is a fair price, that the trade-in value that they're getting is a fair value, the finance rate that they're paying is a fair rate? Because it's not that hard, but you have to know to do it.

>> Robin Thurston: Dwain, go ahead.

>> Dwain Alexander II: I agree that the awareness is an issue. And with servicemembers, part of the problem is getting to them to make them aware before this instance happens. Servicemembers arrive at a station and maybe within a couple of weeks to four months, they've bought a car -- sometimes because they need it, sometimes because they've been taken there. Making them aware of the fact that there is this wonderful tool that has all this information on it that would make them better informed consumers and then somehow directing them to use that tool before they bought would be of great value to the servicemember. Just, again, the whole problem is gonna base our center around education and getting an informed consumer before they get to the place where they're relying on the seller to be the educator, so that you can control the seller as the educator.

>> Robin Thurston: Jeremy.

>> Jeremy Anwyl: But I think there's -- We're circling, I think, around what's really a fundamental issue, and that is that there are sort of stratuses developing of car buyers. You have well-informed car buyers, people that are fairly well educated, they tend to be a little bit more affluent, and they're really doing their homework, and they are taking advantage of all the tools, the data, the information that's available on the Internet. But, then, you also find people that, perhaps, aren't quite as savvy, and they end up paying more because this is a negotiated transaction. There's four or five elements that are negotiated in pretty much every automotive transaction. And if you don't do your homework, if you don't negotiate those aspects carefully, skillfully, you are gonna end up paying a little bit more than you should have done, than you -- more than you needed to, even when we're talking about the timing on buying a Prius. But I think the issue here for the military is that you're gonna tend to find that these folks tend to be younger, perhaps not quite as savvy as some other folks. I don't want to stereotype anything here. But the risk is they end up paying more, as a category, than they need to. And I see this happening across the Internet. It's a negotiated

transaction. There is just every incentive to maximize the profit on each element of those -- of the transaction, and if consumers are not paying attention, they can end up paying more than they need to.

>> Robin Thurston: Steve?

>> Steve Hall: Yeah, I think most consumers realize that, in buying a used car, what makes it so painful is that you do have to either overpay with your wallet or overpay with your time to actually get a good deal. And I think there's some things out there that consumers can do to lessen that impact on it. And I think the Internet is certainly making consumers a lot smarter. Here are some of the things that we are seeing consumers do that are enabling them to make better decisions online. The first thing is they're doing their research about the vehicle, as Jeremy and others have mentioned. But then they also have the ability to do their research about the seller. And there is all kinds of information they can access about the seller on it, independent of the input from the selling dealer. They can also take a look at that dealer's Website, and you can get a feel for how transparent that dealer really is being with you on it. That's the first, most obvious indication. By "transparent," I mean, do they post their price on every car on it? Do they have a good variety of photos? If there's only a few photos, are they really disclosing what the condition of that vehicle is, and especially on a used vehicle on it? Do they give you a free vehicle history report so show if that vehicle's ever been in an accident, how many owners it's had, was it -- where did it originate from, was it a fleet, a trade-in, a rental car, on it? Did they allow you to obtain your financing over the Internet on it? The more information that a dealer is willing to give you on the Website, without any contact, initial contact, that's a sign that that dealer is being transparent. That's the initial sign. I'm not saying that's the end game for you. But I think what's happening out there, and what we're certainly -- I'm sure not at the level in the industry that Tom would like -- but, the consumer is driving this. You know, this is -- the dealer has pretty much lost control of the sale on it. The consumer is dictating the terms of the sale, on who they buy from, where they buy, how they buy, and when they buy on it. And I think you'll see more and more of that. And that's why you're seeing a huge trend in the automotive industry, across so many dealers, that they know that that is the new marketplace to reach consumers, and to reach consumers, you have to focus on transparency. You have to be able to get them the information quick and easy because they're no

longer in your showrooms when they're shopping on it. They may still go to the showrooms to buy, but more and more consumers are shopping online. And if they don't get the information they want, it's just a click away. It's not like they have to get back in their car and drive to the next dealership. So it's so much easier for the consumer to leave you if they don't get what they want. So I think you'll see -- continue to see a trend of dealers -- of consumers accessing the Internet and leveraging that information to become more informed. I think that's the message -- is become more and more informed, because it is available out there.

>> Robin Thurston: I know you have your sign up. I'm gonna move on to another question. I think we've been talking primarily about price shopping online and price comparisons. Are consumers going online to compare financing options? Are they doing research about financing? Are they completing any financing deals online? Do you want to speak to that? Tom, go ahead.

>> Thomas D. Domonoske: Yep. There's a tremendous number of sites online. I believe Dwain Alexander talked about the ability to shop for credit, but not really know who you're shopping that credit with, and that if you just go online and the sites are begging for the information to check your credit and make you a credit offer -- I use the word "offer" not in the legal sense -- the problem is whether they're actually making you an offer in the legal sense. The -- As Jeremy mentioned, the technology exists, especially for loans. They could be making you an offer in the legal sense, and you could accept that, and you could borrow money right from your desktop, and it's a legitimate offer. You should be able to go online, and in that technological world, and get multiple offers from creditors on finance terms, choose the best term, get an offer, and then be one of the people that walks on the car lot with cash in your pocket. That technology is there. Unfortunately, this goes back to what I was talking about -- the difference between information and advertising. I call it the illusion of information. Someone gets something that they think is an offer, but if they really read the fine print, oh, it's not really an offer. They shouldn't have to read the fine print. If it says it's an offer, if it looks like an offer, it should be an offer. And so people are using these tools, and they think they're getting information -- really, what they're giving is advertising. That site may have just wanted hits. They might be making their money by selling their site to advertisers and that they're not actually in the business of extending credit. They're not actually in the business of making offers. They might be a car dealer looking for leads, and that by putting your information



in there to get your credit, all you really did was you fed that information to someone working at a phone at a car dealer who knows that you're out there shopping for cars, and now knows all this information about your credit. And the problem is the person doesn't know who they're dealing with. It is the illusion of information.

>> Robin Thurston: Dwain, go ahead.

>> Dwain Alexander II: I think that, in shopping online, the servicemember has the potential to become a commodity, in that we are uniquely situated. We have guaranteed jobs, guaranteed income. When there was no credit available to anybody else, car dealers were looking for servicemembers to buy cars. If you want to garnish the servicemember, it's relatively easy. Our salaries are published in the newspaper -- I mean, not in the newspaper -- they're fairly known. So you know how much a servicemember makes. And once you can know how much someone makes and you know that income is guaranteed, giving them access to credit is relatively easy. And so, when you're shopping for credit online, when you're shopping for things online, again, knowing who you're dealing with is highly important because that individual could collect your information and then sell that to a dealership or solicit you calls from a dealership and just be taking a cut, thereby increasing the price of that purchase to the servicemember.

>> Robin Thurston: Jeremy?

>> Jeremy Anwyl: Well, you mentioned finance online, and it's a bit of a puzzle, frankly, 'cause -- I was talking earlier about how much information is out there and how many, many times, consumers just don't avail themselves of the information or the tools that is available. And I think finance, certainly, would fit, 'cause I was just looking at some data from our Website here, and it varies month by month, but, generally -- and putting this into perspective, we're talking about 15 million people a month -- 1/2 of 1% of those people are actually going to any pages that have anything to do with finance. It's a very small number. And then, when you start getting into that, there's one tool that I find is one of the most useful tools -- if a friend of mine calls me up and says, "Hey, I need to be buying a car. What should I be doing first?" The first thing I would send them to do is look at a tool that we've created called an affordability calculator. And it basically is

designed to avoid consumers wasting a lot of time checking out cars that they can't afford. So it's sort of a reverse payment calculator. They basically put in a target monthly payment range, and then it calculates typical discounts and sales taxes and incentives, and it'll recommend a price range for vehicles somewhere between \$5,000 -- you know, \$25,000 to \$30,000 or \$20,000 to \$25,000. It's not meant to be that precise, but it's meant to narrow the field down, so that, when they do start looking at comparison tests and reading about cars that they're not wasting a lot of time. But that particular calculator actually gets about 10% of the 1/2 of 1% of the 15 million that I mentioned. So there's a tool there that's really useful, and people just don't use it. And I think some of this is that they're not aware of some of the -- I guess the risks associated with financing. Maybe they think they just go into a dealer, and it's not something that they should be worrying about. What they are really focused on when they're going to the Internet right now is pricing, comparison road tests, editorials about test drives of vehicles. It really speaks, I think, to, you know, the fun part of car buying, which is the car itself. And all these related areas that are also very, very important, just don't get the attention of the consumer.

>> Steve Hall: We are continuing to see the same trend in the financing space as we did with the purchase of vehicles, is that consumers are coming in more knowledgeable about their financing options, just as their vehicle options. More and more consumers are aware of what competitive rates should be, based on their situation. It's pretty accessible online. And so I think it's continued to increase where consumers not only will be knowledgeable just about the financing, but -- in the last panel, they were talking about some of the finance products, such as extended warranties. We're seeing consumers come in and inquire about one of our vehicles. They're financing it through their own credit union or bank, and then they are comparing our extended warranty against other extended warranties that are online. They're looking at GAP insurance through their auto-insurance carrier. So the Internet has given them more options -- not just about the vehicle, but about the financing, about the extended warranty, and other products that are out there. And that -- those options do give that consumer more power on it.

>> Robin Thurston: Does anyone have any information about what type of consumers are going online? I think someone had mentioned they tended to be more savvy consumers. Any demographic information?

>> Thomas D. Domonoske: I don't think it's necessarily more savvy consumers because I work as a consumer lawyer, so I only see people who are victims. And my people are victims of car dealers that we'll call "bad car dealers." So I only see the worst of the industry -- People who've had a good buying experience don't come to me. I've had clients who saw a picture of a vehicle online and drove across state lines to go buy that vehicle. That's not a very savvy person. [ Laughter ] When they got there, that vehicle not only was not there, but that vehicle had never been there. And if someone doesn't know that there are people online, advertising cars that they don't have, then they won't take steps to ensure that they don't become a victim. So, I think all lines are on there. And real quick -- while I was looking for my Prius, I thought I might see if I could buy one here in Texas, while I was in Texas, so I went to driversselect Website. They had all their cars online that you could look at individually. None of them were a Prius. They told me the number of cars they had on the lot. I then went to Google Satellite, and I zeroed down on their lot, and I started doing a rough estimate of how many cars were on the lot, and it was close to the number that they said they had on their Website. So I figured they got all the cars that they say they really have. I pulled up a chat off their Website. I talked to one of their sales reps, asked them if they had a Prius or thought that one was coming in. A person got on the line in probably 20 seconds, said, "Hello," told me they didn't have a Prius -- was I interested in something else? I said no. That took less than a minute and a half. And I both verified that he was actually selling cars that he had and that, indeed, they wouldn't be able to sell me a Prius while I was here in San Antonio. [ Laughter ]

>> Robin Thurston: Jeremy, go ahead.

>> Jeremy Anwyl: Well, we're talking about demographics. And I think, to some degree, it's worth pointing out it's changing. 10 years ago, when we did demographic studies of our site traffic, it was fairly affluent, male, 25 to 49, and what's happened over the last 10 years is that it's really become more mainstream. The people going to the Internet now -- these days are just people, like the regular population. I think it's probably a mistake to think about it as being a special group. The way they use it, though, varies, based on how sophisticated they are or if you're, you know, if you really know about buying, the ins -- or the ins and outs of buying a car, you're gonna spend more time looking at some of the details that, perhaps, regular folks are not. But even having said

that, you were talking about, you know, bad examples. We've been working with the FBI on a case -- or several -- a lot of cases, actually -- I think there's about 60 cases -- where a company or a group of people in Romania are creating these fraudulent sites that actually look like pages from the Edmunds Website, and they've created this bogus escrow service. And what happens is people are running used-car listings, and they're advertising the car for sale -- the car doesn't exist -- and that, when you respond to the listing -- and, of course, the price on the listing is very good, because you can sell a nonexistent car for not a lot of money and still make profit -- people are -- you respond to the e-mail address, and you get an e-mail back stating that the person selling the car is in the military and that they've been posted overseas and that they have given this car to the Edmunds escrow service and that, if you send the money to the Edmunds escrow service, then Edmunds will make sure that you get the car. Obviously, there is no car. Perhaps not quite so obviously, there is no Edmunds escrow service, and we've been working very hard to get the word out. But it's a very sophisticated, you know, fraud, and surprisingly, the people that -- and there's been quite a few cases where people have actually been drawn into this, probably because of the greed aspect -- the price of the car is so low that it -- they suspend disbelief because it looks like such a great deal -- these people are pretty savvy people. These are not people that are easily duped. And yet, it happens over and over and over again. So, we see some of these bad apples, as well.

>> Robin Thurston: Dwain, go ahead.

>> Dwain Alexander II: When we're talking about the servicemembers, most of my clients are 18 to 24, and they use the Internet for social networking, but not for work. And shopping for a car as a consumer is actually work. We talked about all the places you can go, all the things you can learn, and this age group is interested in getting transportation and using it. And so their stopping and focusing on getting all these other details isn't happening. And that's why they're susceptible to being dragged into things where someone else is gonna do the work for you. "Give me your application, and I'll find you a car. Give me your application, and I'll find you financing." They've been led all along. These are soldiers. These are sailors. We train them to follow. I mean, if you say, "Go charge a hill," they go charge the hill. They don't say, "Why?" They do it. And so you give them authority -- when you give the people who are leading them, they will frequently follow. And so the extra protections that we're talking about that are needed is because of their age range

and who they are and how we've trained them. So we need to train them to use these extra tools or find a way to help them so that they don't have to.

>> Robin Thurston: Steve?

>> Steve Hall: You know, as far as who's the online consumer, I think that was a question that we would try to answer five years ago, but today, I don't think that you can say who is the online consumer. It's -- What we're seeing is, it's the everyday consumer. I mean, if you look at the reach of broadband Internet now and the amount of time spent on social media and the amount of time that you have access to Internet at work, I mean, just about everybody's online in some capacity. So, you know, we can't really differentiate who the online consumer is. I mean, I think the stereotype is this young, Internet-savvy customer, but that's not what we're seeing come in through our Website on it. In fact, Facebook just released that their fastest-growing segment online is actually the 35-plus-year-old on that. A lot of that is because especially parents and grandparents know that if they want to connect with their children or grandchildren, guess where they have to go on it? And so the online world is really the same as the retail consumer world. We're not seeing a whole lot of different customers that have -- going online to reach dealers, versus just walking into the showroom blind and never have logged on the Internet.

>> Robin Thurston: I'd like to talk for a minute about how the online process, impacts military specifically, and, Dwain, I know you've been referring to that throughout, and so start with our military consumers going online. And I know you just referred to that a little bit. They tend to be more likely to be using social media. And then, also, are there issues with shopping online that affect the military directly, like being deployed or shopping from overseas? Is that something that they need to look out for that has become an issue in the marketplace? Tom?

>> Dwain Alexander II: Go ahead.

>> Thomas D. Domonoske: Well, one of the issues as a trial lawyer that I face is just basic jurisdictional issues when there's a problem. I was dealing with a JAG lawyer calling me from Florida for a servicemember who, when he was stationed in Georgia, bought a car in Virginia. And

he was lured to Virginia through online advertising, got this car in Virginia. It was licensed in Georgia, and then he was now in Florida. And there were -- so many issues had to do with Georgia titling law and how much money was actually paid to the state of Georgia. That gets very complex. I'm a Virginia lawyer. I don't know Georgia law. I don't know Florida law. If I want to do a case, I want to do a case in Virginia. In that case, I think we definitely had jurisdiction in Virginia, 'cause they brought him basically into Virginia and he signed contracts in Virginia, so it wasn't too difficult. But the issues of the mobility of the media -- as Holly Petraeus was talking about, the number of times she moved. And now with online, they're making purchases and crossing state lines to buy vehicles -- it just ups the number of issues that get involved, and it makes dispute resolution harder. It's a lot easier to resolve a dispute when you can drive back to the dealer that you bought the car from, you're sitting there, you're gonna be a long-term member of the community, and they have an interest in helping you, whereas, if someone is now out of state and a deal has happened, it becomes harder to resolve that issue, and then it makes it harder for the court system.

>> Robin Thurston: Dwain?

>> Dwain Alexander II: I think there's a lot of identifying products on the market in being identified as a consumer on the market for servicemembers that maybe not a lot are purchasing. I think that our ability to access the market is really good because you have access to all this information. Again, finding out what's accurate and what's advertising is gonna be a problem. We are overseas and everywhere, so we will shop where we are online, and we'll shop when we're deployed and coming back online. And we'll shop when we're overseas for something we may acquire when we return to the States online. Being able to verify that what you're shopping for, what you're seeing is the actual thing you're gonna get and it's the price it's going to cost you when you get there is a problem. And, again, the only way you can do that is by being in person, in the place, and getting some finite definition of, "This is it, and this is how much it costs," and that's not happening. And that does create problems for our personnel.

>> Robin Thurston: Great. Now, we've talked about some of the consumer-protection issues that - not just for military, but for all consumers that come up shopping online, and Tom mentioned

advertisements and that sort of thing. My question is, are those issues different in the online marketplace from traditional media, you know, other kinds of advertisements, or are there other consumer-protection issues that are unique to online shopping that differ from, you know, traditional brick-and-mortar shopping? Tom?

>> Thomas D. Domonoske: I think they're different because the Internet and the software allows for multiple brokers between the individual and who they're actually doing a contract with. A real quick example -- I rented a rental car when I came in to San Antonio last night. I did it online. I did it through Travelocity. It looked like a great price, because it said that I was getting a Nissan6, Toyota6, which is...

>> Male Speaker: Mazda6?

>> Thomas D. Domonoske: Mazda. Says -- I was getting a Mazda6. They called it an intermediate car -- Mazda6. I figured that was the same as the old 626s. And I'm like, "Oh, that's a great price for that car." It was more of a car than I needed, but for that price, I said, "I might as well be comfortable." And when I got to the rental-car agency, they gave me a 3 -- a 323. And I said, "Well, actually, I was told it was a 6." And they go, "Oh, well, was that through a broker?" They decide what cars to align for what descriptions. And this very nice young woman who was just getting me in my rental car so I could get to my hotel room so I could sleep explained to me that the brokers identify the cars -- they don't identify the cars. They weren't taking any responsibility for that representation by Travelocity that I would be getting a 6. They had a 3 for me, which is a perfectly fine car. I didn't mind it at all. So I chose the Toyota Corolla, just 'cause I was pissed... [ Laughter ] ...and took the Toyota Corolla. And if I want to do anything about that, I have to take it up with Travelocity. And I am sure that Travelocity -- that first rep is gonna tell me, "Oh, no, we got that information from the rental-car company. You've got to take it up with the rental-car company." And then I'm gonna be faced with, you know, "How much is this worth my time to go and just get the endless loop between these companies that were communicating with each other electronically in order to give me a seamless experience, but they have a glitch in their software?" I don't think that that rental-car company, which, you know, big brand-name rental-car

company, and Travelocity were really trying to rip me off. But I think what they did, they do all the time, and it is just a software interface problem that is consumer fraud.

>> Robin Thurston: Dwain, go ahead.

>> Dwain Alexander II: If what you're talking about is the difference between the old word print and the current Internet issues, there -- the base newspaper has advertising for cars because they pay for advertising, and that helps fund base newspapers. And there are circulars at every base from area car dealers that have lots of advertisements with great deals in them for specific cars. I think the difference is that, on the Internet, you have the access to two-way communication, so whereas, when you get it in print, you can think about it, you can talk to your chief or your senior enlisted about it, or there's some exchange. When you see it on the Internet, you can immediately give information and feed them things that give them access to you. You can think you're doing more than you're doing, which gives you a tie or a bond to that individual and makes you want to follow up that -- and that doesn't happen in the print media.

>> Robin Thurston: Jeremy? And then I think we'll open it up for questions.

>> Jeremy Anwyl: Well, I think, as we've heard, there's lots of potential for abuse on the Internet, really based on its, I think, its just essential nature. I shared with you one where there's companies popping in and out of existence in Romania. It's very hard to do anything about that. But I think there's another side to it, as well, and that is that the information that we've been talking about that is so freely available online is continuing to grow. And one of the areas where it's growing very quickly is the feedback loops, so that people who have done business -- in this case, with the rental-car agency -- could actually provide feedback on the Internet that could help guide future consumers, or future car buyers, about the experience that they had, and I think where this gets really interesting is that the auto industry hasn't really recognized yet that buying a car today has fundamentally changed over what it was for the prior 100 years. And so, when we start to measure the car-buying process and provide feedback to dealers and to consumers about what we call satisfaction with that process, the feedback's not very useful, 'cause we're measuring the old process and not the new one. But I think this is starting to change. And as feedback starts to become more



available on the Internet about things like transparency, about the dealers' willingness to provide up-front pricing, about the dealer's transparency on the used-car appraisal process, et cetera, et cetera, et cetera, that the dealers that are doing a good job will start to reap the financial rewards for doing so, and the dealers that are doing a bad job will start to feel some financial penalties. And one of the unique things about the auto industry is that feedback loop has not existed and that many dealers could make lots of money doing business in a very customer-unfriendly way. And I think those days are slowly being numbered. Maybe I'm overly optimistic, but I think, over the next five years, we'll see a lot of positive changes in terms of how the information that's out there can start to put pressure on dealers to be doing a better job.

>> Robin Thurston: Does anyone have any questions in the audience? I think Jim has a mike and maybe Carole. Patrice has a question.

>> Patrice: Thank you. I had a question about access to the Internet. We've talked about how the demographic has changed, and I think everyone agrees that Internet access is more widespread than it has been. But my understanding is that, for people of color in particular, there is an important divide, which is that a lot of the Internet access is through the small screen, through smartphones, as opposed to the large screen of laptops, P.C.s or Macs. And I guess I'm just wondering, from Jeremy and Steve, has there been any thought, in terms of driversselect and Edmunds in terms of providing access through the small screen to important information for consumers for whom the Internet is reachable only through their smartphone?

>> Steve Hall: We're seeing a huge growth in smartphone applications and actually have built a mobile application for the smartphones. Again, consumer demand is driving it. The more people that are using their smartphones -- not only are they using it just to shop when -- before they get there, but we actually see them right there when they come in and they're looking on it, and they're going, getting updates while they're standing in our showroom and accessing other sites to see, you know, is there anything else that showed up in the last day on it? So we believe that, to win on the Internet, you have to be able to reach the consumer wherever they're most comfortable -- whether that's at the home, the office, or on the go. And you -- We try to give them all the capability from a mobile device that is available on our Website. So we haven't really differentiated and don't give

them really any more functionality on the Website that they can't access through the mobile phone. But it's a rapidly growing segment, and we're seeing incredible traffic there.

>> Robin Thurston: Okay. I think -- one more question. Rosemary?

>> Rosemary: Thank you. In California, we have a requirement that, when a vehicle contract is negotiated in a language other than English, if it's one of the seven main languages in our state, that the contract has to be provided to the consumer in that language. And I'm wondering about language issues on the Internet, 'cause we're not finding that consumers are getting that kind of disclosure in language. And how does that work?

>> Steve Hall: We haven't really experienced anybody negotiating in a different language. You know, we do have the Hispanic community and -- but we have Hispanic-speaking associates, so... But we haven't had any negotiations in a lot of other languages at all, so I don't know if I could speak properly to that.

>> Jeremy Anwyl: I think it's an interesting issue. Obviously, from the Edmunds perspective, we're not selling anything, so there's no contracts associated with it. You could -- There are legal understandings between the site visitors and ourselves, like our privacy agreement, and they all tend to be in English. We have been watching traffic as it relates to different languages. The tricky part we find is that, if we create Spanish sites or Spanish content, it tends not to get a lot of readership, and that's a bit of a puzzle, 'cause you would think, 'cause -- and, you know, talking about California, we're located in Santa Monica -- certainly, a heavy Hispanic population. They tend to be bilingual, and in many cases, some of the older Hispanics are sending their kids to the Internet to do their research for them. There's a lot of car research by proxy going on. And I'm not saying that's a negative thing. I think a lot of it is folks my age delegating the shopping process to their kids. And generally, the kids tend to be very comfortable with English. So there hasn't been any financial incentive to broaden into other languages, just because it doesn't generate a lot of traffic.

>> Robin Thurston: Thank you very much to the panelists. We're gonna go straight into Panel 3, which Carole is moderating. [ Applause ] [ Indistinct conversations ]

>> Male Speaker: [ Chuckling ] [ Indistinct conversations ]

>> Male Speaker: Which is at the naval station, so I got to find reasons to get down there.

>> Carole Reynolds: Welcome to Panel 3.

>> Thomas D. Domonoske: Do you have one for Terry?

>> Male Speaker: [ Chuckling ]

>> Carole Reynolds: The topic of Panel 3 is "Military Consumers, Sales Representations, and Financing Process Issues." To my right, as you know, we have Captain Dwain Alexander, who's done lot of work with Naval Reserve Legal Services and has been a frequent speaker before national audiences for many, many years. We also have Michael Archer, next to Dwain, who is a retired Marine Corps Judge Advocate and has been serving in a civilian capacity as director of Legal Assistance for Marine Corps Installations East. Next, we have Tom Domonoske. As you know, Tom is Of Counsel at the Legal Aid Justice Center, and he has taught both at the University of North Carolina Law School and at Duke Law School, and he specializes in credit-related frauds, including auto frauds. And next to Tom we have Shawn Mercer. Shawn is a partner in the Raleigh, North Carolina, firm of Bass Sox and Mercer. His practice is devoted specifically to representing motor-vehicle dealers and to representing dealer trade associations. He counsels them, but he also works in resolving consumer concerns. And next, we have Terry O'Loughlin, director of compliance for Reynolds & Reynolds. Terry was previously, however, with the Florida Office of the Attorney General in the Economic Crimes Section, and he focused very specifically on many issues with automobile sales, finance, and leasing. He's the author of numerous magazine articles. And he has his undergraduate degree from the University of Pittsburgh and his MBA and J.D. from the University of Dayton. Welcome all of you here today. I'm Carole Reynolds, and I'm your moderator. Let's start off a bit with focusing on military consumers. We've heard a bit about this

today in numerous panels. We've heard about the transience of military consumers, people who are almost constantly on the move, whether it's in the United States, whether they are temporarily on duty in another area, whether they have been deployed overseas. This can and may have an impact. I would like some of our panelists to discuss a little bit more and drill into, how can this transience affect their ability to actually purchase a vehicle and finance a vehicle, and how can that raise particular issues? Mike?

>> Male Speaker: Michael.

>> Michael Archer: Well, the armed forces personnel are a transient group in general. But the rate of -- at which you move is even more -- is even greater at the beginning of your career, when you're going to first go to some basic sort of training, either as an officer or enlisted person, and then you'll go for a few weeks for some follow-on training in your specialty, and after that, you'll go to your first real non-school duty station, maybe, if you don't have additional schooling to go to. And then pretty soon after that, since 9/11, you're gonna go to overseas. So, for the group that is the most problematic, they're moving more than anybody else. And they're transient, and they not -- don't have much time, either. You know, if somebody's at the School of Infantry East at Camp Lejeune, they don't have a lot of time to go looking on the Internet. You know, they may not even have a computer. Frankly, that's one of the places where people are getting ripped off at military installations, by the financing of consumer electronics. As you see, the Tennessee and New York attorney generals have major lawsuits against people doing that. So, we have this assumption that, you know, we're all attorneys and consumer advocates and car dealers -- that there's this Internet access. There may not be so much access at all. They don't know the reputations of various dealers. And then, of course, there's jurisdictional concerns, as well. So, all of those things play into the mix. I'd also like to add that it's not just a matter of education. Education's good, but, frankly, we have people -- this combustible mix attracts the bad guys. As, you know, we have good dealers, and it attracts the bad guys to the large places. You know, Fort Bragg has 57,000 troops. A place like Naval Station Norfolk -- they have a cluster of a variety of military installations, and that's going to increase, not decrease, with budget cuts. You know, the Base Realignment and Closure, the BRAC, means that little installations close and the big installations get bigger. So you get that phenomena, as well. So you have, you know, the bad guys in life insurance, for example,

in personal finance and payday loans. They're all attracted to this place where you can shoot fish in a barrel. And why would you expect car dealers to be any different?

>> Carole Reynolds: Dwain?

>> Dwain Alexander II: So, tacking onto what Mike was saying, I think our most vulnerable section is that first tour. When you join your -- I'm from Kansas City, Missouri. If you're from Kansas City, you join the military -- you go to boot camp. You're really, really busy. You're learning a lot of stuff. Basically, we're reorientating you to a military lifestyle, where you'll follow direction. And then you show up at your first duty station. You're exhausted. You're kind of, "Where am I?" You're at a new place. You need transportation. This is our most vulnerable level of servicemember and consumer, and this is where we're having a majority of our problems. They're being addressed as they leave the airport. They're being addressed in the cabs as they go to duty stations. They're met as they come back from deployment. As they're leaving their ship, there are cabs which take them places -- with advertisements that take them to dealers and get paid for delivering a buying customer to a dealer. So this is that first level where, after that, you go E-1, E-2, E-3. The next duty station, you may be E-4, E-5. E-4 is the last level where you're probably most vulnerable. I've talked to car dealers, and they say they don't want E-5 and above. They don't want senior petty officers. They want junior people 'cause they don't push back. These guys will listen to what you say. If you've got a retired chief or a retired sergeant in the office, they will listen to what you say and sign where you say "sign" and drive off if you say "drive off," even if they don't have a driver's license.

>> Carole Reynolds: Shawn?

>> Shawn D. Mercer: Carole, I wanted to get back to your actual question about the impact of military being transient, based upon deployments and whatnot. And, frankly, my view in dealing with a lot of primarily franchise dealers who are situated close to -- in close proximity to military installations, there really is no difference. It's the military person who makes the decision when to purchase a vehicle. And they do that with full knowledge that they might be deployed. The dealer himself or herself steps out of the equation at some point in time once that transition is completed.

It could have an impact on what dealership the purchaser might return to for service or for warranty work or for service under a vehicle-service contract. But as Marc Cross, the dealer in the first panel today testified, most of these service contracts are readily transferrable, or they're honored across the country. So I don't think that it is a huge issue. I did want to address one other point, too, about that first deployment being the most vulnerable. I don't know if this applies across all installations, but I do know that there are orders that have been made that -- I think it's a 20-week rule -- and that during the first 20 weeks after that first station -- first assignment after basic training, that military people may be prohibited from purchasing a vehicle. It may be for protection. It may be for focus. It may be for lack of parking. But we were looking at some orders along those lines just the other day. So there are protections out there.

>> Carole Reynolds: [ Speaking indistinctly ]

>> Michael Archer: Yeah, just one issue with regard to transience -- we talk a lot about education, and the transience makes it harder to do the education piece. I mean, education -- we're talking about people that come in -- you know, thousands of them -- they're gone in another couple of weeks. The education may be a first lieutenant getting 15 minutes out in the sun at 95 degrees, talking to troops in the bleachers, and that's all you get because they have such a frenetic training schedule.

>> Carole Reynolds: A practice we heard a little bit about earlier today involved how servicemembers get to the dealership. I wonder if someone could describe a practice that has been called "bird-dogging." Dwain?

>> Dwain Alexander II: Bird dogging is illegal in Virginia. And it's a practice whereby non-licensed salespersons solicit sales for dealerships and bring individuals, usually servicemembers, to the dealership for a fee. The fee in Virginia averages \$500 to \$1,000 a head. There are taxicab drivers who do this. There are servicemembers who do this. There are people who are salesmen for dealerships who troll the bases, the exchange, the gates and see people stopped on bus stops. There's one dealer in our area who has hired physically appealing people to wait on bus stops and offer to date people, but they don't have a car, so, "You have to go to a place that I know to buy a

car,” and they pick up people that way to get cars. So, all that is a process of bird-dogging, where non-licensed salespersons are acting on behalf of dealerships and soliciting sales and getting compensation for that sales practice.

>> Carole Reynolds: Terry, did you want to speak?

>> Terrence J. O’Loughlin: I'd like to add to that a little bit. Bird-dogging does go on in all parts of the country, except where it's illegal, which is in many states. In Florida, I spent 15 years enforcing the law regarding...transactions, and in my experience, a very small number -- bird-dogging is legal under certain circumstances in the state of Florida. It happened rarely in my experience, and usually, the fees were \$50 to \$150. So, it may vary near some other locations more than that. But we've reviewed probably well over 100,000 transactions, and I'm gonna suspect maybe 100 or 200 of those cases there were these bird-dogging fees assessed. And I should add, as well, sometimes, bird-dogging is for the person who is buying a car presently or a third party. So there might be some other person who is advising others to go to this dealership and they'll get this \$50 or \$100 bird-dogging fee.

>> Carole Reynolds: Tom, did you want to speak to that?

>> Thomas D. Domanoske: There's some rather infamous cases in Virginia of a car dealer who was going down into North Carolina with a van and picking up Marines and saying that they could come look at vehicles, and transporting them hundreds of miles away from the base up into Virginia, and then telling them, when they didn't buy a car, that they were not being provided transportation back. And those young Marines needed to get back or they would be AWOL. Their only way to get back was actually to buy a car, and so they end up signing contracts to buy a car just so they can get back and not be AWOL. And they were -- So they were being physically taken off-base in a van, and then not being returned. And the material fact was not told to them -- the material fact being, "We won't bring you back unless you buy a car from us when we take you away." And there's been problem, and I've heard of that in other areas of the country.

>> Carole Reynolds: Shawn?

>> Shawn D. Mercer: Addressing Tom's example, the Marine Corps Base at Camp Lejeune, as well as the Marine Corps Air Station at New River both declared that particular business off-limits. The Armed Forces Control Board did that, and I actually reviewed their list, and they are, in fact, on that list, so the base handled that situation, to my understanding, internally, with the mechanism that's already in place. And as to the issue of bird-dogging, as Terry said, there are a number of states that outlaw the practice, but it's generally prohibited because it's deemed to be selling vehicles without a license where the state requires licensing. The practice of bird-dogging itself is not limited to the automotive industry. It's prevalent across all industry. For example, I went to the dentist to get my teeth cleaned last week. My dentist gave me some cards to give to friends, and they will give you a gift card or a free electric toothbrush for referring other people to the dentist. They said, "Tell them what a great experience you had, and I'll give you something in return." If anybody took a cab when they arrived in San Antonio, if you asked the cabbie for a recommendation on a restaurant, you can rest assured, they're going to get something from the restaurant for delivering you to the restaurant. It's a widespread practice. But why it tends to be restricted in many states in the automotive industry, again, is because of the issue of licensing. If you are routinely involved in selling cars and receiving compensation, it's already prohibited in many, if not most, states.

>> Carole Reynolds: Dwain?

>> Terrence J. O'Loughlin: Bird-dogging is especially egregious in the military, because we're an organization that relies on trust and interdependence. So you have to rely on your shipmates, your seniors, your subordinates to do things and to be there for you. When you have a senior petty officer taking recruits to a dealership to buy cars that may or may not be good, may or may not be priced reasonably and making money on them, that destroys the cohesion of that unit and their ability to function, so it's detrimental to us as a unit. The part about the Armed Forces Disciplinary Control Board -- I'm the consumer law adviser to the one in the Mid-Atlantic Region. And so I talked to them about car dealers and issues and things come up. When you place a car dealer off-limits, and we've done that several times, it does impact their business. We placed one dealer off-limits. Their sales went from 40 to 12. And it makes unlawful for the servicemember to go to that



dealership if they -- you know, well, it's unlawful for them to go. It's an orders violation. However, what that dealer did do was increase their advertising to military members. They created a military financing Website that didn't have their name on it. They increased their ads on Craigslist and other things from their service -- from their salespeople to servicemembers, advertising great deals for servicemembers, and within a period of a couple of months, their sales were back up. They also came before the board and agreed to stop doing all bad things, and because the board's charter is not to sanction civilian entities, but to work with the community to make sure that we are cooperating and developing a good military/civilian relations, once they've agreed to stop doing bad things, generally, they're taken off-limits until you can prove that they're doing bad things again. And so, while the board does function and does have a good purpose, a dealership who wants to do wrong can get around that just by advertising. If you're catching somebody at the airport and taking them to the dealership, they don't know who's off-limits, so...

>> Carole Reynolds: Shawn?

>> Shawn D. Mercer: And, Carole, in conclusion, I did want to raise the issue of the senior petty officer receiving a bird-dog for referring enlisted men to a particular business. If that practice is, in fact, negatively impacting morale of the troops, why is that not addressed internally, if a senior enlisted person or officer is, in fact, negatively impacting morale by their own actions? Why is that not handled internally?

>> Michael Archer: Well, I think it should be handled internally. That's one of the tools. But I'd like to talk about the AFDCB, the Disciplinary Control Board, and what it looks like -- not at the presidential-appointee level, but at the worker-bee level of the person bringing the case before the hearing. First of all, I don't have any investigators. The military police don't go out. They have jurisdictional problems. They got other things to do. So I have to sit back passively and wait for people to make those sorts of complaints. And some of them do -- some of them don't. Many of them don't have an idea that there's even been a problem. And then, when I get the first one, well, maybe it's got a good paper trail, and maybe it doesn't, or it's just "he said/she said." So, maybe I need a couple of more complains before I go to the AFDCB. And then, what happens is, under the Joint Services Regulation, we get to basically send a letter warning them about how they're doing

bad stuff and they should stop. And then I need to sit back passively and wait for a few more violations before I have a case. And then the board meets quarterly when they get around to it, and the business is gonna ask for delays, and they're almost always gonna get them. A report's made. And it goes to the installation commander, the busiest guy on the base. And then we declare them off-limits and then they move down the road, down Interstate 40 and go to Fort Bragg from Lejeune, or they just play the corporate shell game and change names. So, the AFDCB is a useful tool, but it's pretty limited.

>> Carole Reynolds: Okay. Some more points, and then we need to move on. And Dwain.

>> Thomas D. Domonoske: The reality of the sales process starts with the transient population, when you're talking the E-1s through E-4s. And for the reasons that were discussed earlier, that population is vulnerable, and that is known by the people who sell to that population. And that reality of that sales process is then -- feeds into the bird-dogging when the bird-dogging is done by a retired servicemember of a higher rank. Retired servicemembers of a higher rank are still given deference and respect by members of the military. They expect that. Members of the military are trained to give that. And when they're used as bird-dogs, as their retired military, they are abusing the cohesiveness of what makes our military work. And it is just wrong, and it is not something that a base should have to spend its resources to deal with.

>> Carole Reynolds: Dwain?

>> Dwain Alexander II: And regarding punishment -- you can take the servicemembers who are found to be bird-dogging to mast. And that does work. That is a deterrent unless you really need money. And here is an instruction for prohibited employment that a region could inflict or a command can do it, saying that this practice is a prohibited employment, not allowed by the military. But the reality is that we have an E-4 who comes in the office and says, "When I came to the ship, my division officer, my leading petty officer took me to a place where I bought a car, and the car doesn't work. And I paid 21% interest, and it's way too much money, and I don't know what to do." And so we say, "We'll work with the car dealer. We'll try and unwind this for you. Give us the guy's name so we can work with getting that person addressed." "I can't do that. I work with

this guy. If I tell who he is, all the other petty officers or chiefs on the ship,” or whoever that this rank structure is, "will know what I did, and I got somebody else in trouble.” So, how can a junior person report a senior person in a system that doesn't -- where there could be a problem? And so, when people do give us the names, we do take them to mast. We do try and prosecute. Mast is a criminal function, so there has to be enough evidence to do something in that regard. You can put these places -- make it prohibited employment. But the reality of the situation is that, in a military structure, that order and discipline in the rank structure really counts for a lot. And junior people reporting on senior people doesn't happen that often.

>> Carole Reynolds: I'd like to turn now to a discussion about spot delivery and yo-yo financing. We did address this in the first roundtable. I would just like to first have a brief recap of spot delivery, and perhaps you would like to address that, and then a brief recap of yo-yo financing, if someone else would like to...

>> Shawn D. Mercer: Certainly. A spot delivery is, quite simply, allowing a customer to leave with a vehicle before financing is 100% final. And in my view, technically, any deal where cash is not paid, to a certain extent, it's a conditional delivery. And the reason I say that is because until the funds are actually received from a lender or finance -- or I should say third-party finance sources -- we're talking about retail installment contracts -- it's technically conditional because the dealer has not yet been paid for the vehicle. However, when there tend to be problems, the problems are created by the consumer. The consumer forgets about charge-offs. The consumer is mistaken about their length of residence. They might overestimate their income when they complete a credit application. And a lot of these lenders or third-party finance sources these days -- they conduct consumer interviews. And they will call the consumer and ask them questions. "Have you, in fact, resided at such and such address for the last three years? Do you, in fact, make 'X' amount per month or per year?" And sometimes it turns out that information is not true. That leaves the dealer in a predicament. They have to call the customer back, if the contract allows it. And I know we'll probably get into this, but conditional deliveries drastically vary depending upon how they're handled. In many situations, by the wording of the contract, it is, in fact, a completed sale and the consumer would be fully within their rights to make monthly payments to the dealer because the dealer is typically listed as being the creditor. However, if there is a valid agreement

that's incorporated and made a part of that retail installment contract, a bailment agreement, then, yes, in fact, consumers can take a vehicle from the lot in most states, and they will drive it until the sale becomes final, and then that condition is removed from the agreement. So, I don't see conditional deliveries as being a pervasive problem. There might be situations or individual anecdotes from bygone years where a dealer delivers a vehicle just to yank the person back and try to jack up prices. In reality, if there is a re-contract -- and, again, the customer is within their rights to walk away -- that's the recourse for a conditional delivery. If the sale is not consummated, the contract is rescinded. If the consumer elects to re-contract, what we tend to find is that the sales price goes down. The dealer makes less profit. It is not a situation where the customer is promised a low rate and they come back and they're charged a higher rate -- quite the opposite is true.

>> Carole Reynolds: Now, I'd like --

>> Shawn D. Mercer: The rate goes down.

>> Carole Reynolds: Sorry. I'd like someone else to talk about yo-yo, and then, if you could also apply it in the military...

>> Michael Archer: Thank you. The spot delivery, as our other panelist mentioned, is simply a conditional sale. The yo-yo is the abuse of the conditional sale -- essentially, telling some person -- misleading them into believing your financing is final, or, if not, "It's just a technicality. It's a matter of time. Drive the car off the lot. Don't worry about it." And then he gets that telephone call sometime later, yanking him back to the dealership like a yo-yo on a string, thus the name, at which time he said -- he's told, "You know, you don't qualify for this financing, and you need to buy another car or get different financing," all of which may be illegal, but that certainly happens. And then, when the Marine or sailor decides, "I don't want to do this. I want to rescind the contract, and I'm within my rights to do that," first of all, they don't know they're within their rights. They'll say, "Just give me my trade-in back. Just give me my down payment back. Let's go to the status quo ante, and let me get out of here." And at that point they're told, "No, no. That car's been sold." You know, every other car on the lot's still there, but 24 hours later, magically, his trade-in

is gone. And so that's the kind of -- the yo-yo sale that we see that causes so much consternation. You asked for a description, and there you have it.

>> Carole Reynolds: Tom?

>> Thomas D. Domonoske: There's no difference between a spot delivery and a yo-yo financing, except that the yo-yo happens later in time if the sale is -- then when the dealer decides that they don't want to sell the credit contract. The numbers we heard earlier -- was it 71% of the new-car -- of the purchasers on this new-car dealer's lot were dealer-assisted financing? Dealer-assisted financing means that 71% of his business is selling a credit contract to a finance company. They put a consumer in a car, and they sell that credit contract to the finance company. In the same way that credit contract is negotiable with the consumer, the sale between the car dealer to the finance company is negotiable between the car dealer and the finance company. Any credit contract can be sold. It might not be sold for very much money, but it can be sold. What happens is a car dealer, when trying to sell a credit contract, after the consumer has left the lot, sometimes decides they're not happy with the price that the financial markets are willing to pay for that credit contract. And when the car dealer decides it's not happy with the price that the finance markets are paying for that credit contract, it calls up the consumer and tells the consumer, "Your financing fell through." What actually happened is the car dealer decided, "I was not happy with the price that I could obtain for selling your credit contract," in a way no different than if a car dealer called up a consumer and said, "The deal fell through 'cause I wasn't happy with the price I could get for your trade-in when I went to sell it." Now, they don't say that about the trade-ins, and they don't tell the truth about the credit contracts. They don't say, "I wasn't happy with the price I could get when I tried to sell your credit contract." They say, "Your financing fell through." And so the yo-yo happens when they make that statement, when they decide to call off the transaction. The spot delivery is just the function of exactly what Shawn said, which was allowing the customer to leave before it's 100% final. And the truth in the car industry is exactly what Shawn said -- the car dealer's business model is the deal's not final till someone pays the dollars that the car dealer wants for the credit contract. If the car dealer doesn't get enough dollars for the credit contract, the car dealer calls off the deal 'cause they weren't happy with the dollars they could get for the credit contract. That's when the yo-yo happens. So all spot deliveries are the setup for a yo-yo at the car

dealer's choice, if it's not happy with the dollars it could get for selling the finance contract. And the question is, what did the consumer think when the consumer drove off the lot? I've done these cases in several states. I've talked with lawyers in states around the country. The cases that come to the lawyers -- and, again, we see the victims. We see people who've been done wrong. The cases that come to the lawyers -- when the consumer drove off the lot, the consumer thought, "The deal is done." And they thought the deal is done, 'cause the finance manager says, "I got you approved." They thought the deal is done because they were told, "Congratulations. It's your car." They thought the deal was done 'cause they got plates put on the vehicle that are in their name. They thought the deal was done because they got insurance that they had to get, because the service contract started running that day -- the warranty started running that day. The representations made to them that they relied on were, "The deal is done." Now, they may have also been given, in a stack of papers, another document that said, "Hey, the deal's not done," and that document is fraudulent. You can't lie to someone and tell them you're putting them in a completed deal and then slip a piece of paper in that says, "The deal's not done." What we're talking about is not the legal structure of the documents, but the actual reality of the sales process with the finance manager that happens behind closed doors. Was that person told, "The deal is done"? And in every spot delivery/yo-yo case, they're fraud cases, because every case I've seen, the consumer was told, "The deal is done." In the military, there's no reason for that deal not to be done. And by "reason," I don't mean necessarily within the car dealer, but they have -- an E-1, an E-4, an officer -- they have a guaranteed income. They know where that person lives. They know where that person works. If that person wants to move up within the military, they're gonna have to maintain a security clearance. They're gonna have to keep their debts in order to do that. That is the best credit customer in America. And the finance companies should tell the dealer, "We're immediately funding you on the basis of that person being in the military." And I think that, as a industry, which is the car dealers and the finance companies, when they're willing to let the dollars flow to the car dealer, there's no reason that the financial industry is not letting the car -- letting the money flow to the car dealers, when they write up that retail installment sales contract for a person in the military, that they don't need to check anything out. If the financial industry was giving the dollars to the car dealer that day, and they can either, you know, do them electronically, or if they were just agreeing, "It's a done deal," then the car dealers would not even be doing a spot delivery/yo-yo sale to a member of the military.

>> Carole Reynolds: Terry? And then we need to turn to some additional aspects.

>> Dwain Alexander II: What happens for our servicemembers when a yo-yo deal occurs -- to sell a car, you need a buyer's order or a contract. That's the basic instrument you need to say, "We're agreeing to buy and sell this vehicle." What follows that is frequently a retail installment sales agreement, which has extra terms, a promissory note in it, and it defines the buyer and the seller and the seller and the creditor. What our guys are signing, in addition to that, is a separate promissory note for the value of the car. And this is used as leverage when the deal doesn't go through -- "Well, you signed a promissory note. You promised to pay me \$16,000. Where's the money?" And they may have even told you, "You can go to your credit union and get it," or, "We'll get your financing," but the financing fell through, so now it's on you because you've signed this document. Additionally, usually, there's a long time period. I mean, it may happen in a couple of days, but, frequently, there's a 30-, 60-, or 90-day time period where this financing isn't occurring. And the servicemember is driving this thing to the base, to home, and everyone's thinking, "I love you in your new car." There's a lot of psychological bonding, but, additionally, when you come back -- and they say, "You have to come back to the dealership," there's a fee. There's a cost for driving a car, even when you don't own it. So you have to pay the mileage fee or some other costs. And for those guys who drive home to Texas from Virginia to show their family the car, they have to pay for those miles, and they may not have that money. So then you have to do something. So there's a lot of leverage that occurs in a yo-yo sale that's put on the servicemember for pressure to make them make this second deal. It's not necessarily an option just to say no at that point.

>> Terrence J. O'Loughlin: I enforced a number of actions against dealers for truly egregious spot-delivery transactions, where they attempted to steal the trade-in -- they attempted to steal the cash down payment and so forth. They take a trade-in and hide it so the consumer couldn't get back -- get the vehicle back. But, to be honest, I mean, over 15 years of experience in doing that, I didn't see dealers -- in particular, dealers doing this on a routine basis. Moreover, the volume of transactions -- and I'm looking at it from both sides of the fence -- the volume of transactions that are actually either spotted, so that the financing isn't final -- most of those transactions clearly go

through on the terms presented. And in my experience, as well, I've talked to probably thousands of consumers. This issue came up often. And one of the questions I would pose to consumers -- "Did you know it was a final transaction?" Some didn't. My experience is that most of them did. Now, the documents themselves certainly tell the consumer if it's final or not. And the -- I mean, I'm in the business of producing documentation for dealers, and I think, if the consumer sees some of these documents, takes a cursory look at them, they'll understand that this is a contingent transaction. And if you've talked to a lot of dealers -- and I talk to dealers all the time -- dealers don't want to see a consumer come back. So if they are spotting a vehicle, they want -- they never want to see the consumer back unless that consumer is coming back to get a repair, some repair work done, or something like that. So, I guess -- And I agree with Tom on the one hand, that clearly some of these things are truly egregious, and to take someone under false pretenses is fraud and they should be prosecuted to the nth degree. However, there are consumers who want the vehicle today, and the dealer wants to put the consumer in a vehicle today, and the vast majority of cases -- my experience -- they're valid transactions.

>> Carole Reynolds: Are there programs that have been adopted or used in some areas to deal with...

>> Dwain Alexander II: In the Hampton Roads area, it's -- we have the largest naval station in the world, and in that area, we also have Langley Air Force, Fort Eustis, Fort Story, and the Coast Guard. And so we had ongoing problems with yo-yo sales, with price gouging, with bird-dogging -- just the litany of lists. And the Better Business Bureau locally -- again, and Bud Shelton -- and the Virginia Independent Automobile Dealers Association got together to create a program called "MAPP," MAPPVA, Military Appreciation Purchase Program in Virginia. And what that program did was tried to address the problems that we saw, and it did it through education, disclosure, and review. So, in the process, the servicemember is given a sheet that says, "Here are your rights," and there are like 15 rights -- the right to be told the truth, the right to talk to a legal assistance attorney before you sign the contract. You can put \$100 down that's totally refundable, and they'll hold the car for 24 hours. Some of our servicemembers were signing papers to buy the car, thinking they were holding the car so they could go back and talk to their petty officer or senior chief or the bank to find out if they had financing. If the deal's not financed in five days, the deal is



canceled, so no more holding the car for 30, 60, 90 days while your bill is accumulating, then telling you that it's a yo-yo sale. You are provided in the document the NADA or Kelley Blue Book value of the car, so you know what the fair market value of the car is. You don't have to pay an extra \$3,000 or \$4,000 above that unless you want the 22-inch rims or some other special features that are on the car. And this addressed many of the problems, and bird-dogging was an agreed prohibited function, so that just wouldn't happen. The program works pretty well. There are some ups and downs with it. But the review part is that there's a document that the servicemember and the dealer signs at the end that discloses all this stuff. So it has all the servicemember rights. It has the fair market value of the car. It explains what the warranty is and what happens if you get a car without a driver's license. You can sell a car to somebody who doesn't have a driver's license, but they can't drive it or get it insured usually without doing some fraud, and that's a problem we have, too. But we address all those things. There are about 30 dealers signed up for the program. And it's a functioning thing that we continue to try to tweak, but it does give us some advantages, as far as being able to review a problem that's occurring with the dealership.

>> Carole Reynolds: Michael and then Shawn, and then we need to...

>> Michael Archer: We found that the North Carolina Department of Motor Vehicles has a License and Theft inspector, and they've been very helpful when it comes to unraveling these yo-yo sales. Unfortunately, a lot of consumers don't know about them as well as there's just not that many inspectors -- and underfunded. But when they do get involved, they've been very helpful.

>> Shawn D. Mercer: I just want to say, personally, as an attorney who represents dealers, I mean, we clearly applaud efforts to educate all consumers and to work voluntarily to ensure a smooth, seamless transaction. And I have reviewed the Military Appreciation Purchase Program materials, and one of the things that I noticed is one of the elements of the program is that a deal is canceled if the sale is not approved as written by the dealer, and that is, at least, my clients' -- and there are a lot of them -- understanding of what a conditional delivery is -- that the sale is conditioned upon the dealer getting paid, but if the deal is not approved as it was written up and agreed to by both parties, it's canceled -- the full contract. We applaud those efforts on spot deliveries.

>> Carole Reynolds: All right, let's turn to another issue that's been described by some and it involves...called "negative equity." Can someone describe what negative equity is and, also, what the representations for issues can...

>> Shawn D. Mercer: Sure. Negative equity is simply a situation where a customer desires to trade in a vehicle, and they owe more on the retail installment contract than the vehicle is worth.

>> Carole Reynolds: Are there issues in sales representations regarding negative equity that have been -- raised problems for military consumers?

>> Dwain Alexander II: The main issue is what you do with the negative equity. My clients have bought two cars in a day, which is really bad, but they also will buy one car, and then, at the end of that year, when they find out that the car is really bad, they'll try and buy another car. Well, if you're in a five- or six-year loan and you trade in your car at Year One, there's negative equity. In our area, the subprime lenders will lend 140% of the fair market value of the car. Credit unions and banks go about 125%. Now, 100% is what you need to buy the car, so the extra 40% or 25% is buying the debt from the other car and putting that into the loan somehow. On the forms that we have in Virginia, that's supposed to all be disclosed. Frequently, it's not. The dealers will increase the value of the car and put down the negative equity as being paid. So it's \$5,000 negative equity, \$5,000 allowance, zero balance, but the car that was \$12,000 gets sold for \$17,000. That flows through at 140%. That'll be covered. One of our main problems is just understanding what's going on with the financing transaction and the fact that the person doing the education and information is the F&I guy at the dealership. And so, with one of our credit unions, they will internally roll over a loan. So if you buy a car and it's financed by this institution and then you choose to buy another car and finance it by that same institution, what they want to see on the buyer's contract is just the allowance that you're giving for the car. So you reduce the price of the car by the allowance that you're giving, and that gives you a price that you need to buy this new car. And then, internally, they will roll over any negative equity into the next loan. But that's all internal and known by the bank or the institution and by the car dealership. The servicemember doesn't really know what's happening. Sometimes they think the negative equity was absorbed by the dealership -- "Thank

you very much for giving me a gift.” Sometimes, they think the bank's gonna do it and it's automatic, but it's not. So if the terms of the deal don't meet the bank's criteria, what you wind up with is two loans -- two full car payments on one car that you no longer own and a car payment on the other one. And that just leads to more confusion. So, those are the issues that I see.

>> Carole Reynolds: Tom and then Shawn.

>> Thomas D. Domonoske: The negative-equity cases I worked on all had the same characteristic, which was the negative equity in the deal was not properly disclosed on the Reynolds & Reynolds form that -- Terry here is the compliance officer for Reynolds & Reynolds. In the itemization of the amount financed, it used to be on line "G" -- there is a place where they put the negative equity for those states that allowed the dealers to do negative equity. For instance, Virginia didn't used to allow dealers to do negative equity. It was considered a loan of money, and they had to be licensed if they were going to loan that negative equity. And then Virginia changed its rules and allows dealers to include negative equity in the retail installment sale price. Reynolds & Reynolds shows where it gets disclosed on the amount financed, which has the primary job, then, of telling the purchaser. These retail installment sales contracts are bought. They're bought by financial institutions, who securitize them. They're sold as investments on -- into Wall Street, in the same way that mortgages are bought, packaged, and sold. And if that face of the credit contract does not disclose that there's negative equity in the deal, it is actually a fraud on the people who are investing in the deal, 'cause the people investing in the deal expect, want, and ordinary business practice would be that the numbers on the retail installment sales contract are accurate. Cases we've seen -- the car dealer, in order to sell that credit contract for more money than it's worth, does not disclose the negative equity in the Truth in Lending disclosures. They do what Dwain said, which is they increase the cash price of the car and they hide the negative equity in the cash price of the car. One of the things that does is it eliminates the main tool that our government decided should be used by consumers everywhere in America, which is the Truth in Lending Act. Our system is dependent on accurate information. We want informed consumers to make knowledgeable decisions. The Truth in Lending Act disclosures are to be given to the consumer before the consumer agrees to a transaction, so the consumer can comparison-shop by taking those Truth in Lending disclosures, applying for credit at another creditor, and seeing which of the

creditors is offering the best deal, in order to make that informed decision, which everyone agrees we want. We want consumers to make informed decisions -- those Truth in Lending disclosures must necessarily be accurate. The negative-equity problem -- when it's hidden in the cash price, it's making those Truth in Lending disclosures no longer accurate because the amount financed is not accurate, as to how it's broken down. Furthermore, when you combine that with the yo-yo sale, when you combine that with a car dealer who -- and it's acknowledged that this is how cars on credit are sold in America by car dealers -- they don't intend to live by the terms of the credit contract until they get the dollars from the finance company that they're gonna sell it to. Until that point, they reserve the right to call it off. What that means is their Truth in Lending disclosures cannot be compared to a credit union or a bank because when you apply for a loan at a credit union or a bank and they give you those Truth in Lending disclosures, they are showing you what they will give you if you sign. You don't get called back two weeks later by Bank of America and get told, "Oh, you know, we decided we didn't want to go through with your car loan," or, "We couldn't sell your car loan for enough money." It's not possible for a consumer to comparison-shop a car dealer's retail installment sales contract's Truth in Lending disclosures unless the car dealer is willing to live by that deal when the consumer signs it. And for that reason, the entire discussion about creating informed consumers -- it's not happening in these credit transactions, and it just gets worse when the negative equity is not properly disclosed.

>> Carole Reynolds: All right, Shawn and then we need to turn to some other issues.

>> Shawn D. Mercer: I think maybe the current environment is maybe being painted with too broad of a brush and too many generalities are being spread across the entire industry. Where there may be isolated bad players spread across the country, my experience is that dealers do, in fact, comply with Truth in Lending. They're aware of Reg "Z," they're aware of Reg "M" with leases, and they do, in fact, disclose that prior loan or sale or lease balance on a retail installment contract. Under "other amounts financed," there's a box for it that are on most contracts across the country. They do, in fact, disclose that negative equity. And lenders in today's environment are intimately aware of the value of vehicles. And they don't routinely approve deals where \$17,000 is paid on a \$12,000 vehicle. And I expect, you know, that the comeback to that to be, "Well, they power-book." But, again, I'm sure we'll probably get to that. But, again, that's isolated incidents that

today's market addresses, I think, adequately with existing laws. The issue of failure to provide TLA disclosures -- covered under existing law. I don't believe additional regulations are necessary. I think, primarily, dealers are compliant, and where they're not, the law addresses it.

>> Carole Reynolds: Let's focus now for a few minutes on add-ons. When a military consumer, as other consumers -- shop for a vehicle, of course, there may be additional products or items that could become -- or could be offered or could become part of the transaction. Could someone please describe some examples of what these add-ons are, and, also, we're particularly interested in whether there are representations here that could be problematic? And one term that's sometimes used is... Michael?

>> Michael Archer: We've had -- Recently, I've polled attorneys within Marine Corps Installations East, and they've seen a lot of the extended service contracts or warranties, one or the other, and the misrepresentations has been -- in the one case, when they say, "We're gonna give you this two-year warranty," but then packed somewhere in Page 6 of the document is, "The inception date for that was 18 months ago, when the car was first sold." So, the other thing that we're seeing is other sorts of warranties, where the dealers will, essentially -- something will go wrong, fairly minor. They'll just keep the car in the shop for as long as they possibly can, and then wait for the short-term warranty to run out, and then as soon as that happens, the transmission falls apart. So, we've seen those kinds of things.

>> Carole Reynolds: Dwain?

>> Dwain Alexander II: The add-ons that I see are generally two types -- one of them adds profit -- well, they both add profit to the dealership. But one is, "I'm going to sell you a car, and then I'm going to sell you accessories that will customize that car and make a profit on those --" your basic add-ons. The other one is, "I'm going to sell you a car, but the amount of the loan that you can get at your current pay structure isn't enough to cover the car, so I'm gonna sell you an add-on, and we're going to use the profit from that add-on to cover the extra in the car." We have one case where two buyer's orders were written -- one for one price that went to the financing institution that was financing it -- the most you could get for this particular servicemember. Another one was

written, and that one went to a secondary lender, and included with that was a purchase for a GPS system. It was \$2,700 for your standard in-the-dash, stick-on-the-board GPS system that, I guess, retails -- I've seen them for \$199, \$200. And the contract was written up as though the GPS system cost \$2,500 and then some service for the car was an additional \$200, for a total of \$2,700. And the -- we went to the dealer and explained, and eventually, the dealer worked it out, 'cause it looked really nasty when you saw the paperwork. But their whole thing was, "We could have gone through a subprime lender and gotten this thing financed at a much higher interest rate, but to help out the servicemember, we went ahead and made this fiction, where we went to the bank and gave one buyer's order and got that money, and then, at a lower interest rate on a smaller amount, we went to this other lender and got a GPS unit for \$2,700. It covered the balance that we wanted on the car." And this was because the market's now changed, and so dealers are paying more for used cars, and so you want it to make more profit. His profit has to stay at a certain amount to stay in business, and so, to stay in business, you do what you have to do, and this was what they decided to do.

>> Carole Reynolds: Shawn?

>> Shawn D. Mercer: I think it's important to break down what dealers do, I think, really, into at least four distinct transactions. And dealers start out -- their primary function is to sell a vehicle. We're gonna leave the Service Department aside. But there's one transaction -- sell the vehicle. Second potential aspect is, does the consumer want to trade in their vehicle? That's clearly optional. They can keep the car. They can sell it at CarMax or some other retailer, or they can elect to sell the vehicle to the dealer, because that's what we're doing -- it's a sale. The customer sells. The dealer purchases. There's a second separate transaction. The third part -- the customer needs to determine, "How am I going to pay for that vehicle?" The preferred method, across the board, will typically be cash. There are no questions -- that's a good customer. You pay cash, or the customer can elect to finance that vehicle, and then the consumer determines, "Who is going to loan me that money? Who am I going to get to give me the money to buy that vehicle?" So, that's a third transaction. The fourth, and, again, all voluntary -- most dealerships offer optional products and services that provide value to the customer. It's up to the customer to determine whether they wish to purchase those additional products and services. It could be, as Marc discussed earlier

today, a vehicle service contract. He indicated that he bought a contract for his own son. It could be an insurance product. There are a number of things. It could be GAP. GAP, for those of you that don't know, is a product that will basically pay off the difference between the value of the vehicle and the loan in the event of a total loss. That makes sense for some purchasers -- maybe not for others, but, again, those are all voluntary elements of the transaction. And to the extent there is an abuse somewhere, I think that's the exception, not the norm. Dealers, by and large, are looking for a customer for life. I hear that from dealers every day. They want to treat the customer well. They want to offer value. They want to offer products and services that appeal to customers and potential customers, and that is their focus. It is not to put \$2,700 GPS units on a vehicle. I do not dispute the fact that those types of things have happened in the past and they probably are happening in some places today, but that's not the industry norm. So I just wanted to point out that these so-called "add-ons," these additional products and services are offered are voluntary, and that's just another piece of the transaction. And the customer has the absolute right to say no. They're voluntary.

>> Carole Reynolds: A quick follow-up point of clarification -- if the consumer, the military consumer, is quoted a monthly payment, how do they know what's in that payment? Could you also...

>> Shawn D. Mercer: Certainly. Consumers, in reality, are driven by monthly payments. I think everyone here is aware of that. They want to determine, "Can I afford this vehicle? Will it fit within my budget or my family's budget?" There's no question about that. But at the end of the day, payment is driven by price of the vehicle, arriving at a fair price that's agreeable to both the consumer and the dealer, and then, also including any additional optional products or services that the customer elects to purchase from the dealer. Again, those add-ons could be purchased from anyone. They can be purchased after the fact from another source if they choose to purchase it later. But monthly payment is driven by the amount that is financed, and dealers determine that based upon the price of the vehicle.

>> Carole Reynolds: Tom?

>> Thomas D. Domonoske: About the add-ons -- the add-ons are what, in the industry, they call the menu option selling, which was discussed in the prior one. It's whatever other products the car dealer is going to ask the person to make a decision about, after they've gotten the person to agree to buy the car on certain terms. And what is standard in the industry, which I think is abusive, is the consumers aren't told at the beginning of the process that they're going to end up sitting in a room, having a very sophisticated computer tablet put in front of them, and they're gonna be asked to make choices about any number of things. And those things -- they can be the GAP. They can be credit life. They can be extended warranty. They can be undercoating, etch, theft protection. If it's really voluntary, voluntary is someone having the time to comparison-shop before they get in a room -- to make the sales process voluntary, so that then the legal fiction, which I continue to hear in my cases, which is, "Oh, your consumer chose that 'cause they signed on the contract." It's like, well, we heard the numbers. Consumers spent 17 to 18 hours shopping before they sign on the contract. Someone's invested 17 to 18 hours, on average, shopping for a deal, and, at the last 15 minutes, they then get told, "Oh, by the way, you now got to decide about GAP. You got to decide about credit life. You got to decide about extended warranty," without being given the extended warranty to actually read and to determine whether it's a good extended warranty that any Ford dealer in the country will honor, or whether it's one of those extended warranty deals that you can't get service on because the service is always denied because it's from a third party who is never gonna honor it. "You have to decide about etch. You have to decide about theft protection." The car industry could tell people up front, "When you come shop for the car on our lot, here are the options that you are going to be asked to make a choice about." The consumer didn't say, "Hey, I want to make a choice about all those products." It's not voluntary when, at the end of that process, they're in a room, they just want to leave with their car, and they get told, "Oh, do you want this? It's voluntary, but it's already included in the monthly price that we previously quoted to you." It's a very easy fix. The easy fix is, at the beginning of the process, the consumer get told, "At this car dealer, the following options will be presented to you, and we will not let you sign a contract with us until you say yes or no to them." Then the consumer, before they get on the lot, they can look and they can say, "Wow, do I want to get credit life from these people, or do I want to get it from the insurance agent?" Do I want to get an extended warranty from these people, or do I want to get it elsewhere?" That's how you could make it really voluntary. That's how you create the informed consumer that we're talking about. And otherwise, the fact that a consumer signed a contract,



where, on the contract, it says, "These options are voluntary," in reality, it's not voluntary. It is what they got the consumer to sign so they could finally leave with the car. The last aspect about that "voluntary" -- it's recognized in the industry that cars are spot-delivered, which I think is the beginning of yo-yo financing, because the car dealer is not going to live by the contract and honor it until they get paid by the finance company. The car dealer should tell that to the consumer at the very beginning of the negotiating process. All the finance manager and the salesman has to say is, "We're gonna negotiate with you today, but we can't make a final decision."

>> Carole Reynolds: All right, Tom, I think time is running short. So, Michael, Dwain -- everybody wants a last word here -- then Terry, and then, very quickly Shawn, and we're going to our audience. So, the last points, very quickly.

>> Michael Archer: Another aspect we've seen about these add-ons is a disconnect between them, where someone will say, "I'd like to buy this special turbocharging to soup up this car, and, also, give me an extended warranty." Well, then, when something goes wrong, the dealer says, "Oh, didn't you know the extended warranty doesn't cover, because you now got this supercharging thing? And we'll give you a refund of the price you paid for the warranty, but we're not gonna fix the problem." And I'd also like to say that, you know, a lot of these things are illegal already. Some of them are not. But we ought to look at prevention of these things in the first place, to get rid of the aggravation of having to deal with this in the first place, and, secondly, the remedies aren't that great. Now, you're Lance Corporal Smith, and you're deploying in six months -- are you really gonna hire an attorney, assuming you can find a guy like Tom Domanoske in that location? Do you really have the money to do it? Do you have the time? And in the end, is it worth the fees to do that? Probably not.

>> Carole Reynolds: Dwain?

>> Dwain Alexander II: In deference to Shawn, I just want to say, I acknowledge we're talking about probably the good, the bad, and the ugly of car dealers, and if you're selling to a big population, a lot of these things may not happen, 'cause you deal with regular consumers. But there's a special part of the market that targets and sells specifically to servicemembers, and they've

developed practices to maximize their profit in that process, and regulating that part of the industry would be very beneficial. And if you're not doing anything wrong, anyway, it won't impact you -- if you're doing all -- following all the rules and following all the laws. If you're not, the ability to track and enforce would be really beneficial.

>> Carole Reynolds: Terry and then Shawn, quickly.

>> Terrence J. O'Loughlin: Three points very quickly -- first of all, I think your initial question -- you asked about whether or not the price -- what's the price quoted to the consumer? Well, the price quoted to the consumer should be without any other additional products -- otherwise, this payment packing, which is illegal in every state -- every attorney general has signed off on it. I participated in that resolution way back in the mid-'90s. Secondly, Tom mentioned about menu selling. Menu selling is a terrific way to present products and services to consumers, provided it's done properly and provided that the first base point is the monthly payment without any other options. And thirdly, and Tom strikes on this about the educated consumer -- sadly, and I've talked to thousands of consumers in my day -- consumers really don't prepare themselves for the buying experience. Yes, they do. They look at some things. For the other additions, these other products, the consumers are not prepared for this, but they could very well be if they spend some time researching them. And I would have to fault a lot of consumers for not spending more time preparing to make a \$15,000, \$20,000, \$30,000 decision because it's in their best interest to be prepared. And if they don't like what the dealer's doing, they can vote with their feet and leave.

>> Carole Reynolds: Shawn, wrap up quickly.

>> Shawn D. Mercer: In conclusion to the issue of dealers forcing products and services upon a consumer, and that that offering is not really voluntary, I liken it to walking into Walmart and buying a toaster. What are they going to do at Walmart? They're gonna try to sell you an extended warranty on the toaster. Just like at the car dealership, the consumer has the right to say no. And in my view, based upon my experiences, that the best way to address these potential problems is to enforce the existing law -- and we've heard it -- these issues to the extent -- they're covered already,

and most importantly, is to emphasize, particularly with military people, education. I believe it's called Camp Geiger at Lejeune -- is that right, Mike?

>> Michael Archer: There's a satellite base, Camp Geiger, yes.

>> Shawn D. Mercer: Young enlisted military men, when they arrive at Camp Lejeune from Parris Island, my understanding is that they are afforded some education. And I believe that one or more of the local franchise dealers in Onslow County, North Carolina, participate in trying to provide some information to these people about the car-buying experience -- what to expect, what it entails.

>> Male Speaker: They shouldn't be. They're vio--

>> Carole Reynolds: All right, we need to leave some time for the audience...questions.

>> Female Speaker: Thanks. On the extended service contracts, one problem we've seen is that many cars that are sold to servicemembers are salvage or have prior damage, and usually, the service contracts don't cover that. So I was wondering if you could comment on that. And, also, on the loan packing, we're hearing about dealers who are telling consumers, "Well, if you don't get these products, then that low interest rate we're offering you disappears, and the interest rate goes up." And is that legal?

>> Terrence J. O'Loughlin: No. [ Laughter ] No, that is not legal, and the idea that a salvaged vehicle, which is an extended warranty or mechanical break-down protection or other service contract -- obviously, that's a fraudulent transaction. Any dealer that does that, they should be prosecuted, and if it's happening more near military bases, I mean, I'd recommend anybody in JAG to report it to the Attorney General's Office, because I can tell you every Attorney General's Office is keen on enforcing these type of actions.

>> Carole Reynolds: Any other questions? We're really basically out of time. Others? Okay. Please join me in thanking our panelists. [ Applause ]

>> Male Speaker: Good times. [ Indistinct conversations ]

>> Male Speaker: Got you, but all they had to do... But one thing is, this is not intentional. [ Indistinct conversations ]

>> Jim Chen: Sorry to shoo everyone away. But my name is Jim Chen, and I'm an attorney with the Federal Trade Commission. And I just want to get -- have a couple minutes here to talk about one of our projects that's intended to help military servicemembers and their families and to help us identify consumer-protection concerns, and that's Military Sentinel, which is a joint FTC and DOD project. It's -- What it is, is a secure database that's available only to law enforcement, and it's accessed through -- the FTC's home page is the easiest way to access it. You'll -- On our home page, there's a link to report a complaint, and then, if you click on that, you'll come to another access point to get to Military Sentinel, which -- you'll see the home page of Military Sentinel here. As you can see, it represents all branches of the military, and the Coast Guard is coming online shortly. But what it is, is a way for law enforcement to have near-immediate access to a consumer complaint. So what that's intended for is to more quickly identify consumer-protection concerns that are facing servicemembers, and, you know, we can drill down a little bit further by branch. It also provides a unique reference number for each complaint that's taken in through that, so we can, you know, follow up more easily. And, also, you know, we've heard a lot about consumer education. We're gonna hear about that a little bit more later. At the conclusion of the complaint-intake process, there's reference to relevant consumer-educational materials through links to our information, the FTC's consumer-educational material. Even though, today, we're talking about motor-vehicle dealers, this Military Sentinel can take complaints on all sorts of problems that consumers may face. It's a close cousin to our more well-known Consumer Sentinel, which is open to all consumers. You know, so, for instance, you know, one of the largest problems that we see facing military members is I.D. theft. I'm sure that part of that is due to the transient nature of servicemembers that we've talked about. We, you know, intake debt-collection complaints, mortgage foreclosure relief scams, all sorts of -- any kind of complaint that's facing the servicemembers can be addressed through Military Sentinel. There's drop-down menus that kind of hone in on the specific practices, specific actors. It really gives us a wealth of information for, you know, to potentially take, you know, appropriate action. One of the best things about Military

Sentinel is the breadth of organizations and individuals that contribute to it. Apart from military members directly contributing to it, state attorney generals can put their complaints in. We have international partners, such as the Canadian Anti-Fraud Centre, that also contribute -- the Internet Crime Complaint Center, other non-governmental agencies, such as the various BBBs, Better Business Bureaus, or Lawyers' Committee for Civil Rights -- they also help us out by inputting complains. And the reason why I'm talking about it today is that it hasn't really been as well -- widely used as we would like. We get far fewer complaints into Military Sentinel than Consumer Sentinel, and, you know, we're hoping, since we have such a great audience here, especially of people that educate military consumers and have access to military servicemembers, that, you know, we hope that this can be more widely spread amongst the military population, that this is an avenue that really helps law enforcement to hone in on consumer-protection problems. And with that, I think that we have lunch until 1:30, I believe. So we'll hope to see everyone back then. [ Applause ]