

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

COLLECTING CONSUMER DEBTS:  
THE CHALLENGES OF CHANGE

Wednesday, October 10, 2007  
9:00 a.m. to 5:30 p.m.

United States Federal Trade Commission  
Conference Center  
600 New Jersey Avenue, N.W.  
Washington, D.C.

Matter No. P074805

Reported and transcribed by: Susanne Bergling, RMR-CLR

1	TABLE OF CONTENTS	
2		
3	Welcoming Remarks	
4	Deborah P. Majoras, Chairman.....	3
5		
6	Overview of Changes in and Affecting	
7	the Industry	
8	Thomas B. Pahl, Moderator.....	17
9		
10	Debt Collection Today: Understanding	
11	the Business	
12	Karen E. Hickey, Moderator.....	77
13		
14	Concerns About Debt Collection:	
15	Consumers' Perspective	
16	Katie Harrington-McBride, Moderator.....	135
17		
18	Concerns About Debt Collection	
19	Collectors' Perspective	
20	Alice Saker Hrdy.....	195
21		
22	The Role of Creditors in Debt Collection	
23	Charles A. Harwood, Moderator.....	255
24		
25		

## P R O C E E D I N G S

- - - - -

## INTRODUCTION AND WELCOMING REMARKS

1  
2  
3  
4 MR. KANE: Good morning, folks. My name is Tom  
5 Kane. I'm an attorney in the FTC's Division of  
6 Financial Practices, and I want to welcome you to the  
7 FTC's two-day workshop on debt collection issues, which  
8 we're calling "Collecting Consumer Debts: The  
9 Challenges of Change." And in addition to those of you  
10 here in the conference rooms, I'd like to welcome  
11 everyone who's viewing the workshop over the internet.

12 And before I introduce our Chairman to welcome  
13 you officially, I'd like to go over a few administrative  
14 matters. First, we have a very full agenda, and we will  
15 all do our best to stay on schedule, and we ask you to  
16 help us with that by returning to your seats on time  
17 after breaks and lunches. If you do come back after a  
18 session has started if, by some slim chance you do, then  
19 please enter through the first door over there or the  
20 last door. Please don't enter through the middle door,  
21 because it could distract the panelists. The door right  
22 there, please avoid that in the middle of a session.

23 For each of our sessions, if time permits, we  
24 hope to give members of the audience a chance to pose  
25 questions to the panelists. In your folders, you'll

1 find a few note cards. So, please write any questions  
2 you have on the cards as neatly as possible and hold  
3 them up so they can be collected and forwarded to the  
4 panel moderator. If we don't have a chance to ask a  
5 question during the session, we will keep the card and  
6 consider the question as we draft our workshop report.  
7 If you need extra cards, you can find them at the  
8 sign-in table up front. Those of you viewing the  
9 webcast online can submit questions for our panelists at  
10 [debtcollectionworkshop@ftc.gov](mailto:debtcollectionworkshop@ftc.gov).

11 Now, please turn off the ringers on your cell  
12 phones to avoid interruption -- thank you very much. If  
13 you leave the building during the day, you'll have to go  
14 back through security, so please give yourself a few  
15 extra minutes if you leave the building and are  
16 returning for a session.

17 The bathrooms are located in the far hallway  
18 behind the elevator banks on this floor. You just go  
19 straight out through glass doors, past the guards, go  
20 between the guards and the elevators, and that's where  
21 the men's room and the women's room is.

22 Finally, if you have questions during the day,  
23 please feel free to ask at the sign-in table or ask me  
24 or any of the other workshop moderators.

25 Now, I have the opportunity to introduce our

1 Chairman. In February of this year, Chairman Majoras  
2 addressed the Consumer Federation of America, and there  
3 she announced the FTC's consumer protection agenda and  
4 stated that debt collections would be a top enforcement  
5 priority this year. Chairman Majoras also noted that  
6 the FTC would host a fall workshop to examine and take  
7 stock of the debt collection industry. Well, as we at  
8 the FTC continue to vigorously pursue our debt  
9 collection enforcement mission, autumn has arrived. It  
10 doesn't really feel like it outside, but actually, it's  
11 autumn. We have reached the first day of that debt  
12 collection workshop. So, here to introduce this  
13 important event is Chairman Deborah Platt Majoras.

14 Chairman?

15 CHAIRMAN MAJORAS: Well, thank you. Good  
16 morning, everyone. It's really my pleasure to welcome  
17 you to this workshop, and I'm really very gratified to  
18 see so many of you here to address this important topic.  
19 We have a lot of great experts here from academia, from  
20 consumer groups, from industry, government. We're  
21 especially pleased that the North American Collection  
22 Agency Regulatory Association scheduled its annual  
23 meeting to coincide with our workshop today so that we  
24 could have so many state enforcers with us. So, thank  
25 you for being here.

1           Consumer credit certainly has had its share of  
2 critics over time. In Hamlet, Lord Polonius advised his  
3 son to "neither a borrower nor a lender be." Henry  
4 David Thoreau, retreating to the north woods to seek the  
5 simple life, started Walden by saying, "I have no doubt  
6 that some of you who read this book...are trying to get  
7 out of debt, a very ancient swamp." Or, as a pithy 19th  
8 Century phrase put it, "He who goes a-borrowing goes a  
9 sorrowing."

10           Well, notwithstanding its critics, consumer  
11 credit is a significant tool in our modern economy. In  
12 the 20th Century, consumer credit grew rapidly as it  
13 became a common means through which consumers of limited  
14 resources were able to purchase automobiles. By 1926,  
15 two out of every three cars sold in the United States  
16 was purchased on credit. I wonder what the number is  
17 today. It's got to be higher than that. Consumer  
18 credit again grew rapidly in the 1950s and '60s with the  
19 introduction and expansion of the use of credit cards.  
20 Indeed, by the mid-1960s, poet Randall Jarrell found a  
21 very apt metaphor for the pervasiveness of consumer  
22 credit, believe it or not, in the Sistine Chapel's  
23 ceiling, saying, "If anyone wishes to paint the genesis  
24 of things in our society, he will paint a picture of God  
25 holding out to Adam a check-book or credit card or

1 Charge-A-Plate."

2           Paying over time allows consumers to make  
3 purchases that they could not otherwise have afforded.  
4 It permits us to get the benefit of goods and services  
5 while we're paying for them rather than postponing those  
6 benefits until we've saved up the entire purchase price.  
7 Some forms of consumer credit provide consumers with  
8 greater convenience, like using a credit card for a  
9 large purchase rather than worrying about having the  
10 cash. The lyrics from the musical Miss Saigon, though,  
11 may sum up best the view of consumer credit in our  
12 contemporary culture in the United States, but I am not  
13 going to sing it. "What's that smell in the air? The  
14 American dream. All yours for ten percent down. The  
15 American dream." The purchases that consumers make in  
16 pursuit of their dreams do collectively provide, all  
17 kidding aside, a powerful engine for economic growth and  
18 for enhancing the welfare of our consumers.

19           Debt collection plays a vitally important role  
20 in this system of consumer credit. Collecting on a  
21 debt, of course, benefits individual creditors who are  
22 repaid money they're owed, but it also has much broader  
23 economic benefits, of course. If consumers don't repay  
24 their debts, then sellers will seek to increase the  
25 prices of the goods and services to those of us who are

1 paying to cover the cost, and if consumers don't repay  
2 their debts, creditors will be less willing in the end  
3 to lend money to consumers, and that will decrease our  
4 future purchases. So, obviously debt collection plays a  
5 key role in keeping prices low and ensuring that  
6 consumer credit remains widely available across sectors  
7 of our economy.

8           But notwithstanding its benefits, activities in  
9 the industry have been the source of harm to consumers.  
10 In 1977, Congress took a hard look at debt collection  
11 practices and found that debt collection abuse by  
12 third-party debt collectors was a "widespread and  
13 serious national problem." Congress concluded that  
14 abusive debt collection practices were contributing to  
15 personal bankruptcies, marital instability, job loss,  
16 and invasions of individual privacy. This abuse took  
17 many forms, including -- and I'm quoting from the Senate  
18 report -- "obscene or profane language, threats of  
19 violence, telephone calls at unreasonable hours,  
20 misrepresentation of a consumer's legal rights,  
21 disclosing a consumer's personal affairs to friends,  
22 neighbors, or their employer, obtaining information  
23 about a consumer through false pretense, impersonating  
24 public officials and attorneys, and simulating legal  
25 process." To curtail these practices, Congress passed



1 the Fair Debt Collection Practices Act, establishing  
2 specific standards of conduct for the industry and  
3 directing the FTC to enforce its prohibitions.

4 Now, over the next two days, we are going to  
5 consider whether consumer protection laws have kept pace  
6 with the changes that have occurred since this Act was  
7 passed 30 years ago. It goes without saying that our  
8 role is very different from where we were in 1977.  
9 Consumer debt levels have risen dramatically over the  
10 past 30 years. Innovation in the financial services  
11 marketplace has given consumers many more choices,  
12 including an array of options for paying for goods and  
13 services, and these innovations, of course, have an  
14 impact on the willingness and ability of consumers to  
15 borrow money.

16 Well, the debt collection industry has changed  
17 significantly as well. With the increase in the amount  
18 of consumer debt has become a corresponding increase in  
19 the number of companies seeking to collect on the debts.  
20 The types of businesses holding and collecting on debts  
21 has also evolved. Many creditors certainly continue to  
22 collect their own debts, and if in-house collection  
23 efforts are unsuccessful, they then retain third parties  
24 to collect. For many creditors today, they are also  
25 choosing to sell their uncollected accounts to

1 collectors known as "debt buyers," who then attempt to  
2 collect the debts themselves or hire agencies or law  
3 firms to do it.

4 Technological change also has had an impact on  
5 the industry. Debt collectors, in fact, have a long  
6 history of adapting innovations to become more efficient  
7 in collections. Starting in 1788, Samuel Barrett, a  
8 Boston justice of the peace, began using forms to notify  
9 consumers that he would sue them unless they paid up,  
10 and the forms had these blanks for the names of the  
11 creditor, the consumer, the place of residence, type and  
12 amount of the debt, and the length of time remaining  
13 before suit would be filed. Now, that doesn't seem like  
14 such a big deal to us today, but I mean, come on, this  
15 was 1788. And the efficiency of these printed forms,  
16 combined with the specter of what we then had, debtors'  
17 prison, caused many consumers to decide that their  
18 better course was to pick up and move to the American  
19 frontier. Indeed, this happened so frequently in the  
20 late 18th Century that "gone to Kentucky" became a  
21 euphemism for migrating west to avoid your debt  
22 collectors.

23 Now, later in our history, technological  
24 developments made it, of course, more affordable for  
25 collectors to make long-distance calls to consumers, and

1 now collection calls are far more efficient because of  
2 the introduction of automatic and predictive dialers.  
3 In addition, advances in hardware and software have  
4 enabled collectors to create and use information in  
5 extensive databases for better profiling and tracking.  
6 And, of course, the emergence of the internet over the  
7 past decade has opened up new possibilities for  
8 communication and has facilitated instantaneous  
9 processing of payment of debts.

10 Now, given the changes that have occurred since  
11 the FDCPA was passed, this is an opportune time for us  
12 to assess whether changes are needed in order to improve  
13 our consumer protection efforts. Significantly, the FTC  
14 continues to receive more complaints about third-party  
15 debt collectors than about any other single industry.  
16 The number of these complaints has been increasing  
17 steadily for a number of years, reaching nearly 70,000  
18 in 2006, and as we look at our complaints that are  
19 coming in so far for 2007, it looks like they're coming  
20 in now at an even greater rate. Complaints about this  
21 industry have also increased as a percentage of the  
22 number of complaints that the FTC receives as well.  
23 Now, consumer complaints are not all representative of  
24 violations of the law, but still, this large absolute  
25 number of complaints and this trend over time warrants a

1 hard look at the current state of debt collection. I  
2 anticipate that the robust and informed debate over the  
3 next two days will help us to identify current problems  
4 as well as possible solutions that would enhance  
5 consumer protection without unduly burdening legitimate  
6 debt collection.

7 In the meantime, as we explore new issues, the  
8 FTC continues to use our law enforcement tools, our  
9 consumer education, and the promotion of industry  
10 self-regulation to fulfill our mission. Our recent  
11 cases, I hope, demonstrate that we're going to use all  
12 weapons in our law enforcement arsenal to combat  
13 unlawful debt collection practices. We will pursue  
14 tough remedies, and that includes disgorgement of  
15 ill-gotten gains, consumer redress, and civil penalties  
16 in appropriate circumstances. We will seek, in the case  
17 of egregious violations, we will seek immediate  
18 injunctive relief and, if appropriate, asset freezes.

19 For example, earlier this year, the Commission  
20 alleged FTC Act and FDCPA violations against a Florida  
21 debt collection agency, Rawlins & Rivera. Our complaint  
22 charges that Rawlins routinely misrepresented to  
23 consumers that they faced immediate legal action and  
24 wage garnishment and that they could spend time in jail  
25 if they failed to pay the defendants promptly. If I can

1 recall correctly, they did so in quite colorful  
2 language. The Commission quickly secured a preliminary  
3 injunction that, among other things, bars the company  
4 from making these false and misleading representations,  
5 from engaging in abusive or harassing conduct when  
6 contacting consumers to collect the debt, and that  
7 litigation is ongoing.

8           We recently secured our largest restitution  
9 award ever in a debt collection case. This case dates  
10 back to 2003 when we filed a complaint against National  
11 Check Control and Check Investors, Inc., alleging they  
12 had violated Section 5 of FTC Act and, again, the FDCPA.  
13 These defendants falsely threatened consumers with  
14 arrest and criminal and civil prosecution to extract  
15 payment from them for bad checks plus exorbitant and  
16 illegal fees. In 2005, the federal district court  
17 granted our motion for summary judgment and ordered the  
18 defendants to pay \$10.2 million in restitution. And  
19 last month, the United States Court of Appeals for the  
20 Third Circuit affirmed the lower court's decision,  
21 including the \$10.2 million judgment. This restitution  
22 amount should demonstrate that those who engage in  
23 unlawful debt collection may have to pay a steep price.

24           Now, in addition to our law enforcement efforts,  
25 we reach out and encourage industry to undertake

1 self-regulatory initiatives to address consumers'  
2 concerns. Self-regulation can encourage voluntary  
3 compliance with the law through adoption of industry  
4 standards that meet or exceed legal requirements and  
5 through educating industry members as to what needs to  
6 be done to comply with these standards, and this is  
7 especially important in an industry that's undergoing  
8 rapid growth.

9           Now, in this regard, I want to recognize the ACA  
10 International Board of Directors for recently revising  
11 its Code of Ethics to enhance the protections that its  
12 members afford consumers. This is a promising  
13 development. And I would note that this week, the  
14 Commission issued an advisory opinion supporting one new  
15 requirement in ACA's Code of Ethics. The Code would  
16 require debt collectors who are ACA members to notify  
17 consumers who disputed a debt in writing if they have  
18 ceased their collection efforts, and we were asked if  
19 they send that letter, would that violate the FDCPA, and  
20 what our advisory opinion concludes is that debt  
21 collectors providing such a notice that they ceased  
22 their collection efforts would not be in violation of  
23 the FDCPA.

24           The final prong of our strategy is effective  
25 consumer education. We recognize that for the FDCPA to

1 be fully effective, consumers have to be aware of their  
2 rights, and often, in this area, they really are not.  
3 Through a variety of consumer education initiatives, the  
4 FTC provides consumers with materials that summarize the  
5 FDCPA's provisions so that consumers know what their  
6 rights are and can exercise them. We are also doing  
7 personal outreach, community events, in schools, on  
8 military bases, to disseminate information about the  
9 rights of debtors. We know that well-informed  
10 individuals can better protect themselves from  
11 unscrupulous debt collectors and may contribute also  
12 valuable information to our database as we continue to  
13 do our job on the enforcement side.

14 Well, the agenda for the sessions to be held  
15 today and tomorrow is ambitious, and it promises to spur  
16 vigorous debate and constructive dialogue, which is why  
17 we're doing it. It's what we want. So, we're very  
18 eager to engage in this, and in an effort to ensure that  
19 our record of this workshop is as complete as possible,  
20 we are going to accept additional comments, written  
21 comments, through November 9th. We look forward to  
22 working with you to identify solutions that adequately  
23 protect consumers without unduly burdening legitimate  
24 debt collectors in performing their important role in  
25 the economy. So, I thank you again for being with us

1 this morning, and without further adieu, I will  
2 introduce Tom Pahl, an Assistant Director in our  
3 Division of Financial Practices, who will moderate your  
4 first session. Thank you very much.

5 (Applause.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1                                   OVERVIEW OF CHANGES IN  
2                                   AND AFFECTING THE INDUSTRY

3                   MR. PAHL: Thank you, Chairman Majoras.

4                   Our first panel will provide an overview of  
5 changes in debt collection and how they affect  
6 consumers. We will discuss the types of debts that are  
7 going into collection, the demographics of debtors, and  
8 the methods that are being used to collect on debts.  
9 We'll discuss changes in debt collection since the FDCPA  
10 was enacted 30 years ago with a particular emphasis on  
11 changes that we've seen in the last five to ten years.  
12 We'll ask the experts on our panel to give us their view  
13 as to what the future of debt collection may look like,  
14 particularly the near future of debt collection.

15                  Our discussions are intended to provide a solid  
16 foundation for more in-depth assessments and discussions  
17 during the rest of the workshop as to the implications  
18 for consumer protection policy of developments in debt  
19 collection.

20                  Before introducing our presenters and panelists,  
21 I want to emphasize that although everything that will  
22 be said during the workshop is important, these  
23 discussions are only part of the information the FTC  
24 will consider in connection with this proceeding. We've  
25 received a large number of public comments, empirical

1 research, and similar types of data. This information  
2 will be critical to us as we move forward in forming  
3 views on debt collection issues, and we want to thank  
4 those who have taken the time and the effort to prepare  
5 these materials for our consideration.

6 As the Chairman noted in her opening remarks, we  
7 will be leaving the public comment period open until  
8 November 9th for submission of additional materials.  
9 So, if someone during the panel presentations over the  
10 next two days expresses an idea that you would like to  
11 respond to or something that you would like to elaborate  
12 on or you'd like to emphasize, definitely submit an  
13 additional comment to us or a new comment if you have  
14 not submitted one in the past.

15 We will listen to everything that is said during  
16 the workshop, of course, we will read everything that is  
17 submitted, and then we are going to form our views as to  
18 what we think should be done in the future with regard  
19 to debt collection and consumer protection.

20 Let's move on to our panel. First, we will have  
21 two presentations. The first presentation will be by  
22 Bill Hampel, the chief economist at the Credit Union  
23 National Association, and he will provide us with an  
24 overview of household debt exposure. Following that  
25 presentation, Robert Hunt, a senior economist with the

1 Federal Reserve Bank of Philadelphia, will follow with  
2 an overview of the collections industry. We are  
3 thrilled to have two such eminent researchers making  
4 presentations to us today.

5 We have three panelists who will be offering  
6 their views on the presentations and who will respond to  
7 questions from the moderator and, time permitting, from  
8 the audience. Rozanne Andersen is the Vice President  
9 and General Counsel of ACA International, a trade  
10 association composed of credit and collection companies  
11 which provide a wide variety of accounts receivable  
12 management services.

13 Jean Ann Fox is the Director of Consumer  
14 Protection at the Consumer Federation of America, a  
15 consumer advocacy, research, and education organization  
16 with broad experience on consumer finance issues.

17 Gary Wood is the President of Collins Financial  
18 Services, Inc., a debt buyer, as well as the President  
19 of DBA International, a trade association of  
20 professionals dedicated to building a reliable and  
21 credible market for delinquent receivables.

22 We are pleased to welcome our esteemed panelists  
23 to help build a foundation for discussions during the  
24 rest of our workshop.

25 So, we will begin first with Bill Hampel's

1 presentation.

2 MR. HAMPEL: Thank you, Tom.

3 Well, I have the easiest job here, because I'm  
4 first while you're all fresh. Usually they put me on  
5 right after lunch for some reason, but this is way early  
6 in the morning, so I am going to take advantage of that  
7 by being as brief as possible.

8 I actually don't know much about debt  
9 collection. That's not my job. What my job to do this  
10 morning is to give you an overview of the extent to  
11 which American households are exposed to debt and also  
12 some recent indicators of potential problems in that  
13 debt which would lead to debt collection activity. So,  
14 mine is sort of the macro view of the overall market  
15 that drives debt collection activities, and then the  
16 really interesting speakers and panelists will come  
17 after me telling me what it is you want to know.

18 (Technical difficulty.)

19 MR. HAMPEL: Actually, if there's one slide you  
20 want to concentrate on, this would be it. You could  
21 probably snooze for ten minutes after this. And let me  
22 tell you, as an economist, typically what I do is I get  
23 to play against the histrionics and the hype that  
24 typically show up in the financial press by some groups  
25 who would like to tell us every day that the world is

1 about to end, having something to do with the fact that  
2 we have too many newspapers to sell and too many cable  
3 TV channels, and, therefore, we need to get lots of  
4 coverage.

5 Therefore, typically what we economists will say  
6 is, well, no, the world is not ending, things aren't  
7 quite as bad as we expect them to be, and whereas I  
8 don't think the world is ending, this chart is somewhat  
9 disconcerting. What this tells us is the total  
10 household -- the U.S. household's exposure to mortgage  
11 and consumer debt and what's happened to this over the  
12 last 25 to 35 years.

13 What we see here, starting on the left, this is  
14 in 1960, the total ratio of household debt, the stock of  
15 debt outstanding -- this is not monthly payments. This  
16 is the stock of outstanding debt to annual disposable  
17 income, annual after-tax income, was just under 50  
18 percent, which meant that the average for all U.S.  
19 households was about six months of after-tax income  
20 would account for paying off all debt.

21 Over the next 25 years or so, if we look ahead  
22 to the mid-1980s, this had increased very slightly to 56  
23 percent, to about seven months worth of after-tax  
24 income. So, not much of an increase over a period of  
25 about 25 years.

1           Skip forward to the next 20 years, the number  
2           had risen to 85 percent, mostly because of an increase  
3           in mortgage debt. Mortgage debt was up to 64 percent of  
4           annual disposable income, and consumer debt was up to 22  
5           percent, but the really remarkable thing is look over  
6           the -- just so far in this decade, in this century, this  
7           decade, this number has gone from about 85 percent to  
8           125 percent.

9           In the short space of less than ten years, the  
10          household sector now has gone from about ten months of  
11          disposable income in order to pay off debt to about 15  
12          months. This is an incredible increase, in  
13          proportionate terms, and this is not just a pure number.  
14          This is the ratio. This is the stock of outstanding  
15          debt divided by annual after-tax income.

16          Incomes have been rising. We have had a strong  
17          economy, growing economy. Incomes have been rising.  
18          Employment's up, but the rate -- the increase in debt  
19          has been so much greater than the increase in income  
20          that we have this huge increase in the ratio of debt to  
21          income. Therefore, a couple things to conclude from  
22          this.

23          First of all, Polonius may have told us not to  
24          borrow, but apparently, people in America, at least,  
25          don't listen to him, because we have had this huge

1 increase in borrowing. I would also point out that  
2 shortly after Polonius said that to his son going off to  
3 college, he was hiding behind a curtain and got killed  
4 for trying to eavesdrop on someone else's conversation.  
5 So, there are a couple messages to be taken from that.  
6 But the main message here is that the household  
7 sector -- and you can draw your own -- the household  
8 sector has exposed itself to a great deal more debt in  
9 the last ten years or so, and this raises the question  
10 of how is the household sector going to be able to  
11 handle this.

12 The next question -- so, that's sort of the  
13 worst way to state the picture. Let's back off from  
14 that a little bit and see what else we can say about it.

15 This next chart is the ratio of debt service to  
16 monthly disposable income. This is monthly payments on  
17 outstanding debt divided by annual after-tax income.  
18 And you can look at this chart -- this starts in the  
19 early 1980s. This is from the Federal Reserve. This  
20 data series doesn't go back as far. This starts from  
21 the 1980s, and for all U.S. households back then, it was  
22 around 11 percent. Eleven percent of monthly income was  
23 required to pay the then existing stock of consumer and  
24 mortgage debt, and by now it's up to 14 and a half  
25 percent.

1           So, we've had an increase in here, but at the  
2 same time that the ratio of outstanding debt to income  
3 almost doubled, the ratio of monthly payments to income  
4 only went up by about 20-25 percent, a much smaller  
5 increase, relatively speaking, in the payments, which  
6 means that the consumer is now more able to handle this  
7 larger stock of debt, apparently, because the payments  
8 have not gone up as much as the debt has gone. If the  
9 payments had gone up as much as the debt had gone up,  
10 this had gone from 11 percent to 22 percent, yikes, you  
11 know, 22 percent of monthly income already accounted for  
12 before you get to spend anything else? That would be a  
13 big problem.

14           So, why did this happen? Well, a couple  
15 reasons. Number one is in the early 1980s, we had the  
16 highest interest rates we've had in the last -- in the  
17 post-war period. Remember, we had the big inflation of  
18 the late 1970s, and Paul Vogel came in to stop that  
19 inflation. To do that, he had to push short-term  
20 interest rates up to 15 percent. Mortgage rates were 12  
21 or 13 percent. So, for a given stock of debt, payments  
22 were much higher, because interest rates were so much  
23 higher.

24           On the consumer side, we've also had the  
25 extension of terms. You know, back in 1980, a typical



1 car loan was 48 months, and now a typical car loan is 60  
2 months or even 72 months. So, we have had extension of  
3 terms. So, consumers are now more able to handle this  
4 larger debt burden because the payments are not as high,  
5 which helps, but there still is this significant amount  
6 of debt that needs to be paid off, and it sort of is  
7 creating a greater call on a household's future income  
8 if it is because of an extension of terms into the  
9 future. So, this means it's not quite as severe a  
10 burden on consumers as we might otherwise expect.

11 This is just my little lesson in how not to  
12 present charts. If you look at the previous chart, you  
13 notice that we went from 11 percent up to 14 percent.  
14 This is exactly the same data. That's from 11 percent  
15 up to 14 percent. People who are trying to get you  
16 excited will present a chart this way, and notice that  
17 the chart begins at 10 percent. You shouldn't ever do  
18 that. If someone has a chart that doesn't begin at zero  
19 on the Y axis, you should ask them why they are trying  
20 to overstate the case. So, if I wanted to get -- to  
21 really scare you, I would say this is what's happened to  
22 debt service, but actually, that's what's happened to  
23 debt service, okay?

24 Okay, moving to the next topic, then, is looking  
25 at a little bit more information specifically on debt

1 service obligations, just homeowners, this is people who  
2 own a home, and, therefore, most of them have a  
3 mortgage, we see that the -- over the last -- from 1980,  
4 the ratio has gone from 14 percent -- 14 percent, this  
5 is an average across all households, of monthly income  
6 was required to pay debt, and now it's up to 18 percent.  
7 That is a significant increase.

8 Now, remember, this is the average. Quite a few  
9 homeowners and quite a few households in the U.S. have  
10 zero credit outstanding, no borrowing, and so when the  
11 average is now 18 percent, that means that a lot of  
12 households have zero, a lot of other households have 30,  
13 35, 40, and 45 percent. The fact that the ratio went  
14 from 14 to 18 percent is, again, a sign that we have a  
15 bigger drain on consumers' financial statements and  
16 budgets because of the requirements to pay past debt.

17 What do consumers think about this? Well, once  
18 a year for the last seven years there, Credit Union  
19 National Association, CUNA, who I work for, and the  
20 Consumer Federation of America have jointly done a  
21 survey. We do this just around Thanksgiving time. We  
22 ask households what their holiday spending plans are.  
23 One of the questions we've asked every time is, how  
24 concerned are you about your ability to handle your  
25 consumer debt? We ask two versions of this question.

1           One is, if you're going to be spending a credit  
2 card for holiday spending this year, how concerned are  
3 you about being able to pay that off? And then the next  
4 we ask is, just in general, how concerned are you about  
5 your ability to pay your debt?

6           Notice here from 2000 through 2004, there was a  
7 steady decline in households' express concern of their  
8 ability to handle their holiday spending credit card  
9 debt from -- combined, if we add up the somewhat  
10 concerned and the very concerned, it was 35 percent in  
11 2000, which was just before the last recession, which  
12 was in 2001, to a low of 22 percent, and it was 25  
13 percent in 2004 and 2005. In 2006, it's back up, and  
14 this is almost a year old now. So, starting a year ago,  
15 households were beginning to tell us they're getting a  
16 little bit more concerned about paying their debt. We  
17 will be doing this survey again in about a month, and  
18 we'll have new data, so stay tuned for that.

19           More broadly, we ask, how are you concerned  
20 about paying your debts in total? There's less of a  
21 drop here, but we get the same result, and 2004 and 2005  
22 were the low periods. In 2004, 38 percent, in 2005, 35  
23 percent of households expressed concern, and that is now  
24 up to 43 percent in 2006. I would expect that this is  
25 going to be pushing 50 percent when we ask this question

1 about a month from now. We will have to stay tuned to  
2 see what the result is.

3 Okay, if we've had a big increase in household  
4 consumer indebtedness over the last five years  
5 particularly, but a long, secular trend over the last  
6 four years, how is this debt distributed according to  
7 the ability to handle it? If all of the debt is held by  
8 people with really high incomes, it's much less of a  
9 concern than if it tends to be concentrated in lower  
10 income groups. So, what I'm about to show you in the  
11 next three slides has to do with how debt is distributed  
12 by household income.

13 Before I do that, this slide is not debt. This  
14 is income. This is how household income is distributed  
15 by quintiles of income distribution. So, the first  
16 quintile over there is the bottom 20 percent of income  
17 distribution earns 3 percent of all income. This is  
18 from 2004, the Fed Survey of Consumer Finances. The  
19 second quintile, that quintile has 7 and a half percent  
20 of all household income. So, if you're doing the  
21 numbers in your head with me, we're up to about 10 and a  
22 half percent of household income is earned by the bottom  
23 40 percent of income distribution.

24 Throwing in the third quintile, we add another  
25 12 percent, so we're at 23 percent of total now. I'm an

1 economist, so we will call that a quarter, that the  
2 bottom 60 percent of income distribution earns about a  
3 quarter of all income. The next quintile gets 20  
4 percent of all income, so we're up to 42 percent,  
5 pushing 45. The top quintile has 57 percent of all  
6 household income. The top one-fifth of income  
7 distribution has 57 percent of it, and, in fact, most of  
8 that, 43 percent of that, is concentrated in the top 10  
9 percent. The other 15 of that 57 is in the 80th to the  
10 90th percentile group of income distribution. So,  
11 that's how income lies.

12 What we're going to do now is, keeping those on  
13 each chart, show how debt is distributed. The first one  
14 is credit card debt. Most credit card debt is held by  
15 upper income households. Twenty-nine percent of it is  
16 held by the top quintile, which is more than 20 percent,  
17 so that's disproportionate. Twenty-six percent of it is  
18 held by the fourth quintile, but notice that, relatively  
19 speaking, lower income households have a greater share  
20 of credit card debt than they have of income, about two  
21 to one.

22 The first quintile has 6 and a half percent of  
23 credit card debt, 3 percent of income; the second  
24 quintile, 14 versus 7; similarly, the third quintile, 24  
25 versus 12 percent. So, we get the fact that in terms of

1 credit card debt, lower income households tend to have a  
2 higher proportion of credit card debt relative to their  
3 proportion of household income. Therefore, credit card  
4 debt is, of course, a bigger burden on lower income  
5 households.

6           Installment loans, this is non-credit card,  
7 non-mortgage debt, basically car loans, okay? There are  
8 a few other things in there, but the vast preponderance  
9 of this is car loans. We will get a very similar result  
10 here, that lower income households tend to have about a  
11 two to one ratio of their share of installment debt to  
12 income.

13           Mortgage on primary residence, we get a very  
14 different result here, that the proportion of mortgage  
15 debt owed by household income group is -- for the lower  
16 income groups is fairly close to their proportion of  
17 income. 2.7 percent of mortgage debt is owed by the  
18 lowest quintile, and they have 3.1 percent of the  
19 income; just under or just over 7 percent for the second  
20 quintile; and the middle and the upper income quintiles  
21 have, of course, a slightly greater share of mortgage  
22 debt.

23           So, mortgage debt, which has been most of the  
24 increase in household indebtedness for the last ten  
25 years, tends to be concentrated more in the middle and

1 the upper income group compared to installment debt and  
2 consumer credit, and, therefore, much -- you know, of  
3 course, all the stories in the paper the last few months  
4 have been about the subprime market, but most of the  
5 growth of debt in the last ten years has been in  
6 mortgage debt. Most of that debt is owed by people in  
7 the upper portion of the income distribution with a  
8 great wherewithal to be able to pay it.

9 As you may see from now, in a lot of these  
10 measures, the glass is half full or the glass is half  
11 empty. This one suggests that the glass is not quite as  
12 empty as some people suggest it is. And this is if we  
13 add all household debt together. Since mortgage debt is  
14 the preponderance of total household debt, these numbers  
15 look pretty close to the household debt.

16 Just some recent behavior of commercial bank  
17 charge-off data, sometimes to show where problems have  
18 been rising and what we might expect to happen. This is  
19 from 1985 through 2006, so this is about 20 years.  
20 There's a long upward trend here in charge-offs at  
21 banks. The first time is in 1991, which is during the  
22 recession of 1991. I have no clue as to why it went up  
23 in 1997. That wasn't a recession, but something was  
24 going on with the credit card market then. It backed  
25 off a bit and then rose again in 2001 because of the

1 last recession and has been backing off some since then,  
2 but it is still higher relatively speaking than it was  
3 20 years ago.

4 This is credit card debt. Most of the  
5 volatility in bank charge-offs come from credit card  
6 debt, rose from about 2 percent in the early 1980s to a  
7 peak of 6 percent just after the last recession, has  
8 been backing off and is now down around 4 percent.  
9 Non-credit card debt, commercial bank charge-offs are  
10 much more well behaved, much less of the volatility  
11 here, a low of a half a percent, a high of 1 and a half  
12 percent, and back down to about 1 percent there.

13 Of course, now, if you have been watching in all  
14 of these, there is a spike about a year and a half ago.  
15 That was, of course, just after the passage, just before  
16 the implementation, of the change in the bankruptcy law,  
17 when everybody rushed to file bankruptcy. Here we see  
18 it, the Chapter 7 spike in the third and fourth quarter  
19 of 2005, dropped off dramatically in the first quarter  
20 of 2006, but has begun to rise since then. Here we see  
21 just Chapter 7, the big drop-off in and the increase,  
22 and here we see Chapter 13. I don't think the law was  
23 supposed to do this, but this is just in terms of  
24 consumers' understanding of how things happened, less of  
25 a drop-off, and there has been a slight increase of



1 Chapter 13 relative to Chapter 7, but in my view, it's  
2 way too early to see what the effect of the change in  
3 the bankruptcy law is likely to be from all of this.

4 So, summarizing, what my data suggests is the  
5 household sector is much more exposed to consumer credit  
6 than it has been for a long time; in fact, than it ever  
7 has been. We are at a record level now of the ratio of  
8 total debt outstanding to household income. There are  
9 some reasons to be concerned about this. Number one,  
10 the number is so high, if nothing else, it is going to  
11 be a drag on the economy. It also suggests that the raw  
12 material for debt collection issues is as great as it's  
13 ever been. The ground is as fertile as it's ever been,  
14 because there is just so much debt outstanding.

15 On the other hand, with lower interest rates and  
16 longer terms, the monthly payments have not gone up  
17 quite as much, and this suggests that this is perhaps  
18 not as severe an issue as it may otherwise be.

19 And secondly, for the most part -- and this is  
20 mostly because the vast majority of lenders who lend  
21 money would like to get it paid back without having to  
22 get into collection, because it's cheaper that way, and,  
23 therefore, they ask a few questions typically before  
24 they make the loan. Because of that, the vast majority  
25 of the increase in debt, especially the mortgage debt,

1 is held by households in the upper half of the income  
2 distribution who have more wherewithal, ability, to  
3 handle it.

4 So, it is going to be an interesting period, of  
5 course, as we're approaching what I'm also expecting, as  
6 an economist, is that the economy, at best, going to  
7 slow down considerably over the next year or so, if not  
8 fall into a recession, which will, of course, create  
9 additional issues for us to have to deal with.

10 MR. PAHL: Thank you, Bill.

11 (Applause.)

12 MR. PAHL: Before moving on to our next panel,  
13 I'd like to give the other panelists -- excuse me, our  
14 next presenter, I would like to give the other panelists  
15 a very, very brief opportunity to comment or to offer  
16 any thoughts or observations about Bill's presentation.

17 Gary?

18 MR. WOOD: I think if you'll read further in  
19 Shakespeare, you'll find that upon the death of his  
20 father, Polonius' son got a guaranteed student loan, and  
21 that was subsequently securitized and sold into the open  
22 market, thereby providing an investor the opportunity to  
23 earn and the son the opportunity to get his education.

24 MR. PAHL: Jean Ann?

25 MS. FOX: Yes. Another family economic point to

1 put on the table with Bill's presentation is the fact  
2 that only 40 percent of American families have separate  
3 emergency savings, because it's the ability to reach  
4 into your savings and meet an unexpected expense or a  
5 sudden drop in income that helps people cope with a  
6 level of debt that they have, and we know that the  
7 consumers who do not have separate emergency savings are  
8 most likely to be young and low income and minority  
9 consumers, the same folks who are most likely to be  
10 using extremely high-cost emergency credit.

11 We know that for a family that makes \$25,000 a  
12 year and has at least \$500 in emergency savings, they  
13 are much less likely to take out a payday loan, which is  
14 an emergency, quick cash kind of product.

15 MR. PAHL: Thank you.

16 Rozanne?

17 MS. ANDERSEN: We have a couple of observations  
18 I'd like to share.

19 First of all, for the record, I would like to  
20 say that the conclusion that an increasing debt  
21 correlates to an increase in issues needs further  
22 examination. An increase in consumer debt may give  
23 cause for concern for a group such as ours to consider,  
24 but not necessarily rising issues, particularly in the  
25 realm of consumer protection.

1           Second of all, while I understand the purpose of  
2 Mr. Hampel's setting the stage, we absolutely -- I would  
3 accept his statistics but would like to offer that while  
4 he described the American public's exposure to consumer  
5 debt, this audience is hopefully here today to discuss  
6 what happens after that exposure occurs and to address  
7 the responsibility that each party to a credit  
8 transaction has, beginning with the creditor in terms of  
9 the origination of the exposure, if you will; and their  
10 lending practices, the debt collection and debt buying  
11 community in terms of their responsibilities when  
12 collecting debt, the exposure, if you will; consumers,  
13 in making the decision to borrow and to purchase; and  
14 finally, government, to protect a free market system and  
15 a credit reporting system that remains in place.

16           MR. PAHL: Thank you.

17           Robert, if you would like to --

18           MR. HUNT: I would just like to comment on that  
19 puzzle that Bill had about the increase in charge-offs  
20 on credit cards around '97, which was a good period for  
21 the economy. It was also a few years after a number of  
22 credit card lenders began experimenting with offering  
23 subprime credit cards, and they learned how to do it the  
24 hard way. That's one way to put it.

25           MR. PAHL: Thank you very much.

1           We have Robert's presentation next.

2           MR. HUNT: So, Bill did a good job of making the  
3 Fed look like it knew a lot of things. I'm up here to  
4 prove the opposite.

5           First of all, I want to thank the Federal Trade  
6 Commission for the opportunity to come present today. I  
7 would also like to thank the Bank's Payment Card Center  
8 for their support in my research and ACA International  
9 for sharing a number of statistics with me.

10           I have to add a disclaimer, that everything I'm  
11 going to say at this workshop is my own views and not  
12 necessarily those of the Federal Reserve Bank of  
13 Philadelphia or of the Federal Reserve System.

14           Before I launch in, I want to make a point  
15 that's very clear to probably everybody in the room, and  
16 that is, all sorts of businesses engage in the  
17 collections of debts that are owed to them. That's not  
18 very surprising. Now, a small subset of firms actually  
19 specialize in collecting the debts of others, and we  
20 call those third-party collectors, and why do we care  
21 about that? Well, because the Fair Debt Collection  
22 Practices Act is largely directed at third-party  
23 collectors.

24           Just to make this point clear, simply by  
25 counting the number of bill collectors employed by

1 various industries, we can get a sense of how important  
2 it is for different industries to engage in collection  
3 of their own debts, and so I've just kind of -- there  
4 were roughly half million bill collectors in the U.S.  
5 economy a few years back, and as you see, third-party  
6 collection agencies do account for the largest number of  
7 bill collectors, and they do have the largest share of  
8 all bill collectors, but, in fact, it's only about a  
9 fifth of the total. So, the other important industries  
10 here are financial services, healthcare, the wholesale  
11 and retailing industries, and although it's a little  
12 less clear to see in this diagram, also  
13 telecommunications companies and utilities.

14 Now, on this slide I'm going to focus just on  
15 the third-party collectors. So, this is a large  
16 industry. They represent about 4500 firms. It employs  
17 about 150,000 people. And what's interesting is that  
18 employment in this industry has grown fairly rapidly for  
19 a number of decades now, but I was looking over some  
20 numbers recently, and there's been little or no growth  
21 in employment for three or four years, and I don't have  
22 an answer for why that's the case. I just think that's  
23 an interesting fact.

24 Now, at least by one estimate, \$40 billion was  
25 recovered on behalf of creditors by third-party

1 collectors in those same years, and in addition,  
2 third-party collectors retained about \$11 billion in  
3 commissions, and we know from other data, two-thirds of  
4 their revenues -- actually, a little more than that --  
5 is obtained by collecting on consumer debts.

6 Now, it's very interesting to study the growth  
7 of this industry over time, and so what I've done is  
8 compile some statistics from 1972 and 2002. These are  
9 the last -- that's the last year of the economic census  
10 I can show you, and I adjust for inflation where it's  
11 appropriate. So, as Bill was pointing out a few moments  
12 ago, real consumer credit has grown a lot. In fact,  
13 it's tripled in this 30-year period, and that is, in  
14 fact, more rapid growth than the economy as a whole.

15 Collection industry jobs have quadrupled,  
16 though, and inflation-adjusted revenues have increased  
17 by six times over this 30 years year period. So, the  
18 conclusions are obvious. Third-party collections is a  
19 growth industry, and, in fact, it's enjoyed significant  
20 growth and labor productivity over these 30 years.

21 Now, this is the composition of the customers of  
22 third-party collectors. This is based on a survey of  
23 ACA members, done in 2006, and as you can see the mix of  
24 customers, healthcare is extremely important, and so is  
25 financial services. Other important customers for this

1 industry include telecommunications companies,  
2 utilities, and the student loan market, which we just  
3 talked about a moment ago.

4 Now, there are two caveats to this particular  
5 set of numbers. The first is that in the healthcare  
6 group, this includes some accounts receivables that are  
7 in good standing that are being managed by third-party  
8 collectors on behalf of healthcare firms, okay? And the  
9 other caveat is that you don't see retailers in this  
10 chart, but, in fact, the retailers are included in the  
11 part for finance.

12 So, if you went back a few years earlier and  
13 looked at some census data, what you would see is the  
14 healthcare share would be a little over 30 percent, and  
15 retailers would account for about 10 percent of this 29  
16 percent you see here for financial services. The bottom  
17 line doesn't change, though. This is a good  
18 rank-ordering of the important customers of the  
19 third-party collections industry, and it doesn't change  
20 that much over time.

21 Now, the data being presented here again is ACA  
22 statistics. What I'm giving you here is the median  
23 performance of collection agencies based on a survey,  
24 and by median, I mean that one-half of the firms that  
25 are surveyed are going to report a number larger than



1 I'm going to give you here, and one-half are going to  
2 report a number that's lower than what I'm reporting  
3 here. So, for example, the median recovery rate is 16  
4 percent. That means for every dollar of accounts I'm  
5 collecting on, I can successfully recover 16 cents.

6 Now, if I look on a per-account basis, the  
7 median firm is able to collect about \$68 on a median  
8 balance of about a little less than \$450. Again, on a  
9 per-account basis, the agency is going to be able to  
10 keep a median amount of \$21, and the median expense per  
11 account is \$17. At the end of the day, the median  
12 profit, again, per account, is only \$2.

13 Now, compare this, looking at the gross  
14 collections per collector at the median agency, that's  
15 \$400,000 a year. So, it's pretty clear that the way to  
16 make money in this business is to collect on lots and  
17 lots of accounts.

18 And while we're on the topic of obvious advice  
19 for successful collections agencies, here are a few more  
20 points. Clearly, you have to recruit and train  
21 productive staff. This is not as easy as it might  
22 appear. The job of being a bill collector is rather  
23 unique, and it's not always pleasant. In addition,  
24 there's state and federal regulation of this industry  
25 that is fairly complicated, and firms must invest in

1 systems and training to ensure that they are in  
2 compliance with these regulations.

3 The other ingredient is to acquire a lot of  
4 accounts on good terms, and that means you're going to  
5 have to develop relationships with creditors and other  
6 clients, and this is especially important in a period  
7 when your clients are experiencing a lot of  
8 consolidation. Some firms are purchasing the accounts  
9 outright, and I'll mention this in a little more detail  
10 in a moment.

11 Of course, you need to triage these accounts.  
12 By that I mean you need to rank-order these accounts by  
13 the likelihood that you are able to successfully collect  
14 on them, and today there's all sorts of technologies  
15 that let you do that, screening and collection scoring  
16 systems, for example, and many firms monitor bureau  
17 activity of the underlying consumers, looking for an  
18 improvement in the prospects of those consumers.

19 And lastly, you need to contact as many good  
20 prospects as possible, and this is where the automated  
21 and predictive dialers come in, and also having access  
22 to efficient skiptracing. By that I mean the ability to  
23 obtain the most recent contact information on these  
24 consumers that you can.

25 Now, as the Chairman mentioned just a few

1 moments ago, the Fair Debt Collection Practices Act is  
2 30 years old, and the industry has changed a great deal  
3 since then, and this slide gives you three types of  
4 changes that have affected the industry.

5 First of all, there are technological advances.  
6 Clearly, as in many other industries, the cost of  
7 information technology has fallen dramatically.  
8 Conversely, the quality of information technology has  
9 increased dramatically. In addition, credit bureau data  
10 is a lot better than it used to be, and at least for the  
11 largest firms, it has become a lot less expensive to  
12 obtain.

13 Secondly, there's a lot more concentration  
14 amongst lenders that serve consumer credit, and so what  
15 I have here is a table that looks at the share of all  
16 credit card receivables by the largest four portfolios  
17 amongst banks and savings and loans over the ten-year  
18 period ending in 2005, and as you can see, that share  
19 tripled in that ten-year period. So, consumer credit is  
20 a lot more concentrated than it used to be.

21 And the third point is that creditors now sell a  
22 significant amount of their defaulted loans.

23 Now, how are all of these trends affecting the  
24 collections industry? Well, first of all, collections  
25 firms have gotten a lot bigger. Now, what I've done

1 here is I've taken the total revenues of the industry,  
2 and I've broken it up by the firms that obtained these  
3 revenues by the size of the firms, and size of firms  
4 here is measured by the number of employees. So, if you  
5 look at smaller collections firms, for example, and by  
6 that I mean firms that collect -- that have 40 -- 50 or  
7 fewer employees, back in 1987, these firms accounted for  
8 more than half of all industry revenues. In fact, it  
9 was 60 percent. In 2002, their share had fallen by  
10 half. In fact, they collect less than a third of all  
11 industry revenues now.

12 Now, let's look at the other spectrum here.  
13 Amongst the largest collection firms, and by that I mean  
14 firms that employ 500 or more employees, in 1987, these  
15 firms accounted for 15 percent of all industry receipts;  
16 in other words, a quarter of the share of the small  
17 firms I just described to you. By 2002, their share had  
18 more than doubled. In fact, they account for more than  
19 a third of all industry receipts today; in fact, more  
20 than all of these smaller firms now collect.

21 And another interesting point about this is that  
22 the most rapid growth amongst these largest firms  
23 occurred in the last ten years, and that explains what  
24 I'm about to show you in the next slide, which is the  
25 sort of standard measure of industry concentration that

1 you usually see. What you do is you add up the sales of  
2 the largest four, eight, or 20 firms and calculate that  
3 as a share of revenues, and you see the data in the  
4 table. Notice that the concentration ratios don't  
5 change that much until after 1997. Thereafter, they get  
6 a bit more concentrated, and that corresponds to exactly  
7 the period when these largest collections firms appear  
8 to have grown the most rapidly. Now, this is not a  
9 particularly concentrated industry when compared to a  
10 lot of other industries, but it is clear that it has  
11 gotten more concentrated over the last ten years.

12 Now, this figure tells us about the rapid growth  
13 in the sales of defaulted consumer debt since the early  
14 1990s. Now, most of the debt that's in this figure  
15 represents the debt that is sold originally by the  
16 creditor, but I have to caution you here, because some  
17 of this debt is sold more than once. So, there's  
18 double-counting in these numbers, and there's no way I  
19 can tease that out.

20 Also, this figure is showing you the face value  
21 of the debt that's sold. Now, in fact -- and I'm  
22 speaking very roughly here -- most of this debt is sold  
23 for something like 3 cents to 5 cents on the dollar.  
24 So, if you looked at 2006, for example, the total value  
25 of the transactions would represent something like --

1 and, again, very roughly speaking -- \$2 to \$3 billion  
2 being sold.

3 And the last thing you should take away from  
4 this figure is that by far, the largest share of the  
5 debt being sold is defaulted credit card receivables.

6 Here's some more information about the debt  
7 buying market. At least according to one estimate,  
8 collections on its purchased debt are about \$2 billion a  
9 year, and so this is about a fifth of the industry's  
10 revenues now. That's pretty significant.

11 Relative to the collections industry as a whole,  
12 it's also a more concentrated market. So, if you look  
13 at just the bad credit card debt that's being sold, only  
14 ten buyers accounted for 80 percent of that debt being  
15 sold.

16 Now, how is this debt being financed? Well,  
17 generally, there are three sources. There's investment  
18 from Wall Street. A number of these firms are, in fact,  
19 publicly held companies, and so they have sold more  
20 stock in order to purchase more of this debt. And  
21 finally, a number of these firms are issuing  
22 asset-backed securities. By that I mean they are  
23 pledging future collections on these purchased debts in  
24 order to retire the securities that they have issued.  
25 And the last point that I would mention here is that if

1 you look at credit card receivables, the average price  
2 of this debt being purchased has been rising over time.

3 Now, here's kind of a strange slide. Only an  
4 academic would write it down. What I'm asking here is,  
5 what is an ideal collections process and why would you  
6 regulate a collections process in the first place? And  
7 so this story works something like this. What you want  
8 to do is to sort between two groups of consumers. On  
9 the one hand, you have consumers who are simply unable  
10 to pay their debts. On the other hand, you have  
11 consumers that are able to pay their debts, but they're  
12 simply not willing to. So, we're going to call this  
13 group the can'ts, and we're going to call this group the  
14 won'ts, okay? Ideally, you want to be able to separate  
15 between these two and focus on the won'ts, because  
16 you're not going to get anything out of the can'ts.

17 Now, suppose that this is hard to do. After  
18 all, the won'ts have every incentive to masquerade as  
19 the can'ts. Now, the natural response of a creditor is  
20 increase the implicit and explicit cost of not paying  
21 your debts. That's how you're going to induce these  
22 won'ts to pay more of their debts, but, of course, if  
23 you can't tell the difference between the can'ts and the  
24 won'ts, you're applying these extra costs to both groups  
25 of people.

1           And what can make this worse is if consumers owe  
2 debts to multiple creditors, then, in fact, these  
3 creditors are competing against each other for the  
4 limited resources that the consumer has, either income  
5 or assets, okay? And that is at least one rationale for  
6 government intervention, either the parameters of a  
7 consumer bankruptcy law, perhaps limitations on creditor  
8 remedies, or state or federal regulation of collections  
9 activity, but I would point out that these interventions  
10 also impose costs. In particular, they can affect the  
11 pricing and availability of consumer credit. I'd like  
12 to say, we know, everything we need to know about those  
13 effects. We know a little bit; we need to know a lot  
14 more.

15           This slide is a little duplicative, so I want  
16 you to focus on the last two bullet points. There is,  
17 in fact, very little formal research on the effects of  
18 the collections process. This stands in contrast to a  
19 huge literature on the effects and the costs and the  
20 benefits of consumer bankruptcy law, and what research  
21 there is is actually quite old. Most of it ends around  
22 1992. Quite a bit of it is older than that.  
23 Fortunately, I think that's about to change, but the  
24 bottom line remains, there's a lot to be learned, and  
25 there's a lot more data to be gathered. So, there is my



1 plea for data.

2 Here's something we want to understand better,  
3 and this was actually a point that the Chairman made  
4 earlier this morning. These are the number of  
5 complaints that are filed by consumers in regards to  
6 collections to the Federal Trade Commission, okay? Now,  
7 this is simply a number. It says nothing about whether  
8 these complaints are valid. It says nothing about  
9 whether these complaints are alleging a violation of  
10 law. Nevertheless, there is clearly a rising trend.

11 Now, some of this trend might be explained by  
12 the fact that, over time, consumers are getting more  
13 comfortable with the internet, and, of course, that's  
14 one way you can file a complaint with the Federal Trade  
15 Commission. We also have the 2001 recession, and so  
16 part of this may actually be the aftermath of that  
17 recession in the data.

18 But what's interesting about this pattern here  
19 is that the rate of growth in complaints for third-party  
20 collectors is a lot higher than it is for the creditors  
21 themselves. Now, I don't know why that's the case. I'm  
22 very interested in explaining why that may be the case  
23 and understanding that, and I'm also interested if that  
24 has any implication -- and it may or may not -- for  
25 policy. But at this point, I don't think we really

1 know.

2 Thank you for your time.

3 (Applause.)

4 MR. PAHL: Thank you, Robert, and as with Bill's  
5 presentation, I guess I'd like to give each of the  
6 panelists an opportunity to offer any very brief  
7 thoughts on the information Robert presented.

8 MS. FOX: Well, thank you.

9 Robert asked, well, why the increase in  
10 complaints to the Federal Trade Commission, and I think  
11 it helps to look at what else has been going on in the  
12 credit market over this period of time. We've had a  
13 serious erosion in consumer protections, especially at  
14 the state level with preemption of state usury limits,  
15 exportation of home state deregulated interest rates,  
16 especially for credit cards. Back in 1977, when this  
17 law was enacted, states regulated what credit cost, and  
18 that's much less the case today.

19 We've had an increase in abusive credit  
20 practices and products that have come on the market.  
21 Who would have thought back in 1977 that the majority of  
22 states would condone check-kiting for credit at 400  
23 percent annual interest due in full on your next payday?  
24 And we've also had the end of meaningful underwriting  
25 and determining of ability to repay for consumers.

1           So, there are credit trends and consumer  
2 protection trends that need to be lined up beside the  
3 debt information from Bill Hampel and the credit  
4 collection information from Mr. Hunt.

5           MR. WOOD: Bob, I'd just like to comment on your  
6 remarks concerning the consolidation in the debt  
7 collection industry. I hope people don't think that's a  
8 bad thing. The fact is that as the regulations, the  
9 licensing requirements, the compliance requirements,  
10 have grown, they have become more and more onerous.  
11 Small debt collection companies probably are less able  
12 to understand those and deal with them properly, and so  
13 unless we're running into oligopoly power, which as a  
14 recovering economist, I don't see us doing, I don't see  
15 that it's a problem that we're getting that kind of  
16 consolidation. I think probably we'll get better  
17 customer service, better understanding of the  
18 requirements, better licensing, better compliance. So,  
19 I think that's not a problem.

20           MR. PAHL: Rozanne?

21           MS. ANDERSEN: Thank you.

22           In the interest of time, I'd like to focus on  
23 ACA's and possibly the entire industry's concern in  
24 general about the complaint statistics. I would say  
25 that we would also welcome more industry research about

1 complaints, about the underlying cause for those  
2 complaints, and about reasonable measures to resolve  
3 those complaints for consumers.

4 But what is problematic, for the record, I would  
5 like to explain that ACA takes exception to the  
6 methodology and the reporting of the complaints in the  
7 following sense:

8 Here we have a notable economist sitting at this  
9 table using that criteria, though very well couched and  
10 qualified -- I do appreciate that on behalf of all -- to  
11 reflect a certain level of industry compliance and to  
12 raise questions. Those questions and that dialogue are  
13 very, very good, but ACA would submit that absolutely  
14 there is no question that the FTC is the chief law  
15 enforcement authority over this industry and can do what  
16 it will, as it so chooses, with the complaint intake  
17 system, but when it comes to reporting publicly or  
18 reporting to Congress about the level of industry  
19 compliance, ACA would request a further dialogue about  
20 analyzing those numbers so that we know really, is it  
21 true that it's a reflection of industry-level compliance  
22 or the level of compliance of a mere few?

23 Thank you.

24 MR. PAHL: Thank you, Rozanne.

25 What I would like to do now is turn and ask some

1 questions of the panelists. I would encourage folks in  
2 the audience who may have their own questions that they  
3 would like posed to write them out on a card, hold the  
4 card up, someone will collect them and bring them up,  
5 and, time permitting, we will pose as many of those  
6 questions as we can.

7 I guess the first question I'd like to ask, I  
8 guess I would direct to Robert and Jean Ann, and I  
9 guess -- you know, I think, Robert, you had indicated in  
10 your presentation that it looks like the types of debt  
11 have not changed much over the years, and I'm wondering  
12 whether you and Jean Ann think that that's likely to  
13 continue -- whether that's true, whether it's likely to  
14 continue, and what effect that may have for consumer  
15 protection policy going forward.

16 MR. HUNT: Is this working? I can't tell.

17 UNKNOWN SPEAKER: No.

18 MR. HUNT: Hopefully you can hear me.

19 Actually, what I was describing was the customer  
20 mix, not necessarily the composition of the debt being  
21 collected on, and I don't think that's the same. For  
22 example, what is clear is that a lot of what's being  
23 collected on is credit card debt. If you just look at  
24 what's going on in the retail sector, in fact, almost  
25 all of those credit programs are now run by banks. So,

1 in fact, that's just one change amongst others.

2 And I would just -- I want to respond real  
3 quickly to what Gary was -- Gary thought I was making a  
4 statement about an oligopoly forming in the collections  
5 industry, and I don't think that we're anywhere near  
6 anything like that. I was simply pointing out that we  
7 have gotten a little more concentration.

8 MS. FOX: Well, we recognize that consumers have  
9 problems with debt when they have an interruption in  
10 their income, when they have unexpected expenses, but  
11 also when they face unaffordable credit products that  
12 are easy to get and hard to pay, and I expect that we  
13 will continue to see a run-up in credit card debt  
14 collection as you have students coming out of college  
15 with heavy credit portfolios that they have to carry  
16 along with their student loans and their start in life.

17 But I think you'll also see an increase in  
18 collection problems with the extreme high-cost,  
19 short-term products that are now on the market that  
20 weren't there 30 years ago, payday loans that are  
21 secured by a personal check that will bounce on their  
22 next payday if it's not paid in full that cost 400 to  
23 780 percent annual interest. Consumers are paying  
24 almost \$5 million a year for those debts and are one pay  
25 cycle away from disaster.

1           Car title loans that cost 300 percent annual  
2 interest, secured by the title of the car you own free  
3 and clear, due at the end of the month at 300 percent  
4 interest. So, there's an increase in credit that's  
5 extended to consumers who are having trouble making ends  
6 meet, who don't have emergency savings, who are at the  
7 end of their rope already or they wouldn't be paying  
8 such high rates, and those loans are generally made  
9 without regard to ability to repay.

10           So, I expect we'll see an increase in collection  
11 problems there if we don't have an improvement in  
12 consumer protections.

13           MR. WOOD: I just can't let that go.

14           MS. FOX: Go ahead.

15           MR. WOOD: Surely the purpose of this workshop  
16 is to talk about collection issues, not credit policy  
17 issues. The FTC doesn't have any control over the  
18 payday loan industry. They are regulated by the states.  
19 They don't have any control over the banks and the kinds  
20 of credit that they extend. And so I think we need to  
21 focus on the problems with collections, not the problems  
22 that may be subsequently generated for the collection  
23 industry by loan practices that maybe none of us here  
24 would agree to.

25           MS. ANDERSEN: And from the collections

1     standpoint, with regard to the type of consumer debt and  
2     what of that triggers any need for additional consumer  
3     protections, we would submit that all consumer debt  
4     needs to be collected in compliance with the Fair Debt  
5     Collection Practices Act and the 39 or so state laws  
6     that control this kind of activity. Notwithstanding the  
7     type or nature of the debt, all consumer protections  
8     need to be in place.

9             MS. FOX: Tom, can I respond real quickly?

10            MR. PAHL: Sure.

11            MS. FOX: We think that the Federal Trade  
12     Commission does have a role with some of these problem  
13     credit products. We think check-holding for loans is so  
14     close to the practices that are prohibited by your  
15     credit practices rule, that the Federal Trade Commission  
16     should just prohibit lending based on personal check  
17     held for future deposit.

18            And I appreciate Gary's point, but the raw  
19     material for debt collection is debt, and I think for  
20     this first panel, we need to understand what's going on  
21     in the credit market, because it has a direct bearing on  
22     what ends up in collections.

23            MR. HAMPEL: Just on the overall question,  
24     there -- and the long-term trend over the last 20 years,  
25     the two sorts -- types of household debt that have seen



1 the most growth are credit card and home equity, and I  
2 don't know what that means for you guys in terms of what  
3 the collection practices are, but, you know, credit card  
4 tends to have the highest charge-off and the most  
5 collection issues, the worst credit quality, other  
6 things being equal. So, that's where most of the growth  
7 has been.

8 And then also, home equity loans for tax  
9 purposes. The standard car installment loan has  
10 actually been atrophying. It has not been growing as  
11 fast as most other types of credit. So, there have been  
12 some changes in the mix there.

13 MR. HUNT: This is not really a comment about  
14 the mix of debt but about the amount of exposure to  
15 consumers. By some measures, the industry makes a  
16 billion consumer contacts a year, and one way to think  
17 about the number of consumers that are at least exposed  
18 to collection activity is that, roughly speaking, at any  
19 point in time, about 3 million people are at least 120  
20 days behind on their debt. So, if their account hasn't  
21 gone to collections, it's very likely to go to  
22 collections in the next three months.

23 MR. PAHL: I'd just like to follow up on that  
24 and just ask if there's empirical evidence that's  
25 available that talks about the demographics of people

1 whose debt is going into collection, whether that's  
2 income, age, race, ethnicity. Is that kind of  
3 information available as to what kind of debts are being  
4 collected? And I guess has that changed over time, as  
5 well? If anyone could weigh in on that.

6 MS. FOX: I can share a little information about  
7 some of the changes in demographics on debt. I don't  
8 have data on then what goes into collections, but we  
9 know those of us who are getting gray hair, that more  
10 and more of the boomer generation that's approaching the  
11 age of 65 now has credit card debt, and that is  
12 increasing. So, I think that one of the demographics is  
13 older consumers who used to be credit-averse are now  
14 more likely to have credit card debt.

15 We know that young people are increasing credit  
16 burdens and are allowed to get credit cards in high  
17 school or college. They're running up debts for school  
18 and for their living expenses. And then the folks who  
19 don't have the savings buffer that helps them deal with  
20 debt are low, moderate income, minority, young people.

21 MR. WOOD: Tom, one of the things that I wanted  
22 to focus on particularly in response to Bob and Bill's  
23 information is that there's just a supreme shortage of  
24 information that's reliable about this industry, the  
25 collection industry and particularly the debt-buying

1 component of the collection industry.

2 We would be happy to work with either of them or  
3 anyone else at DBA International to try to shed some  
4 light on what really goes on out there, because much of  
5 what we're seeing out there is anecdotal or speculative,  
6 I'm afraid, because we just don't have adequate  
7 information.

8 We saw some of the graphs that Bob Hunt put up,  
9 we're looking at 2004 data. Some of the sources that  
10 are available to us to use are sources that are  
11 notoriously marginally reliable. It's more -- somebody  
12 asked, "How much debt did you buy last year?" And you  
13 say, and they say, "Okay, that's it." It's not  
14 verified.

15 So, I really would encourage the FTC and those  
16 who are in the academic field to begin to focus on this  
17 area as one in which we can really make some progress if  
18 we had better information.

19 MS. ANDERSEN: From a collections standpoint, we  
20 absolutely do not track people based on minority status,  
21 gender, age, you know, that sort of characteristic, so  
22 we cannot speak to demographics in that regard.

23 What we can speak to, though, is that in 2005,  
24 we did commission a study about the attitudes of  
25 American consumers about debt, and over the past ten

1 years, 88 percent of Americans believe it has become  
2 more acceptable for consumers to have and tolerate  
3 outstanding debt, and we also learned over that same  
4 period that 72 percent of Americans, one out of four,  
5 believe that it has become more acceptable for average  
6 consumers to have outstanding debt that they don't pay  
7 for.

8           And in terms of demographics, from a collections  
9 standpoint, we would submit that there's been a change  
10 in demographics. If you look at it from a behavior  
11 standpoint, in terms of the mobility of consumers, the  
12 ability of consumers to work in one state and reside in  
13 another, to choose their preferred form of  
14 communication, and all of this from a behavior  
15 standpoint impacts the debt collection industry as well  
16 as consumers.

17           MR. PAHL: Thank you.

18           I'd like to sort of follow up on that by turning  
19 to technology and maybe ask Rozanne to talk a little bit  
20 about how the technology used in debt collection has  
21 changed over the past 30 years, especially the last five  
22 to ten, and how it may change in the near future, and  
23 what kind of implications that has for consumer  
24 protection.

25           MS. ANDERSEN: Okay. Tom, would you prefer more

1 from the industry side or from the consumer or a little  
2 of both?

3 MR. PAHL: Why don't you speak first on the  
4 industry side and then we can ask about the consumer  
5 side.

6 MS. ANDERSEN: All right. Well, I think the  
7 presentations this morning have done an excellent job of  
8 creating the basis for the change in the industry in  
9 terms of its growth and consolidation, if you will, at  
10 various times.

11 In terms of technology, if you really want to  
12 step back and get a big-picture look at this industry,  
13 going back 30 years, we are comparing an industry today  
14 to that which was one based on paper transactions.  
15 Recipe cards, file boxes being handed from creditor to  
16 debt collector, a very informal, low-tech operation, if  
17 you will, whereas today, collections, debt purchasing,  
18 communications generally, even with consumers, are  
19 largely built around technologies and technology  
20 systems.

21 It allows greater communication between the  
22 credit grantor and the debt collector or debt buyer  
23 directly, and it improves communication and compliance.  
24 Technology improves the likelihood of increased  
25 compliance with consumers as well, specifically with

1 regard to the use of predictive dialers.

2 Collection notices were often done on a  
3 typewriter, handwritten note, or certainly in-house.  
4 Today, collection letters are created outside of the --  
5 most likely created or -- they out-source that  
6 responsibility, and they hire companies that are letter  
7 service companies. The information and the data is  
8 transferred electronically through a secure environment,  
9 and the letters are not generated from the actual locale  
10 of the collection agency.

11 So, how they receive the data has changed from  
12 paper to electronic; how they drive communications to  
13 consumers has changed from largely paper to electronic,  
14 from in-house to an out-source model; and this  
15 technology has really allowed for a tremendous growth in  
16 the industry and has created some parity between those  
17 smaller collection agencies you referred to in some of  
18 your slides and the larger collection agencies, because  
19 through the use of predictive dialers and auto dialers  
20 and other technologies, even the smallest collection  
21 agency can now collect on a nationwide basis and is no  
22 longer local in scope.

23 MR. PAHL: Anyone else like to comment on  
24 changes in technology from the collector point of view?

25 MR. HUNT: Two things: One is we now have these

1     scoring models, so, you know, we start with credit  
2     scoring, which was about predicting the probability that  
3     somebody's going to default two years out, and then we  
4     apply that same kind of statistical technique to other  
5     things. For example, I have all of these  
6     characteristics of people in my collections file. How  
7     predictive are they in the past of my ability to collect  
8     on those debts in the future?

9             I learn something by developing a scoring model,  
10     and then I use it to allocate my labor going forward,  
11     and that's really important, because, you know, most  
12     accounts you are not going to collect on. So, you have  
13     to be very efficient in allocating your labor to collect  
14     on the most promising accounts.

15            And the other thing that I think has really come  
16     about in the last ten years is the ability to follow a  
17     consumer through their credit bureau file, and at some  
18     point -- you know, when do people get in trouble with  
19     credit? Well, they have an income shock or a health  
20     shock or something like that. They don't have the cash  
21     flow to repay. But maybe five years later, they  
22     recover. And what do they do? They apply for credit.  
23     Well, that sets off an alarm bell in the bureau file,  
24     and collectors can find this, because bureau data is  
25     refreshed much more rapidly and is much cleaner and more

1 accurate than it used to be.

2 MS. FOX: Another technology aspect here, with  
3 the growth in electronic information, this is not a  
4 paper-based business anymore, so you would think with  
5 all of this information stored on computers, that when  
6 debt buyers buy old debts and try to collect, that they  
7 would have all of the information about complaints you  
8 raised before, agreements that have already been made  
9 and not honored, and all of the disputes that were or  
10 weren't resolved, so that there'd be few problems with  
11 debt buying, you would think, in a more technologically  
12 sophisticated realm.

13 MR. PAHL: Gary, would you like to respond to  
14 that?

15 MR. WOOD: Oh, yes.

16 MS. FOX: Yes.

17 MR. WOOD: I wish it were true. We are in an  
18 industry that has a difficulty sometimes getting the  
19 kind of information that Jean Ann is talking about, and  
20 we're working very hard with the people from whom we buy  
21 the debt to get them to increase the quantity and the  
22 quality of the information that they provide to us, yet  
23 they still provide adequate information for us under the  
24 terms of the law to go ahead and begin the collection  
25 process, but we would like for it to be better, and we



1 would encourage any work that you could do to see that  
2 we get more information and better information when we  
3 buy the debt. We'll do a better job if that happens.

4 MR. PAHL: I'd like to turn quickly to the other  
5 side, to the consumer side of it, and consumers' use of  
6 communication technologies, which have changed a lot in  
7 the last 30 years, especially the last five to ten years  
8 with the internet and wireless, cell phones, et cetera.  
9 I was wondering if you could talk a little bit about how  
10 consumers communicate with debt collectors has changed  
11 and what implications that may have for the issues that  
12 we are looking at.

13 Gary?

14 MR. WOOD: Well, you're onto something there.  
15 One of the things that DBA International would most like  
16 to see as a result of this workshop and subsequent  
17 activity you undertake is a more clear understanding of  
18 how and when we can contact our customers, and the  
19 people that owe us money are our customers according to  
20 Gramm Leach Bliley, and so we have a right to contact  
21 them, but we have an array of difficulties.

22 The TCPA, that makes it difficult to call  
23 someone on a cell phone, prohibits it in some cases; the  
24 issue of people who only have a cell phone; the hours  
25 during which you might contact someone. If you have

1 someone who has a California number and you call him and  
2 he's visiting in New York, you might have called him  
3 outside the time frame that's permissible to call him.  
4 There are just a wide array of issues that make it more  
5 difficult, because we don't have any standardization and  
6 we don't have good information about how we can contact  
7 our customers, and so we would welcome changes in that  
8 so that we can better understand how to do it and do it  
9 right.

10 MS. ANDERSEN: I would just like to comment with  
11 regard to communication and consumer preferences, is  
12 that the FDCPA, as it stands right now, really is  
13 drafted in such a way that it takes a snapshot of  
14 technology, and we believe that the FDCPA must be  
15 crafted in such a way so that it does not take a  
16 snapshot of technology, but rather, it adjusts to  
17 changes in technology and really allows for those  
18 consumer preferences in terms of the way they would like  
19 to communicate as well.

20 MS. FOX: But, of course, we have to retain the  
21 basis of protection, which is reasonable contacts,  
22 reasonable hours, for consumers so this doesn't become  
23 harassment, but there's another technology issue that  
24 goes with debt collection that's emerged since the Fair  
25 Debt Collection Practices Act was enacted, and that's

1 electronic movement of money.

2 You now have folks who go online and do a loan  
3 transaction untouched by human hands. Folks collect and  
4 process payments electronically, so they reach into your  
5 bank account to take out your money through electronic  
6 funds transfer, even using checks that you didn't sign  
7 yourself, but using demand drafts that are created by  
8 the person who's putting it through the system. So,  
9 there are implications for consumers.

10 In testimony at the Senate committee hearing  
11 last fall, Lynn Drysdale, who will be on your panel this  
12 afternoon, talked about a Navy sailor whose bank account  
13 was hit ten times in one day as a creditor attempted to  
14 collect on an electronic funds transfer, racking up a  
15 bounce check fee every time. So, there are changes  
16 beyond communications that are a result of technology  
17 that have a bearing on consumer debt and on credit  
18 collection.

19 MS. ANDERSEN: Fortunately, that's prohibited by  
20 the law.

21 MS. FOX: But it happens. It happens.

22 MR. WOOD: Well, a lot of things that are  
23 prohibited by the law happen.

24 MS. FOX: Yeah, and they get complaints.

25 MR. WOOD: And they get complaints. We, and I'm

1     sure Rozanne's members, do our very best to keep that  
2     kind of thing from happening. It's unethical, it's  
3     illegal, and we deplore it, and if accidentally one of  
4     our collectors did it, we would have to spank the  
5     collector, because that's just not what's supposed to  
6     happen. This is pretty well protected already. I don't  
7     think we really need to strike beyond that.

8             MR. PAHL: Thank you.

9             One last question before we have some from the  
10     audience, and I guess one of the things that was quite  
11     striking in the presentations was the growth of debt  
12     buying over the last ten years or so. I just want to  
13     ask quickly both Gary and Robert just to weigh in on  
14     this, you know, what's really been responsible for the  
15     growth in debt buying, and is that likely to continue?  
16     What kind of implications does that have for the sort of  
17     consumer protection issues we should be looking at?

18            MR. WOOD: Well, you know, virtually all debt  
19     gets sold. This is nothing new. Commercial debt has  
20     been sold for well over 200 years, but I think the  
21     growth that we have seen in the last decade or 15 years  
22     in consumer debt buying is really a spin-off of what  
23     happened in the late eighties, early nineties, where the  
24     Resolution Trust Corporation was liquidating large  
25     portfolios of commercial assets and some consumer assets

1 mostly from the failed savings and loan industry, and it  
2 became obvious to prospective investors that here was an  
3 opportunity to buy an asset class that hadn't really  
4 been pursued very much in the past and try to make some  
5 money on it, but that was a finite play. There's only  
6 so much of that debt that was going to be available  
7 through the RTC and the FDIC.

8           Consequently, as that was beginning to run down,  
9 they began to look around for other opportunities, and  
10 somebody said, "Gosh, what about all that consumer debt  
11 that's been piling up, charged off, some of it out of  
12 staff" -- and we can talk about out of staff paper, if  
13 you want to, that's back there, too. So, why don't we  
14 see about acquiring that and seeing how we can do making  
15 a business out of collecting the consumer debt that  
16 really banks -- or issuers, I don't want to put it all  
17 on banks, had pretty much given up on, and I think  
18 that's what really led to the rapid growth that we've  
19 seen in the last few years, is just the shift in  
20 attention from, you know, the RTC validated buying debt  
21 at a discount. What we had that followed that was an  
22 opportunity to take another category of debt and buy it  
23 at a discount.

24           MR. PAHL: Bob?

25           MR. HUNT: A couple points: I think -- I don't

1 know this for sure, but my guess is that when the FDIC  
2 was dealing with this problem, mostly what they had to  
3 deal with was commercial real estate, and that's where  
4 the model got started, but they also had these auto loan  
5 portfolios and credit card portfolios of the failed  
6 thrifts, and they were very labor-intensive to handle  
7 it, and I suspect they didn't want to get in the  
8 business of placing these in collections. It may have  
9 been difficult in terms of their regulations. I have no  
10 idea. So, simply selling them in the way that they were  
11 selling the CRE portfolios was probably very sensible  
12 for them, and as Gary points out, in essence, we created  
13 demand. We created a market that was able to absorb  
14 these assets.

15           The other interesting question, then, is where  
16 did the supply come from after this particular episode  
17 ended? Why is it that creditors have decided it's  
18 better to sell debt than to place it through a primary  
19 and secondary and tertiary collections like they've  
20 always done before? I don't have a good answer for you,  
21 but the reasoning has got to be something like I prefer  
22 the certainty of getting 2 to 5 cents on the dollar for  
23 my paper today to the uncertainty and the delay that's  
24 associated with negotiating these primary, secondary,  
25 and tertiary collections through the next several years.

1           And then on the flip side again, there must be  
2           some kind of reasoning amongst the debt buyers that it's  
3           somehow better or more efficient for them to own the  
4           debt outright than to be a contingent collector in the  
5           first place. It might provide better incentives. I  
6           don't really know. This is some of the information that  
7           I'm trying to gather myself. We know the market is  
8           there. I suspect the market is going to continue to  
9           grow as long as the industry has access to capital, and  
10          it's very important to understand why both the buyers  
11          and the sellers find this mutually beneficial.

12           MR. PAHL: Jean Ann, if you could speak first,  
13          and then quickly, Rozanne, and then we will move to  
14          questions. Thank you.

15           MS. FOX: Well, CFA views the huge growth in  
16          debt buying as the most significant new trend in the  
17          debt collection industry, and debt buying, especially  
18          for older debts, does cause some real problems for  
19          consumers, confusion over the identity of who you  
20          originally owed and how much the original debt was for  
21          years later when you're contacted to collect. Sometimes  
22          the debt buyers fail to adequately respond to questions  
23          about billing errors or payments that you think you've  
24          already made or settlement agreements that weren't  
25          credited to your account. And a lot of times, they'll

1 try to collect, but they don't have the full records  
2 that are necessary to show what's happened in the past  
3 with it, and debt buying is one of the reasons, I think,  
4 for the increase in consumer complaints.

5 MR. PAHL: Okay, Rozanne, quickly.

6 MS. ANDERSEN: From a consumer protection  
7 standpoint, this incredible focus on how a debt was  
8 acquired is misdirected. From a consumer protection  
9 standpoint, even purchased debt, at some point, must be  
10 collected by a debt collector, and that relationship,  
11 that communication, is controlled by the FDCPA. So, I  
12 think from a consumer protection standpoint, that's what  
13 we need to remember, is that the FDCPA controls that  
14 behavior, and I think that purchase debt, in general,  
15 when it comes to consumer debt, is crying out for  
16 financial literacy education.

17 MR. PAHL: That's a wonderful segue to this  
18 question from the audience. I think you've conspired  
19 with someone. This is a question for Jean Ann, I  
20 believe, and anyone else can certainly weigh in.

21 It's, what is being done by consumer groups to  
22 offer proactive consumer education regarding proper use  
23 of credit?

24 MS. FOX: There are many consumer groups that  
25 work in this area. CFA focuses on our America Saves



1 outreach to try to encourage and assist low and moderate  
2 income consumers to be savers, and we put out a great  
3 deal of information. I would send you to my  
4 mini-website on payday lending, [www.paydayloaninfo.org](http://www.paydayloaninfo.org),  
5 for consumer information on that particular type of  
6 credit, but from AARP to Consumers Union to the Center  
7 for Responsible Lending to the National Consumer Law  
8 Center and U.S.PIRG and our dozens of local consumer  
9 organization members, there's an awful lot of effort in  
10 the consumer information and empowerment side of this,  
11 and all of that is necessary, but it's not a substitute  
12 for appropriate consumer protections and effective  
13 enforcement.

14 MR. PAHL: Rozanne or Gary, would you like to  
15 talk about things industry does to educate consumers  
16 about proper use of credit or about debt collection?

17 MR. WOOD: DBA International is working with  
18 Project Jump Start to try to find ways to get  
19 information into the school systems, because we feel  
20 that if you hit them at the high school level, that will  
21 be helpful, to get information to students about how to  
22 manage their financial lives as they get older. It's a  
23 tricky thing, some schools won't let you in, but we are  
24 committed to doing what we can to improve the financial  
25 literacy of everybody.

1           You know, we don't view our customers as our  
2 enemies. As I think Bob pointed out, the people from  
3 whom we try to collect, we understand that they have the  
4 kind of problems that have been pointed out. They have  
5 a divorce, they've lost a job, they've had a death in  
6 the family. Ethical collection companies and ethical  
7 debt-buying companies don't lean on those people. We  
8 work with them. We find some way to make the repayment  
9 of the debt that they owe, and we also find that most  
10 people really do believe they should pay what they owe.  
11 Almost everybody does.

12           There's a few of those won'ts, but most of them  
13 are can'ts, and so there's no percentage at all in us  
14 beating up on the can'ts. We want to get them into  
15 where they're cans and wills, and so that's our goal.  
16 They're not our enemies. They're the source of our  
17 income, and we are able to provide them the ability to  
18 deal with the debt generally at a lower settlement fee  
19 than they could get from the original issuer, because as  
20 Bob pointed out, we bought it cheaper.

21           Bob, we can't really buy much for a nickel  
22 anymore, it's more expensive.

23           MR. PAHL: Rozanne, did you quickly --

24           MS. ANDERSEN: I better speak quickly.

25           ACA International has for approximately ten

1 years had a foundation for financial literacy education.  
2 Free information is available on our web site,  
3 [acainternational.org](http://acainternational.org). We applaud the FTC. I review  
4 your website routinely to make sure that our information  
5 is consistent with yours.

6 But we think there is a niche for financial  
7 literacy education beyond middle schoolers, beyond high  
8 schoolers. It's those people who are financially  
9 challenged, in distress, at this time. Debtors need  
10 more information, and we think that collectively we  
11 could put out a pretty good product if we worked toward  
12 a public/private partnership.

13 MR. PAHL: Bob?

14 MR. HUNT: I want to make a plug for the  
15 National Foundation For Consumer Credit Counseling,  
16 which also does quite a bit of consumer financial  
17 education, but what they also do is they have an  
18 important teaching moment, and that is when a lot of  
19 people are contacted by a collector, that's the point at  
20 which they decide to do something. Now, some are going  
21 to file for bankruptcy, but some go to credit  
22 counselors, and that's a very teachable moment. All of  
23 a sudden, people's ears are open, and they want to know  
24 more, and that's one of the things that credit  
25 counselors do, and the credit counseling industry has

1       been doing this for about 50 years.

2               MR. PAHL: Thank you.

3               Unfortunately, our time is up. One thing I  
4       would note is that a number of the questions that came  
5       forward from the audience are really asking for  
6       clarifications about the panelists' slides, and we'll  
7       make sure that in considering the information on the  
8       slides, we'll double-check with the panelists and make  
9       sure that we are correct in our understanding of the  
10      slides and that your question has been addressed by us,  
11      and any other questions that come in as well, we  
12      certainly will look at and consider when we take a look  
13      at all the evidence.

14              I want to thank all of our panelists for their  
15      wonderful discussion and for being here today.

16              (Applause.)

17              MR. PAHL: We will now take a 15-minute break,  
18      and if everyone could be back in their seats at 10:45,  
19      we would appreciate it very much.

20              Thank you.

21              (A brief recess was taken.)

22

23

24

25

1 DEBT COLLECTION TODAY:  
2 UNDERSTANDING THE BUSINESS

3 MR. KANE: Welcome back, folks.

4 Today's second session is entitled, "Debt  
5 Collection Today: Understanding the Business." The  
6 panel will examine the current business models and  
7 practices used by in-house debt collectors, contingency  
8 collection agencies, law firms, and debt buyers. The  
9 moderator is Karen Hickey, who's an attorney in our  
10 division, the Division of Financial Practices.

11 Karen?

12 MS. HICKEY: Thanks, Tom.

13 Good morning. Welcome back from the break. I  
14 know it was rather short. If you could just be seated,  
15 and we'll get started.

16 With me today on the panel are Bob Murphy,  
17 Barbara Sinsley, Mark Davitt, Robert DiGennaro, and Ira  
18 Leibsker.

19 Bob Murphy is a consumer litigation attorney  
20 based in Fort Lauderdale, Florida. His practice  
21 concentrates on consumer finance disputes, unfair debt  
22 collection practices, consumer fraud, unfair and  
23 deceptive practices, and related matters.

24 Barbara Sinsley serves as General Counsel for  
25 DBA International, formerly known as the Debt Buyers

1 Association. In addition to her duties for DBA  
2 International, Ms. Sinsley is a partner at Barron,  
3 Newburger, Sinsley & Weir, where she represents  
4 creditors, debt collection agencies, debt buyers, and  
5 law firms in FDCPA-related matters.

6 Mark Davitt currently serves as President and  
7 CEO of ConServe, Incorporated, based in Fairport, New  
8 York, and they provide debt collection services for  
9 firms in multiple industries and specialize in higher  
10 education loans and provide collection services to over  
11 200 higher education institutions across the country.

12 Robert DiGennaro is a recent CEO of Collins  
13 Financial Services, and he brings 25 years of  
14 senior-level experience in the consumer debt and  
15 collections industry. Prior to becoming CEO of Collins  
16 Financial, Mr. DiGennaro served as Senior Vice President  
17 of GE Capital's GE Money Americas unit.

18 Also on the panel is Ira Leibsker. He is the  
19 current President of the National Association of Retail  
20 Collection Attorneys, or NARCA. As President of NARCA,  
21 Mr. Leibsker oversees the National Trade Association,  
22 dedicated to representing the interests of debt  
23 collection law firms, in-house counsel of creditors and  
24 industry vendors, and he is also a partner in the firm  
25 of Blatt, Hasenmiller, Leibsker, and Moore, a

1 full-service collection law firm.

2 I know we have got a lot to cover, so let's get  
3 started.

4 This morning we are going to talk a little bit  
5 about the sort of business models in debt collection,  
6 and we hope that this will provide some information. As  
7 Gary Wood noted, he thinks that a lot of what's out  
8 there is speculative, and we hope that this panel can  
9 really sort of explore what's happening today in the  
10 debt collection industry.

11 So, turning quickly to Mark Davitt, if you could  
12 describe for us what typically happens in the  
13 contingency collection business model and when you  
14 decide to sell debts. Mark?

15 MR. DAVITT: I'll borrow this for a moment,  
16 Karen. Thank you very much.

17 In terms of the business model, we had discussed  
18 what does a third-party contingency collection agency  
19 look like. Initially, you might not recognize it if you  
20 walked in. The industry is quite a bit different from  
21 many years ago. It is now a very high-tech contact  
22 center with sophisticated technology supporting the  
23 communications with our debtors.

24 The model primarily is to identify and perform  
25 triage between those individuals who cannot pay and

1 those individuals who can pay. A large portion of that  
2 is attempting to locate and contact the responsible  
3 party, the debtor, because a vast majority of the  
4 accounts that are referred to us are referred to us  
5 because the individuals have relocated and neglected to  
6 leave forwarding information with their original  
7 creditor. So, locating the individuals is the first  
8 step in the collection process. From there, it's a  
9 triage down.

10 With that, I would like to pass on for some  
11 other models, perhaps Barbara.

12 MS. HICKEY: Thanks, Mark.

13 MS. SINSLEY: Thank you.

14 Again, DBA International thanks the FTC for  
15 hosting this workshop, because as Mr. Wood said, it's an  
16 excellent opportunity to examine the issues. Debt  
17 buying --

18 UNKNOWN SPEAKER: Speak up.

19 UNKNOWN SPEAKER: We can't hear you, Barb.

20 MS. SINSLEY: Sorry about that. Is this on?

21 UNKNOWN SPEAKER: Yes.

22 MS. SINSLEY: Debt buying is also governed by  
23 the FDCPA, as stated by Rozanne Andersen, and the model  
24 is somewhat different than contingency debt collection.  
25 It starts initially with due diligence, which due



1 diligence as in the new purchase of a business, a debt  
2 buyer would look at the purchase of a portfolio and look  
3 at the characteristics of the accounts in examining the  
4 background and validity of the accounts, running  
5 stratifications, and scoring on the accounts.

6           Thereafter, once the accounts are purchased, the  
7 model for collections is much the same as a contingency  
8 collection agency, contacting the consumers,  
9 communicating with them through letters or phone calls.  
10 Another difference may be that debt buyers can hold onto  
11 the debts longer than some contingency agencies, thereby  
12 giving a longer and perhaps more convenient payment term  
13 to the consumer.

14           MS. HICKEY: Do debt buyers tend to collect on  
15 their own -- on the portfolios that they purchase or do  
16 they farm those out to other contingency agencies?

17           MS. SINSLEY: That's a good question. There are  
18 two types of debt buyers, active debt buyers and passive  
19 debt buyers. Active debt buyers are those that purchase  
20 the debts and hold onto it themselves. Currently, there  
21 are four publicly traded debt buying companies, all of  
22 which, I believe, collect on their own debts. And the  
23 passive debt buyers would be those that are more like  
24 investors. They own the debt but then would hand out  
25 for collections to contingency agencies to collect on

1 the debt while never, in fact, collecting on it  
2 themselves.

3 MS. HICKEY: Are portfolios -- do they tend to  
4 be sold in sort of one -- like the original set that a  
5 debt portfolio comes in, or are those broken up and  
6 distributed? And what sort of factors go into  
7 determining when to sell a portfolio, if a debt buyer  
8 has held it for a while, and when that should be sold  
9 off perhaps to another debt buyer?

10 MS. SINSLEY: That's a good question, Karen.  
11 The sale starts with creditors, obviously. Creditors  
12 such as credit card companies are using more of a -- as  
13 part of their business model, a portion of their debts  
14 will be sold. I think as Bob Hunt said previously, ten  
15 debt buyers purchase 80 percent of the credit card debt  
16 available out there. That's where it starts. The debt  
17 buyers then normally will hold onto it and collect on  
18 it, although there is a small percentage that buy a  
19 portfolio and then resell it. Some of them collect on  
20 it for a period of time and resell it; some of them will  
21 buy a nationwide portfolio and then perhaps sell it on a  
22 state-by-state basis.

23 MS. HICKEY: Okay. Ira, if you could talk a  
24 little bit about the business model for a collection law  
25 firm and when you decide to accept accounts and sort of

1 what the process is when you decide to file suit, if  
2 they go to litigation.

3 MR. LEIBSKER: The process is very similar to  
4 the collection agency. The only difference is that the  
5 collection law firms are made up of firms made up of  
6 maybe two or three people, up to maybe 800 or 900, but  
7 most of them falling into a much smaller range.

8 Our objective is really the same, is to try to  
9 resolve these debts that are owed and get them paid for  
10 our client. Our clients are sending it to us and taking  
11 some additional risk. If we go on to a lawsuit, they  
12 are going to be expending anywhere from \$50 to \$200 to  
13 try to collect that debt, and now they are actually  
14 putting more money out there to try to collect that  
15 debt.

16 So, it's the job of the collection attorney to  
17 try to maximize the return and get as much money back  
18 into their pockets, especially in the debt buyer  
19 situation, which they have paid money for that debt, and  
20 if they don't recover it, they won't recover anything.  
21 So, they come to us to try to collect that debt for  
22 them, and our motto is to find the accounts that are  
23 most collectible and that can be done at a return basis  
24 to the client for their benefit, and that goes to credit  
25 grantors as well as for debt buyers.

1           MR. MURPHY: Ira, I have a question, though. I  
2 have seen a number of your members who have acquired  
3 debts and basically held them in their own closely held  
4 corporations. What do you think about the ethics of  
5 that?

6           MR. LEIBSKER: Well, I don't see really a  
7 problem. As long as it's not commingling these  
8 accounts, I see no reason why someone can't own debt as  
9 well as try to collect it themselves. It's the same  
10 thing as a debt buyer purchasing their accounts and  
11 attempting to collect it themselves.

12          MR. MURPHY: But the attorneys are collecting  
13 fees for accounts that they own, and they are also the  
14 holder of the account. Don't you see a little bit of  
15 double-dipping?

16          MR. LEIBSKER: Well, I don't think -- first of  
17 all, I don't know if the court is going to -- the court  
18 is the one who will determine whether there should be  
19 double-dipping and whether those fees should be granted  
20 to the attorney.

21          MR. MURPHY: But Ira, is there transparency so  
22 that the consumers know that the lawyer owns the account  
23 as well?

24          MR. LEIBSKER: Well, that lawyer is -- who may  
25 own that account in a corporation or business is paying

1 that law firm to collect that debt, and that costs money  
2 to do that. Just like any other debt, it's going to  
3 cost money, and if the contract provides for the  
4 allowance of attorney's fees, I don't see why not.

5 MS. HICKEY: I see that we have -- there's a lot  
6 of very interesting questions about the business models.  
7 Let's step back a little bit and go to Bob DiGennaro,  
8 and if you can talk -- we've heard about debt buying and  
9 the collection firm model and contingency third-party  
10 collections, and if you can talk about, from your  
11 experience at GE Capital, when creditors make decisions  
12 to sell off large portions of debt and what factors into  
13 those decisions.

14 MR. DiGENNARO: Sure, it's hard, because I want  
15 to jump in on both sides, and I'm with Collins, I'm a  
16 little schizophrenic today, so bear with me.

17 On the issuer side -- and this is my personal  
18 belief, because I've worked for many issuers -- the  
19 majority of the thought process that goes into it is  
20 really, you know, what's the best collection path, you  
21 know, and we normally look at it a couple of ways. We  
22 look at it from a cost perspective, and then we also  
23 look at it from a liquidation perspective, and so  
24 typically that decision resides in the recovery  
25 department.

1           You know, in most issuers, you have a collection  
2 group that does the precharge-offs, and then you have  
3 the recovery group that does the charge-offs, and in the  
4 charge-off group, you know, the big issue that you  
5 really run into is, you know, net present value.  
6 There's a lot of analytics around should you work some  
7 of that in-house, should you use an agency, a  
8 contingency agency, should you use an attorney, should  
9 you use a debt buyer?

10           And so it really comes down to, how much  
11 analytics and history do you have on your basis? And  
12 then the final decision is really based on the need for  
13 that particular company to, you know, accelerate  
14 charge-offs through a channel like debt buying and the  
15 cost that's associated with it. And generally, I know  
16 most issuers will look at debt buying as either a  
17 channel of their recovery stream, you know, so it's not  
18 the only channel, it's one of many that they have, and  
19 then the second thing is, you know, you usually start  
20 looking at doing a debt sale when you get closer to, you  
21 know, either an end of a cycle, that particular age of  
22 paper.

23           So, you know, debt buying has now become more of  
24 a strategy than as a one-off. Traditionally, you know,  
25 if you look ten years ago, it would have been more a

1 one-off, you know, try to get some fast money in quickly  
2 to end a quarter or whatever, but now, it's more of a --  
3 you know, it's more of a strategy-driven decision based  
4 on analytics and cost.

5 MS. HICKEY: Okay. Earlier, in the first panel  
6 session, there was a lot of discussion of out-sourcing,  
7 and it sounds like regardless of the business model,  
8 debt buying, third-party contingency collection, even  
9 the law firm model, some portion of the business is  
10 out-sourced, and I would like to know -- and I think we  
11 all probably do -- if that has a consumer protection  
12 impact, if there are adverse consumer impacts based on  
13 this out-sourcing, and maybe, Bob Murphy, you can speak  
14 to that a little bit.

15 MR. MURPHY: Yeah. We are experiencing a lot of  
16 out-source in Jamaica and elsewhere, and especially with  
17 respect to internet loans, anything that's concerning  
18 internet payday loans. The problem from my perspective  
19 is that the consumers have no idea who they're dealing  
20 with, and for those of you who work for, you know,  
21 outstanding debt collection firms, you would be  
22 concerned about this, because what's happening is  
23 there's a confusion where the people who are doing the  
24 calls from the out-sourcing centers are actually  
25 pretending to be different debt collectors to throw the

1 consumer and his or her lawyer off.

2 I can't tell you how many times I've seen a  
3 collection agency that I know is in India from their  
4 number, that they're saying they're a different debt  
5 collection agency, and it's extremely strange. I  
6 haven't been able to figure out what the utility of it  
7 is other than to throw people off.

8 MS. HICKEY: Would anyone care to speak to the  
9 utility of the out-sourcing?

10 MR. MURPHY: Well, economy, obviously, but it's  
11 a little bit more than that. I think they're paying  
12 someone, you know, \$3 an hour in India versus \$20 an  
13 hour in Chicago.

14 MR. DiGENNARO: Well, I mean, first of all, you  
15 have to start thinking of why was there a push to go  
16 outside, right? I mean, a lot of -- there's a lot of  
17 pressure on the industry to look at low-cost options,  
18 because issuers, you know, are driving a lot of that,  
19 because they want their collections -- they want to get  
20 more of the return back, and so, you know, the focus on  
21 going out to a third party that's out-sourced is mainly,  
22 you know, driven by, you know, a cost to collect ratio.

23 MR. MURPHY: Well, what about compliance? I  
24 mean, I'll tell you that --

25 MR. DiGENNARO: Same level of compliance is



1 necessary.

2 MR. MURPHY: I don't believe that. I'll tell  
3 you that --

4 MR. DiGENNARO: Well, I could tell you that --

5 MR. MURPHY: How many times have you been down  
6 to Montego Bay? I mean, it's -- not Montego, actually,  
7 it's in Kingston. Spirit Airlines flies it very cheaply  
8 from Fort Lauderdale, but I don't see the compliance.

9 MR. DiGENNARO: Well, you know, again, you can't  
10 speak to the one-offs that you might have been  
11 experiencing on those types of accounts that you've  
12 listened to, but I've seen this over nine or ten years  
13 now, you know, with the increased focus on looking at  
14 cheaper channels to collect, and I know from an issuer  
15 standpoint, when we decide to go outside to a third  
16 party that out-sources, we use the same internal  
17 controls as, you know, in the U.S., and we put the same  
18 restrictions on the Fair Debt Collection Practices Act  
19 as well as any compliance rating that we have  
20 internally, and if they fail it, we pull the accounts  
21 back.

22 I can't tell you how many times we've actually  
23 pulled accounts back when we found -- and that's also  
24 true in the U.S. as well. So, it doesn't make any  
25 difference. When you violate a transaction, we pull

1 those accounts back. That's penalty enough to bring  
2 those, you know, those agencies, you know, to focus on  
3 it with more rigor.

4 MR. LEIBSKER: And regarding at least the legal  
5 community, we wouldn't be out-sourcing that piece of  
6 business, because we need to be meaningfully involved,  
7 and we would not be able to out-source that work. There  
8 is other stuff that we may out-source, such as IT --

9 MR. DiGENNARO: Right.

10 MR. LEIBSKER: -- or other backroom functions,  
11 but not the collection piece.

12 MS. HICKEY: Mark, did you want to speak to  
13 this?

14 MR. DAVITT: Well, I thought the question  
15 initially was out-sourcing, and we, in fact -- our  
16 entire industry is a business process out-source. In  
17 fact, the American economy is kind of driven on  
18 out-sourcing. We out-source the removal of our garbage  
19 off to the dump to a service. We out-source so much,  
20 and, in fact, the collection industry is an out-source.  
21 It's the end of the revenue cycle of our clients, and  
22 that collection activity, that labor-intensive piece, is  
23 out-sourced to us.

24 Now, again, if you're talking about off-shoring  
25 particular operations, that's a different -- that's a

1 completely different story. It is a means to be  
2 competitive. You know, the American mantra in the  
3 economy, the American business mantra is more, better,  
4 faster, cheaper. That's what drives us. That's what  
5 America is all about. And one of the ways that people  
6 have attempted to do that is to drive down a labor cost  
7 by going off-shore.

8 Now, again, I can appreciate Bob's story. For  
9 the most part, in the contingency world, the standards  
10 of the contractor apply, whether the work is done in  
11 Iowa, in Florida, or in India, but again, I don't know  
12 how to address a particular issue like that, but the  
13 entire industry is, in fact, BPO.

14 MS. HICKEY: Barbara?

15 MS. SINSLEY: Bob wanted it back, that, but, you  
16 know, just to go back to the point of specialization,  
17 there is specialized debt obviously out there, such as  
18 medical debt, and those debts are out-sourced to  
19 companies that can understand insurance claims and the  
20 like. There's state-specific debts, and those could be  
21 types of debts where you have perhaps a Spanish-speaking  
22 market, and to that degree, you have a better chance of  
23 communicating with the consumer if you have a  
24 Spanish-speaking collection agency.

25 You know, I think this was best summed up, the

1 specialization and the out-sourcing, by Judge Posner in  
2 the Seventh Circuit in examining debt buying, and he  
3 said, "There's an innocent reason why creditors assign  
4 collections to other firms rather than doing it  
5 themselves. It's the same reason that most  
6 manufacturers sell to consumers through independent  
7 distributors and dealers rather than doing their own  
8 distribution. Out-sourcing phases the total production  
9 process and facilitates specialization with resulting  
10 economies."

11 I think that's the key, is you have the  
12 resulting economies in the collections process that  
13 gives, in turn, the money back to the creditors.

14 MS. HICKEY: For out-sourcing, I think it should  
15 have impact on your ability to increase profitability,  
16 and so that leads to the question of how has  
17 profitability in the debt collection industry changed  
18 over the past ten years? Is it more profitable now?  
19 Does out-sourcing account for this difference? If you  
20 could each speak to that, let me start with Mark.

21 MR. DAVITT: Yes, I think the opportunity for  
22 profit continues to increase, in part because of that  
23 more, better, faster, cheaper; in part to what Bob and  
24 Tom alluded to earlier this morning with the decreasing  
25 cost, almost plummeting cost in technology, that has

1 allowed most service-oriented businesses the opportunity  
2 to leverage technology and improve the -- in our job,  
3 improve the contact time between our collectors and our  
4 consumers, and ultimately, everything that we can do to  
5 increase that contact time, to increase those  
6 resolutions, that generates better results, and when you  
7 are doing it more efficiently, you have that opportunity  
8 for more profit.

9 MS. HICKEY: Ira, has this been your experience  
10 or do you think it's getting more costly?

11 MR. LEIBSKER: I think at least on the legal  
12 side it's become more costly, more costly for the client  
13 themselves because the court costs have gone up in most  
14 of the nation. That's one of the reasons.

15 But I think the cost of technology, security,  
16 our processes, postage, all those factors have -- cost  
17 money, and at least in the legal community, we're only  
18 getting a very small percentage of the debt collection  
19 business, and yet we still need to have all those  
20 processes, all those automating processes, all the  
21 security processes that the larger agencies have in  
22 their offices. So, it becomes less profitable on the  
23 legal side.

24 MS. HICKEY: Does this increase in the cost of  
25 technology, does that impact the pressure to collect?

1 Does that -- does that -- perhaps, Bob Murphy, you've  
2 found that there's been --

3 MR. MURPHY: I am going to --

4 MR. LEIBSKER: Well, I would like to respond  
5 first before Bob gets a chance to take a shot.

6 MR. MURPHY: I am not going to attack you, don't  
7 worry.

8 MR. LEIBSKER: No, I don't think it does,  
9 because at least in the legal community, my law license  
10 is on the line. I am not going to put myself into the  
11 situation where I'm doing something that's illegal just  
12 to collect an extra dollar. It really is really finding  
13 the accounts that are most collectible. That's really I  
14 think the difference in being able to score the  
15 accounts, if the client will send them to you with a  
16 score; finding the assets of an individual to know which  
17 accounts are the best ones to sue.

18 There is only a small percentage of accounts  
19 that end up getting paid. I don't know what the actual  
20 percentage is, and it probably differs in each office,  
21 depends on how successful they are, but of all the paper  
22 that we get in our office, I would say we're lucky to  
23 collect anywhere 15 to 25 percent of those accounts.

24 MR. DiGENNARO: I would agree with that. I  
25 think the sophistication of the scoring and the

1 technology is, you know, at its best it's ever been, and  
2 as a result of that, you know, large creditors, you  
3 know, really know, you know, the collectability by the  
4 time they either put it out for contingency business or  
5 they put it out for sale.

6           So, you know, folks like Ira and now, you know,  
7 like a Collins and other debt buyers, I believe the  
8 margins are getting tighter as a result of it, because  
9 you're getting pushed on the price, you're getting push  
10 on the margins to collect that, and so as a result of  
11 it, you know, you have to re-invent yourself. You have  
12 got to re-invent yourself in a way that allows you to be  
13 able to take those accounts and collect them at -- you  
14 know, with the proper level of work that's necessary for  
15 it.

16           MR. MURPHY: Okay, here's my piece. More,  
17 better, faster is what you said, and I actually have a  
18 commonality in the interest of what you just said. I  
19 understand that you guys have got increased economic  
20 strains; profitability has gone down. My history, I was  
21 a collection lawyer for ten years, and then I became a  
22 consumer lawyer. I know the difference.

23           The problem is more, better, faster also relates  
24 to a declining compliance with FDCPA, number one.  
25 Number two, there's litigation explosion. President

1 Bush was right. Right now it's passed into a situation  
2 where most of the cases being filed where I live in  
3 Broward County are collection cases, the vast majority,  
4 I think 95 percent of our docket, and they're going to  
5 collection lawyers, going to your members, to file  
6 lawsuits, and the problem is that it's sort of like I  
7 get a case, and I look at it, and I say, well, they're  
8 filing a lawsuit, you know, six years after the statute  
9 has passed. One would think they would go away. No.

10 And your members are not dealing with it I think  
11 effectively, and from what I can tell, is the debt  
12 buyers don't care as long as they don't get nailed for  
13 attorneys' fees from a lawyer like myself. Can you  
14 respond to that? I mean, do you see that? Do you see  
15 it?

16 MR. LEIBSKER: No, I don't see it. I'm just --  
17 really, I don't. I think -- I think you're picking out  
18 on -- you know, there's always going to be an instance  
19 where someone's going to file a lawsuit on a case that's  
20 out of statute, but does it take -- is it a rampant  
21 thing that happens all over the country? The answer is  
22 absolutely, positively no. The judges wouldn't allow  
23 it; the court system wouldn't allow it.

24 Is there an increase in the number of files  
25 being filed? Absolutely. There's no way of avoiding



1 it. There's more credit out there. The debt buyers are  
2 out there. They have to recover their moneys. It's  
3 just the nature of the beast.

4 But you're saying 95 percent of the cases in  
5 Broward County are collection matters. Well, you know  
6 what, I bet if you looked ten years ago, 95 percent of  
7 the cases filed in Broward County were collection  
8 matters.

9 MR. MURPHY: No, not anywhere near it, okay.

10 MS. SINSLEY: Bob, can I address two of your  
11 concerns? You talked about increased volume, decreasing  
12 compliance, and you also talked about increasing volumes  
13 of litigation. With respect to compliance, the  
14 compliance is the same, and if anything, technology and  
15 using the information from the original creditor  
16 actually has facilitated getting the right party  
17 contacts. So, the training is the same, and the  
18 technology actually allows the debt collector to handle  
19 more volume cases in an easier manner. Most letters are  
20 streamlined. They are reviewed to be compliant. So,  
21 you're not seeing one-off type letters for each  
22 consumer. You're seeing a mass volume of letters that  
23 are compliant with Fair Debt.

24 With respect to litigation -- and you and I  
25 talked about this -- you know, I think the perspective

1 is, why aren't creditors filing lawsuits faster? Well,  
2 it could be that they're holding onto them longer,  
3 trying to collect them, because as Bob Hunt said, you  
4 have those that can't pay and those that won't pay. The  
5 problem with technology on the other hand is it's harder  
6 to figure out who can't and who won't, because sometimes  
7 you have an area of consumer responsibility where the  
8 consumer may be actually avoiding paying the debt. So,  
9 the debt may not be actually sued for a long time.

10 The other thing we discussed the other day was  
11 whether or not there's an increase of debt buyers suing,  
12 and my answer was that perhaps that is the perception,  
13 but there's not an overall increase in lawsuits.  
14 Creditors may not be filing suits themselves. They may  
15 be selling the debts, and then you're seeing more debt  
16 buying lawsuits. But at the end of the day, the  
17 compliance should be the same.

18 MS. HICKEY: Mark?

19 MR. DAVITT: Thank you, Karen.

20 Bob, again, I can't comment on the percentage of  
21 lawsuits in Broward County, but I do take issue when  
22 you're intimating that more, better, faster would imply  
23 an decrease in compliance. In fact, I would argue quite  
24 the contrary --

25 MR. MURPHY: Chinese toys, come on.

1           MR. DAVITT: -- that in our environment, in  
2 order to be a sustainable business enterprise, actually,  
3 it's incumbent upon us to become more effective and more  
4 efficient with our training, with our inspection, with  
5 our auditing, with our overall compliance. That's what  
6 will allow us to run a sustaining, profitable business  
7 into the future.

8           MS. HICKEY: We've talked a lot about and hit  
9 upon some of the new technologies in the debt collection  
10 industry. Are any of these specific technologies,  
11 either predictive dialers or, you know, skiptracing  
12 information that's now available, do any of these have a  
13 specific injurious effect on consumers?

14           Bob, maybe you could --

15           MR. DiGENNARO: Yeah. I mean, I think two  
16 things come to mind. I mean, obviously dialers are an  
17 important part of the strategy when you're doing  
18 collections, but they're also very sophisticated today,  
19 where, you know, we know not to recall an account once  
20 we've already attempted it; we know not to repeat, you  
21 know, if somebody asked us to take the phone number out,  
22 and we do that.

23           And so from, you know, a compliance perspective,  
24 you know, on the issuer side, I can also speak on debt  
25 buyers that I've seen, you know, they follow very strict

1 standards to the dialers, you know, as far as when to  
2 call, how to call it, what phones. In fact, if  
3 anything, it's becoming more and more difficult for both  
4 issuers and debt buyers and contingency agencies to  
5 contact people, because, you know, more and more folks  
6 are going to cell phones, and everyone asks for  
7 permission before you call a cell phone.

8           And then the second thing is, is that, you know,  
9 you have less land lines, and so the industry is really  
10 suffering from a contact rate, you know, erosion, and we  
11 have to really start thinking about what kinds of laws  
12 can we put in place to help us be able to reach people  
13 through their cells if we're going to actually have a  
14 chance of collecting debt.

15           I mean, the most concerning thing I see on both  
16 sides of the equation is, I think delinquencies and  
17 losses are going to go up, not just because of, you  
18 know, what's happening in the subprime mortgage  
19 business; it's because we are unable to contact the  
20 debtor, and it seems that there's more and more laws  
21 that are pro debtor and less and less for us to be able  
22 to contact them. As a result of that, you're going to  
23 see an increase in losses, and that's going to come back  
24 to the credit lending industry in higher rates.

25           MS. HICKEY: Bob Murphy, would you care to

1 comment?

2 MR. MURPHY: Predictive dialing? I have filed a  
3 lot of lawsuits concerning predictive dialing, and when  
4 you get a senior citizen with 15 phone calls in one day,  
5 how is that compliance? It isn't.

6 UNKNOWN SPEAKER: Against the law.

7 MR. MURPHY: Yeah, you know, against the law,  
8 but I just heard Robert make a comment that I wrote  
9 down, "Everyone asks for permission to call a cell  
10 phone."

11 MR. DiGENNARO: Yes.

12 MR. MURPHY: That's in the mythical world of  
13 complete compliance. It is not complete compliance. I  
14 look around the room, and if it's complete compliance,  
15 why have deposed six or seven people in this room more  
16 than once? And it is because your compliance is as you  
17 are the managing people running the companies saying  
18 this is supposed to be.

19 MR. DiGENNARO: I can tell you that they're now  
20 in the terms and conditions, at the time of origination  
21 that the issuers and creditors are dealing with, where  
22 they are asking for permission to use cell phones, and  
23 they get that, and that becomes part of the strategy to  
24 utilize. So, there is more and more sophistication in  
25 getting that approval through the terms and conditions

1 that the creditors are offering at the time of  
2 underwriting.

3 MR. MURPHY: We're talking about the credit card  
4 provider change in terms --

5 MR. DiGENNARO: Right.

6 MR. MURPHY: -- which came out -- I think the  
7 most recent publications were the last two years on that  
8 issue, and that in and of itself isn't an accepted  
9 practice, because it's causing the consumer, especially  
10 my low income clients, are going to have a cell phone  
11 bill from one of your debt collectors calling 15 times  
12 in a week.

13 MR. DiGENNARO: They won't call a cell phone  
14 without a permission.

15 MR. MURPHY: I'm not pointing -- I'm not  
16 picking on your debt collectors.

17 MR. DiGENNARO: No, I understand.

18 MR. MURPHY: I'm picking on the debt collectors  
19 in the back over there. The fact of the matter is it  
20 costs my client moneys, and it should not happen, but it  
21 does. And the fact of the matter is, most of the people  
22 in this room, I think, care about the industry. I came  
23 up here at my own cost and I'm losing time from work.  
24 Why? Because a voice has to be heard from the consumer  
25 side, and I was put on this panel largely to provide

1 that voice, and candidly, we have a common area of  
2 interest to basically clean up the industry.

3 I don't want to hear lip service to just to how  
4 we're having compliance. I know most of the people in  
5 this room, and the fact of the matter is, you have got  
6 to do more than that, and I look at the number of  
7 confidentiality orders I have coming towards me in cases  
8 about their training materials, you know, "Oh, our  
9 training materials are confidential." Why are they  
10 confidential? Are they not supposed to be telling  
11 people how to comply with the law? Do you get a  
12 competitive advantage over telling somebody how to  
13 comply with the law over your competitor? I mean,  
14 answer that question. Do you? No.

15 MR. DiGENNARO: No, of course not.

16 MR. MURPHY: So, why do you ask for  
17 confidentiality? I'm really going far afield, but this  
18 is germane to the discussion here. I have heard people  
19 talking, especially Ms. Andersen, about how they aspire  
20 to these great goals. The fact of the matter is -- and  
21 I mentioned this when we were on the phone the other  
22 day -- is that I actually have a common area of interest  
23 to clean up the industry both in terms of some of the  
24 consumer litigation I see that's, you know, got -- it's  
25 problematic, at best, and then also in terms of your

1 own -- clean up your side of the story, and I don't mean  
2 to be picking on anyone in particular.

3 Barb, you have got to say something. Go ahead.

4 MS. SINSLEY: Yeah, you looked at me. Actually,  
5 I have a proposed solution to communication. Prior to  
6 the FDCPA, as we all know, it's 30 years old, and 30  
7 years ago, there really wasn't the use of cell phones  
8 and text messaging and Treos where you can get your  
9 emails all day long and not go to sleep.

10 The FDCPA, as it was originally written, didn't  
11 contemplate this type of technology, and what we need is  
12 some clarification of how does the consumer want to be  
13 contacted? How can we contact them at a time at which  
14 it's convenient for them? For example, a lot of  
15 consumers would like to be contacted via email, because  
16 it's less invasive to them, they can do it really when  
17 it's convenient, yet the FDCPA doesn't necessarily allow  
18 for that, because you may not know who's on the other  
19 end, and you don't know if that consumer has consented  
20 to that.

21 If we can do some sort of work on the  
22 communication with the consumer under the FDCPA, do that  
23 type of communication that the consumer has consented  
24 to, makes them more comfortable, I think we might  
25 alleviate some of these issues.



1           MR. LEIBSKER: As well as, Bob, with the FDCPA,  
2 there are definitely ways for people to protect  
3 themselves, and if they are getting phone calls from  
4 someone, if they simply answer the phone and attempt to  
5 resolve their debt with the collection agency or  
6 collection attorney or with that buyer or the credit  
7 grantor directly, then in most cases, those phone calls  
8 are going to disappear, and without a contact, without  
9 some communication, then you'll have situations where  
10 people will continue to get called, and that's because  
11 our job is to try to collect that debt on behalf of our  
12 clients.

13           So, it takes both sides. It takes the consumer  
14 to meet their responsibilities to the debt that is owed,  
15 and until they're able to -- until they do meet that  
16 responsibility, there will be abuses taking place  
17 because there are, unfortunately, people out there that  
18 abuse the system. That is a very small percentage.

19           MR. MURPHY: Ira, I absolutely agree with you.  
20 It's a concept of just that people should pay, that  
21 should pay, period, but they should only pay what  
22 they're obligated to pay, and I think that's one of the  
23 things that's always missed in discussions with people  
24 on my side and your side, is the fact that my clients,  
25 if they have a debt that they are obligated to pay and

1 they know they are obligated to pay and they have the  
2 ability to pay, I don't represent them unless they're  
3 going to pay, period, and my function is to make sure  
4 that they make arrangements to pay it.

5 But the fact of the matter, in the debt buyer  
6 industry, I'm seeing things that are so far beyond what  
7 should be, like the collection calls from the prior debt  
8 collector or the re-aging of certain portfolios that  
9 certain companies have purchased that I know have been  
10 re-aged, because I've sued the company before, and I  
11 have three or four cases involving the same debt again  
12 and again, and the due diligence I see with better,  
13 faster -- actually, it was better -- better, faster,  
14 bigger -- whatever -- I'm sorry, I went way afield. The  
15 problem is with that type of mentality, you don't have  
16 the ability to make sure that the consumer is, in fact,  
17 paying the just debt.

18 MS. HICKEY: Maybe we can talk a little bit -- I  
19 know that you've got your perspective on the consumer  
20 side. We're sort of -- we're trying to hear everyone's  
21 voice.

22 Are there specific technologies and changes that  
23 we need to keep abreast of at the FTC, from text  
24 messaging -- I know that just a few years ago, I had no  
25 idea what a text message was, and I rarely text anyone,

1 even my college sister, and so how do you keep abreast  
2 of those changes, Mark and Bob DiGennaro? How does your  
3 business change to adapt and embrace these new  
4 technologies? And what sorts of problems do you run  
5 into in terms of the FD CPA and compliance?

6 MR. DAVITT: We would love to be able to  
7 communicate with our consumers in their preferred  
8 modalities of communication. That would be -- that  
9 would be wonderful. We do find it challenging. In  
10 fact, email is -- we have international -- individuals  
11 who are in remote parts of the world, and that is their  
12 preferred method of communicating with us.  
13 Communications by email, as you know, that is a  
14 communication. That has an impact on us under the FD CPA  
15 as well as under our liability insurance.

16 Cell phone usage, actually, I can remember  
17 walking through the halls of Congress asking all of the  
18 aides in the different congressional offices if you have  
19 a land line phone, and they looked at me as if I was  
20 crazy. The next generation does not have a land line  
21 phone. A cell phone is the only thing they -- a cell  
22 phone is the only phone that they have.

23 Again, internet or email access. Text  
24 messaging, I'm not convinced that's efficient. It may  
25 be, but I do know right now that given the rate of

1 change in technology, that we can expect there will be  
2 some other forms of communication evolving soon. So, I  
3 wouldn't say let's hammer down, let's put email and  
4 wireless communications in and have some yet  
5 undiscovered communication modality developed.

6 But, again, to drill down, I'd love to be able  
7 to communicate in the method that's preferred by the  
8 consumer.

9 MR. DiGENNARO: And I agree with that. I think  
10 that SMS messaging, particularly with the younger  
11 creditors, as they come up, it's going to be, you know,  
12 the preferred way to contact them, and I think as  
13 issuers and also as debt buyers, you know, we have to  
14 make sure that, you know, we come together and decide,  
15 you know, what's the best way to communicate in that  
16 manner, and I think, if anything, you know, if we could  
17 get some clarity on, you know, is it -- you know, is  
18 there anything from the FTC that we can leverage, you  
19 know, when it comes to these different types of media,  
20 you know, like the internet, you know, like an iPhone,  
21 you know, as far as, you know, is it permissible for us  
22 to contact them through those vehicles if we have  
23 permission, you know, those are the kinds of things that  
24 we have to continue to redefine our industry.

25 You know, today, you know, we find that only --

1 like, less than half of our, you know, accounts have  
2 land phones, less than half of our accounts have land  
3 phones. The other 50 percent are either using cells or  
4 they're using the internet or they're using SMS  
5 messaging, and we have to be able to communicate to  
6 them, and we have to understand, you know, what's the  
7 most appropriate way to do that?

8           And so as issuers and creditors, I think, you  
9 know, our best thing is to include that in our Ts & Cs  
10 at the very beginning when we originate the loan and  
11 allow them to give us access to those venues, and then  
12 we can utilize them the way we use the land line, you  
13 know, follow the law as a result of it, the same -- you  
14 know, the same time zone and all those kind of things.

15           MS. HICKEY: Does this difficulty in reaching  
16 consumers and keeping abreast of technology, does that  
17 put additional pressure on individual collectors to  
18 collect? And does that translate to creditors putting  
19 pressure on debt collectors? And how do the debt  
20 collectors to respond to these external changes?

21           MR. DiGENNARO: Well, I could tell you that, you  
22 know, on the issuer side, if you can't contact someone,  
23 that's a problem. I mean, that's a big problem. Our  
24 industry is generated on our ability to contact, you  
25 know, our cardholders, and that's not just the ones that

1 go delinquent. We want to contact the ones that are  
2 current, you know, also. I mean, you know, remember  
3 that only 5 percent usually of the population of the  
4 currents fall into delinquencies, so let's don't get,  
5 you know, too out of whack at, you know, how big this  
6 population is.

7 I'm sorry about, you know, that group in that  
8 county in Florida that seems to have a high number of  
9 situations, but across the industry, we're talking about  
10 5 percent of the accounts, and so if we want that to  
11 become 10 percent tomorrow, and we're willing to go back  
12 and charge our, you know, fees, because, you know, if  
13 you have a land phone, should we now charge them an  
14 extra fee if they have a cell phone because we can't  
15 contact you, so that we can, you know, start recouping  
16 some of our losses?

17 I mean, this is the way it's starting to go down  
18 to, because, you know, the whole mode is to be able to  
19 reach your cardholder. When they sign the contract with  
20 you, you know, to -- when you give out -- when you give  
21 out the loan and they accept it, they have to be able to  
22 allow us a chance to collect it through a means that,  
23 you know, is able and given to, you know, the collection  
24 group, and I find that it's becoming more and more  
25 difficult to reach debtors through the channels of SMS

1 and without not having those channels, and so we've got  
2 to add them in as part of the normal collection process.  
3 If we don't, we're going to start seeing a really  
4 catastrophic situation occur with higher losses and  
5 higher delinquencies.

6 MR. LEIBSKER: As well as one other thing you'll  
7 see, is you'll see more lawsuits filed.

8 MR. DiGENNARO: Right.

9 MR. LEIBSKER: Because if that's the only  
10 way you get-- if people won't -- if you cannot  
11 communicate --

12 MR. DiGENNARO: You have got to sue them.

13 MR. LEIBSKER: -- and you cannot contact, then  
14 there will be more lawsuits filed.

15 MS. HICKEY: If you can't contact the consumer  
16 and you can't reach them and you file a lawsuit and you  
17 still haven't contacted the consumer, where does that  
18 leave the lawsuit? What happens?

19 MR. LEIBSKER: Well, the way I look at it is  
20 really it's the one and only time that a consumer gets  
21 to actually talk to somebody face to face, in a lawsuit  
22 situation, if -- assuming that they contest their bill.  
23 If they decide to contest their bill, and which most  
24 people don't, but the ones that do, when they go to  
25 court, they actually are talking to a person. They're

1 not talking to somebody on the phone. They're actually  
2 talking to someone face to face and which they can then  
3 resolve their bill.

4 So, it's just one of those situations that if  
5 you don't have contact beforehand, if people will not  
6 return their calls or take on the responsibility they  
7 have to try to resolve things, I personally would much  
8 rather talk to somebody in the first 30 days that I  
9 receive an account and try to resolve it than spend the  
10 additional time, effort, money to collect that debt. I  
11 would much rather do it in the first 30 days.

12 MS. HICKEY: Bob, in your experience, do you  
13 have consumers who have been contacted and then sued, or  
14 are you finding that you have more clients who have not  
15 been contacted and perhaps they don't have a land line  
16 and that's why they've been unreachable?

17 MR. MURPHY: This is the difference in the last  
18 five years, is that we're not seeing presuit  
19 communications with the frequency that we used to see,  
20 and I think a lot of it has to do with the concerns over  
21 the consumer collection attorneys not wanting to be  
22 sued, and I think it has just a lot more efficiency for  
23 the purposes of collecting the older debts, the debts  
24 that are pressing the statute of limitations or beyond  
25 it.



1           And someone mentioned about having some guidance  
2           from the FTC concerning communications, electronic  
3           communications, whatever.

4           MR. DiGENNARO: Right.

5           MR. MURPHY: The last time the FDCPA was  
6           amended, about two years ago, to basically exclude the  
7           summons and the complaint as being initial  
8           communication, that was something you guys -- you guys,  
9           the consumer collection people -- were asking for, but  
10          it created additional problems, because if it's not the  
11          initial communication and they were doing embedded  
12          G-notices in the lawsuit, then, you know, when is the  
13          consumer ever going to get the G-notices, the validation  
14          information? They are never going to get it according  
15          to the amendments to the FDCPA.

16          And see, every time that something's tinkered  
17          with, something else happens with respect to -- it's the  
18          law of unintended consequences. My personal belief is  
19          that the reason why lawsuits are being filed without  
20          notice is because it strikes the consumer sometimes when  
21          they least expect it.

22          MR. LEIBSKER: Bob, I have to absolutely  
23          disagree with that.

24          MR. MURPHY: Why?

25          MR. LEIBSKER: There is absolutely far more

1 attempts to communicate with the debtor than ever  
2 before. I know back -- and I have been practicing now  
3 for 31 years. For the first 10 or 15 years of that  
4 time, the only communication that we would attempt to  
5 make on a debtor was a letter or two or three, and then  
6 attempting the lawsuit. Today, there is phone --  
7 attempted phone contacts from the time that account  
8 enters my office to the time that it's collected.

9 There's always an attempt to try to reach that  
10 debtor, to try to resolve it, and I totally disagree  
11 with you that there's less contact -- attempted contacts  
12 on the legal side as you're portraying.

13 MR. MURPHY: It's two sides. You've got the  
14 debt buyer, and you've got the collection attorney, and  
15 I'm seeing a lot less communication from the debt buyer,  
16 and because of the --

17 MR. LEIBSKER: That's not what you were saying,  
18 though.

19 MR. MURPHY: I'm -- let me clarify it.

20 MR. LEIBSKER: Okay.

21 MR. MURPHY: But if that were the case, I  
22 wouldn't have sued as many collection lawyers for not  
23 sending out the G-notices as I have in the last two  
24 years. I'll tell you that right now. And it's just a  
25 function of what I think they perceive the law to be.

1           MS. HICKEY: Bob, earlier you touched a little  
2 bit on training, and you said that a lot of training is  
3 considered proprietary information. I want you to talk  
4 a little bit about how contingency collectors and how  
5 debt buyers and how in-house collection, how you take  
6 the consumers who are the won'ts and can'ts and move  
7 them into the cans and wills.

8           And I think that that lies in training and  
9 monitoring and discipline and also compensation  
10 structure for collectors. So, if we could sort of first  
11 talk a little bit -- Mark, if you could talk about  
12 in-house collection strategies -- I'm sorry, Bob  
13 DiGennaro, if you could talk about in-house collection  
14 strategies --

15           MR. DiGENNARO: Yes, sure.

16           MS. HICKEY: -- and how you compensate your  
17 collectors.

18           MR. DiGENNARO: Absolutely. I mean, from the  
19 issuer side, you know, the big thing is you constantly  
20 monitor performance. We have a quality department that  
21 just monitors their performance and checks all the  
22 different laws and regulations as well as the type of  
23 talk-offs that they do and how they, you know, end the  
24 conversation, from the beginning to end. It's really  
25 well monitored.

1           But the collectors themselves are incentive  
2 based on, you know, hitting their thresholds of dollars  
3 collected during the course of a month. So, you know,  
4 typically, you know, you give them a goal of X, and once  
5 they hit that, they then get incented on, you know,  
6 achieving more than X.

7           And typically, you know, we try to get at least  
8 30 to 40 percent of the population to get engaged in  
9 some type of incentive as well as we try to gear the  
10 compensation of that incentive to about, you know,  
11 anywhere between 10 to 20 percent of their monthly  
12 salary as targets.

13           MS. HICKEY: Mark, do you follow a similar model  
14 for contingency collections?

15           MR. DAVITT: Yes. Yes, Karen. It's a very  
16 similar model in terms of after -- yes, in terms of that  
17 scenario, individuals do have targeted goals, and it's  
18 based upon what they have available. It's always based  
19 on a percentage, based upon the trends in that  
20 particular product line.

21           They do have an incentive that if they are above  
22 that, they do get -- they have an opportunity to earn an  
23 additional incentive. It's not perhaps 20 percent, but  
24 it's -- I'd have to look at your base numbers there, but  
25 it does provide that, again, a good incentive, and

1 that's part of an individual. I mean, also -- well, I'm  
2 not going to talk about our company, in particular, but  
3 as a general -- as an industry-wide practice, that is  
4 fairly common.

5 MR. LEIBSKER: And on the legal side, it fits a  
6 similar model to the collection agency. There are  
7 incentives for them to collect dollars. I think the  
8 biggest thing that we try to do is training, and that is  
9 training individuals how to negotiate and how to speak  
10 to people. If they can't -- the ones who are successful  
11 are the ones who are able to talk to people, try to  
12 resolve issues, and that's -- that's really the big part  
13 of the training.

14 And the auditing process is ongoing all the  
15 time. There's always people spending time auditing, and  
16 if we find that someone isn't following the rules, then  
17 they are usually walked off the floor. So, it's well  
18 monitored as well as you can. When you have 45 people  
19 on the phone or 100 or 500, you can't monitor them all  
20 at the same time, but you can do the best you can.

21 MS. SINSLEY: I think it's important to note, as  
22 nice as Bob is, the last thing a debt collector wants is  
23 to be sued by an attorney, because the cost is high, not  
24 only from an insurance cost, but because of the fact  
25 that that's taking away from business, and it is

1 detracting from really what that company's real goal is,  
2 and that is to recover a debt.

3 Now, the problem sometimes with these lawsuits  
4 is they're on technical violations. It's something  
5 where there is a misinterpretation of, say, a statute or  
6 there is a error in a calculation, there's a number, and  
7 there's a bona fide error on the part of the collector  
8 on, say, putting a number on a letter, say 5,000 versus  
9 500, and there was a typographical error.

10 These type of lawsuits have increased in  
11 proportion to a lot of other lawsuits around the  
12 country, I think we're all seeing, and that's a problem  
13 that we have as an industry, is that we have a fear that  
14 we're going to get a lawsuit on a technical violation,  
15 when largely, what we're trying to do at the end of the  
16 day is run our business, be compliant, and avoid  
17 lawsuits.

18 MS. HICKEY: I think that even technical  
19 violations can have some real impact for consumers. How  
20 do you ensure that your collectors are compliant and  
21 they know about the technical requirements that they  
22 have to meet in collecting debts?

23 MR. LEIBSKER: They're trained. They're  
24 trained. Now, you can monitor them, as I say, as best  
25 you can, but they are trained to follow the law, and as

1 Barbara pointed out, we surely don't want to be sued. I  
2 surely don't want to be sued. I have my law license  
3 involved. I have a staff that I -- if I don't have my  
4 license, they don't work. So, I'm very concerned about  
5 that. I know I myself spend time on the collection  
6 floor. My office is right outside their door, right  
7 outside their office.

8 MR. DiGENNARO: Well, and on the issuer side,  
9 there is a lot of corrective action procedures that are  
10 done, because you monitor -- I mean, the dialer has the  
11 capability and a lot of other technologies that are out  
12 there have the capability of monitoring every single  
13 call, and what they do is they go back, you know,  
14 routinely, after each day ends, and they look for  
15 certain situations to determine whether or not there  
16 could have been a violation, and if there was, it's  
17 corrected immediately, and in most of the cases, it  
18 leads to termination. So, there's a lot of emphasis on  
19 that.

20 In fact, no bonuses get paid out. If there's  
21 any compliance -- all the incentive programs that I've  
22 seen on the issuer side, and I'm sure this is also on  
23 the debt buyers' side, have a -- you know, you have to  
24 be compliant first. You will not receive one dollar if  
25 you have a compliance violation in that current month,

1 not one dollar.

2 MS. HICKEY: How do you monitor all of your  
3 collectors?

4 MR. DiGENNARO: Through the dialers, through the  
5 dialer systems, and also through certain technologies  
6 that are available.

7 Go ahead.

8 MR. DAVITT: Again, as I mentioned, that  
9 plummeting cost of technology, I think the increase is  
10 the amount that we buy, but the per-unit cost is coming  
11 down. That allows for call recording.

12 In terms of the environment themselves,  
13 supervisors should be walking and talking with their  
14 staff members as it's going on, but in addition, you  
15 have to do formal inspections. You have to do audits.  
16 You have to pull up calls from individuals and review  
17 those calls.

18 Actually, the reason we do that is to not only  
19 catch someone doing something right, but also to enable  
20 them to give that positive, that feedback, much like  
21 biofeedback, so they can improve in their communication  
22 with the consumers. But without that inspection, it  
23 would be difficult.

24 Now, let's wind up. Remember, at the beginning  
25 of a sustainable, profitable company, and apart from the



1 vision mission values -- and it has to be a living  
2 mission -- you have to have your policies, your  
3 procedures, your work instructions, and then, most  
4 importantly, you have to train, train, train. That  
5 training takes place, including advising people that  
6 they do also have a personal liability under the FDCPA.  
7 An individual debt collector is a debt collector. But  
8 having those in place, again, you have to -- you have to  
9 live it, but you have to inspect as well.

10 MR. MURPHY: From my perspective, I have taken  
11 depositions of officers, directors, and the individual  
12 collectors themselves repeatedly throughout the country,  
13 and here is something that is germane to every single  
14 one of the depositions but maybe one or two, and that is  
15 that none of the people I ever deposed had an  
16 understanding of the underlying policies in the Fair  
17 Debt Collection Practices Act.

18 They can parrot certain things, like we are not  
19 supposed to talk to third parties concerning the  
20 collection of a debt except when we're trying to locate  
21 the consumer, and they don't have a real understanding  
22 of things like, you know, the nuts and bolts and the  
23 reasons why the policy -- there's a policy underlying  
24 everything in the FDCPA. And you can ask that person a  
25 question, why is that required? I don't know.

1           And then I question you guys, why didn't you go  
2 to that effort -- because I've seen materials from most  
3 of the companies here, and they're just the same thing.  
4 It's the same stuff that's parroted again and again,  
5 just like we're here today saying, you know, we're into  
6 compliance. I trust you are. I know that you try to,  
7 because you don't want to have a lawsuit from people in  
8 Chicago or people in South Florida, but the fact of the  
9 matter is, the reason why you're getting lawsuits is  
10 because the people that are working for you have the  
11 incentive to break the law.

12           MR. DiGENNARO: See, I disagree with that  
13 completely. I'll tell you for a fact that the  
14 mini-Miranda is said on every call, every call. In  
15 fact, sometimes the debtor will tell you -- actually  
16 tells -- will actually recite it before the collector  
17 can, because they have heard it so many times.

18           MR. MURPHY: Right.

19           MR. DiGENNARO: I mean, in situations, and in  
20 addition do that, you know, each one of the collectors  
21 are given a test. They have to pass a test on the  
22 collection fair -- you know, the Fair Practices Act.  
23 They have to pass a test on it, and we give it to them  
24 multiple times throughout the year. It's not just a  
25 one-and-done situation. So, again, I think, you know,

1 you probably have a couple isolated people who aren't  
2 doing it as well as they should and shouldn't be  
3 practicing.

4 MR. LEIBSKER: And to add onto that, at least in  
5 my office, I know I have auditors coming in from my  
6 clients almost on a weekly basis, a different client  
7 every week, who is auditing conversations, asking for  
8 tapes of conversations regarding their accounts. So,  
9 they are concerned that there aren't any FD CPA  
10 violations taking place within our office, and I'm sure  
11 they do the same thing -- I'm positive they do the same  
12 thing --

13 MR. DiGENNARO: Right.

14 MR. LEIBSKER: -- on the agency side.

15 MR. DiGENNARO: Sure.

16 MR. MURPHY: Robert, would you terminate your  
17 most profitable collector if you found that the  
18 collector routinely violated the law?

19 MR. DiGENNARO: Absolutely. I've done it.

20 MR. MURPHY: See.

21 MR. LEIBSKER: So have I.

22 MR. MURPHY: That's the difference between you  
23 and I think many collection agencies in the country,  
24 because I know that I have deposed the same person  
25 repeatedly, the same collection agency, and they've been

1 working there for 14 or 15 years.

2 MR. DiGENNARO: I guarantee you, because the  
3 credit -- I'm sorry, Mark, I'll let you jump in here,  
4 but I can guarantee you the issuers do not want their  
5 name in the paper. They only go after the best in the  
6 market, and if they don't find the best, they don't do  
7 their work. It's that simple. And they have very high  
8 standards.

9 The way we always -- our philosophy was the  
10 collection agency or debt buyer is an extension of our  
11 in-house business, and we want -- the same scrutiny that  
12 goes into monitoring the accounts internally goes  
13 externally. There's no double standard. And if you do  
14 it any other way, you're right, you're set up, Robert,  
15 for lawsuits. But you have to keep it that strict, and  
16 you have to make it a priority, and it even goes up to  
17 senior management doesn't even get their bonuses if  
18 those standards are not met.

19 MR. MURPHY: I actually -- I know you think  
20 that. I know that that's --

21 MR. DiGENNARO: Well, I practice that.

22 MR. LEIBSKER: Yeah.

23 MR. MURPHY: -- I know that's what a lot of  
24 people believe, but I heard the same mantra in Buffalo,  
25 December two years ago, and as it was being said to me

1 by the president of the company, I heard in the  
2 background -- in the pit as they describe it --

3 MR. DiGENNARO: Right.

4 MR. MURPHY: -- exactly the things I was  
5 describing in my lawsuits going on. And, you know, I'm  
6 like, "Wow, this is weird." And the fact of the matter  
7 is it's not an isolated occurrence. What if the  
8 consumer lawyers here today are -- we're in the minority  
9 right now, but --

10 MR. DiGENNARO: Remember, there's billions and  
11 billions of calls being done every day, and, of course,  
12 you are going to have a small percentage of isolated  
13 situations where you are going to have these one-off  
14 situations occur, and you have to deal with it and act  
15 swiftly, but what about the other 99.9 percent that are  
16 going on perfectly every day, and people are satisfied,  
17 and they're happy with the results that they get?

18 MR. DAVITT: Yes, thank you. Thank you, in  
19 fact --

20 MR. DiGENNARO: We have got to be harping on  
21 that issue --

22 MR. DAVITT: In fact, Robert --

23 MR. DiGENNARO: -- and I think that this  
24 Commission should be thinking about that first before we  
25 start looking at the one percentage of a basis point --

1           MR. DAVITT: Correct. And, in fact, Robert, I  
2 appreciate -- I understand. We don't like rogues, we  
3 don't like cowboys, and if you're deposing the same  
4 agency over and over again --

5           MR. DiGENNARO: Get rid of them.

6           MR. DAVITT: Absolutely, and I hope you pass  
7 their name on.

8           MR. DiGENNARO: Yeah.

9           MR. DAVITT: But don't cast aspersions based on  
10 that to the entire industry.

11          MR. DiGENNARO: Right.

12          MR. MURPHY: I'm not.

13          MR. DAVITT: Okay, then I would like it noted  
14 for the record that the vast majority of our  
15 transactions --

16          MR. DiGENNARO: Work with integrity and  
17 ethically.

18          MR. DAVITT: -- are conducted in a consumer  
19 service oriented environment. These are people -- they  
20 are human beings who are having trouble. They are in a  
21 difficult situation right now. We have to work with  
22 them. The natural reaction is --

23          MR. DiGENNARO: Right.

24          MR. DAVITT: -- they shut down. They do not  
25 communicate, because they don't know a way out. Our

1 responsibility is to locate, to identify, to talk with  
2 them, and work them through, if possible, activities,  
3 payment plans, that will get them started on the road to  
4 getting out. That is what we do, and it has to be done  
5 in a consumer friendly manner.

6 Our clients are watching us. And, again, with  
7 respect to the mini-Miranda, that actually can become  
8 rather challenging. In every communication, every  
9 subsequent communication --

10 MR. DiGENNARO: Yep.

11 MR. DAVITT: -- somebody will call us up after a  
12 phone call terminates that, "Hey, what was the mailing  
13 address again?" "I'm sorry, I am a debt collector, this  
14 is an attempt to collect a debt, any information  
15 obtained may --" they say, "I know, I know, what's the  
16 address?" That can become a problem. But still, our  
17 business has to be conducted in a consumer friendly  
18 fashion, and, Robert -- and I agree, nobody likes bad  
19 actors, especially, I think, the people in this room.  
20 We do not like the bad actors, but, again, I want it  
21 understood that the bad actors do not represent the  
22 industry.

23 MR. MURPHY: Karen, I just want to say one  
24 thing, because I know you're anxious to say something,  
25 but this is actually dovetailing into the next issue.

1 Is it consumer friendly if you bought a debt to report  
2 on that person's credit report before informing them of  
3 the fact that you bought the debt?

4 MR. DAVITT: Is that FCRA?

5 MR. MURPHY: It is actually FCDPA. It's an E-8  
6 issue. Is it consumer friendly to do that? Because  
7 this is a problem with debt buyers right now, is that  
8 they park on a person's credit report for I don't know  
9 how long, and the person finds out about the issue when  
10 they're refinancing their house or trying to buy a car.

11 What we're seeing is we're not seeing any low  
12 letters, you know, any G-notices going out, but the debt  
13 buyer has parked on the person's credit report. This  
14 dovetails into electronic issues or technology issues.  
15 What do you think about that? Is that consumer  
16 friendly?

17 MS. HICKEY: Barbara, can you comment briefly?

18 MR. MURPHY: Barbara.

19 MS. SINSLEY: I think you have gotten into a  
20 very complicated area of what's called the FACT Act.  
21 The amendment to the FCRA requires that financial  
22 institutions comply with the requirements of the FACT  
23 Act, which say that you have to give notification to the  
24 consumer before you report on their credit bureau what's  
25 called a negative notice.



1           Again, I think what you're talking about is what  
2 Mark was talking about. There is a small percentage of  
3 actors out there that may not be giving the negative  
4 notice, giving the notice to the consumer that it is on  
5 their credit bureau.

6           There's also, perhaps, a misunderstanding on the  
7 part of the consumer on when it appears on their bureau,  
8 because sometimes it's a prior debt collector they had  
9 on their bureau, it's sold, they get another notice, but  
10 by and large, the debt collectors are compliant with  
11 what's called the Metro 2 guidelines and the FCRA  
12 requirements, and I think what you're seeing is twofold:  
13 Sometimes it might not be happening, and the other  
14 times, the consumers don't understand what this notice  
15 is on their letter.

16           MS. HICKEY: I think that we will have a panel  
17 that actually goes very much into greater detail about  
18 these kinds of issues.

19           You know, one thought that occurs to me is  
20 whether collection agencies use independent monitors for  
21 tracking their collectors and making sure that they're  
22 compliant, and if so, what percentage in your various  
23 industries use independent monitors and how that impacts  
24 the business.

25           MR. DAVITT: I think I understand. Independent

1 from the agency?

2 MS. HICKEY: Yes.

3 MR. DiGENNARO: The clients do that, right?

4 MR. LEIBSKER: The clients do that.

5 MR. DAVITT: That smells like -- well, yeah, but  
6 that's not independent. That would be a client. That  
7 sounds like a third-party disclosure to me, right? That  
8 would be my reaction, is now you're disclosing to an  
9 independent party that this person owes money.

10 MR. DiGENNARO: Unless it's the client, though.

11 MR. DAVITT: Oh, yeah, but that's not a third  
12 party.

13 MR. DiGENNARO: Right, but it's a third party  
14 outside of your operation. Is that your point?

15 MS. HICKEY: Right, yes.

16 MR. DiGENNARO: Okay. So, a client does it  
17 routinely and would continue to do that on a routine  
18 basis.

19 MS. HICKEY: Are there state laws that impact  
20 your ability to monitor your collectors? Are you unable  
21 to record calls in certain states? And if that's the  
22 case, how do you monitor those collectors in those  
23 states?

24 MR. DAVITT: Yes, there are certain states that  
25 have dual-party notification, and actually, that's also

1 a benefit of the software, of the technology  
2 developments, is those things can -- those automatically  
3 prompt up.

4 We advise individuals that the call may be  
5 recorded. If they cease that call, then it's not  
6 recorded. I'm sorry, the calls are recorded. If they  
7 elect not to continue to talk, then it's -- they  
8 terminate and it's not recorded, but all of our calls  
9 are recorded.

10 MR. DiGENNARO: Yeah, and in addition to that, I  
11 think within some -- actually, there's even some zip --  
12 not even zip codes, but area codes that you have to  
13 even, you know, make sure that those calls are being  
14 monitored and you get permission before you monitor  
15 those calls as well. So, yeah, I mean, there are some  
16 states that, you know, obviously demand more from a  
17 compliance perspective and in recording. I mean, we  
18 would love to see all the states the same.

19 MR. DAVITT: Preemption, FCDPA preemption?

20 MR. DiGENNARO: Yeah, absolutely, that would be  
21 fantastic.

22 MR. DAVITT: Yes.

23 MR. DiGENNARO: So, that's one item if you want  
24 to jot that down. That would be great, Karen.

25 MR. MURPHY: I would like it, too.

1 MS. HICKEY: I'm sure our state regulators would  
2 have something to say about that.

3 MR. MURPHY: It would be an awesome tool.

4 MR. DAVITT: It would align it with the Fair  
5 Credit Reporting Act.

6 MR. DiGENNARO: Put that one on the summary  
7 page.

8 MS. HICKEY: And for sort of a flourish at the  
9 end, if you will, you mentioned earlier some instances  
10 where debt collectors would be terminated. What would  
11 constitute zero tolerance behavior where you would  
12 terminate someone, perhaps from your past experience?  
13 I'll start with you, Mark.

14 MR. DAVITT: Cursing.

15 MR. DiGENNARO: Yeah, abusive language.

16 MR. DAVITT: Cursing, that's out. We understand  
17 how it happens. If you think about what we're doing,  
18 again, these are human beings. They're in financial --  
19 they're having a problem. It might be real or it might  
20 be perceived. They're having a problem. We are a third  
21 party. We come along. We're going to initiate a  
22 contact with them. This conversation is emotionally  
23 charged at the onset. The consumer knows that they are  
24 delinquent.

25 Oftentimes, as many of our students of human

1 nature, we can predict different types of responses that  
2 consumers will have, and some of them will be -- they  
3 will become very aggressive in their response, and the  
4 challenge there, for our human being on our side, is to  
5 not escalate. You have to stay calm. No matter what  
6 that person is yelling and screaming at you on the other  
7 side of the phone, you have to stay calm; however, if  
8 they break that, that's -- they won't be productive in  
9 the long term. They won't be successful.

10 MR. DiGENNARO: I'd say misrepresentation of  
11 themselves, you know, a violation of the law obviously,  
12 as well as, you know, maybe not recording the correct  
13 information that was given to them with regard to that  
14 promise commitment or that promise amount.

15 MR. LEIBSKER: And I would say deceptive  
16 practices, as well as it was mentioned before about  
17 taking checks over the phone, if there were any kind of  
18 violation that took place there, it would be immediate.

19 MS. HICKEY: Bob Murphy, does this --

20 MR. MURPHY: Well, actually, it's the same for  
21 clients. I mean, if I have a client that has the same  
22 attributes of cursing at a debt collector or acting  
23 inappropriately, I don't want them as a client, and it's  
24 the same -- it's just basic human decency, which,  
25 unfortunately, in some parts of our country, in terms of

1 cities and other areas of debt collection activity, it's  
2 not there.

3 Barbara, you've got the last word.

4 MS. SINSLEY: I think a zero tolerance offense  
5 would be if you were impersonating an attorney.  
6 Certainly we have enough attorneys, and I'll end with  
7 that.

8 MS. HICKEY: On that note, thank you all very  
9 much. We appreciate your perspectives.

10 (Applause.)

11 MR. KANE: Thanks, Karen.

12 We'll now break for lunch until 1:15. I do have  
13 to make an announcement. I tried to make it before, but  
14 I didn't get to it. Apparently someone left a bag in  
15 the ladies room, and you can retrieve it from the  
16 guard's desk. It's not mine.

17 You'll find a list of nearby restaurants behind  
18 the agenda in your workshop folders, and we'll see you  
19 back here at 1:15. Thanks.

20 (Whereupon, at 11:57 a.m., a lunch recess was  
21 taken.)

22

23

24

25

## 1 AFTERNOON SESSION

2 (1:17 p.m.)

## 3 CONCERNS ABOUT DEBT COLLECTION:

## 4 CONSUMERS' PERSPECTIVE

5 MR. KANE: Okay, folks, we'll get started now.

6 Thank you all for both getting through lunch and getting  
7 through security by 1:15. We really appreciate it.8 Before I introduce today's third panel, I want  
9 to let you all know that people will be heading to Union  
10 Station for happy hour right after today's final  
11 session -- not this one, don't leave early -- at 5:15.  
12 It will be in the bar area of America Restaurant at  
13 Union Station, which is off the station's main atrium.  
14 It isn't an official Commission event, and like the  
15 luncheons today and tomorrow, it is on your own, but it  
16 will be a good time for all of us to spend some time  
17 together outside of the workshop.18 So, our next panel will address concerns about  
19 debt collection from the perspective of consumers and  
20 consumer advocates. Our moderator will be Katie  
21 Harrington-McBride, who is a counselor to the Director  
22 of the Commission's Bureau of Consumer Protection.

23 Katie?

24 MS. HARRINGTON-McBRIDE: Thank you very much,  
25 Tom.

1           The panel is officially called "Concerns About  
2 Debt Collection: Consumers' Perspective," but really  
3 it's the post-parandial stupor panel, and only a very  
4 small segment of the population can be selected to speak  
5 directly after lunch and be expected to keep you awake,  
6 so these are exemplary panelists, and I have no doubt it  
7 will have been worth your wait to get through security.

8           I would like to do a brief introduction and to  
9 allow each panelists just two minutes to state in their  
10 view the most pressing consumer concerns about debt  
11 collection, so that we can begin by sort of getting the  
12 views of the panel, and then we will have a moderated  
13 discussion for the balance of the time that we have.

14           In a total lack-of-imagination moment, I have  
15 ordered this simply alphabetically. We will begin to my  
16 left with Rudy Cavazos, Jr. Rudy is the Texas Regional  
17 Director of Education and Community Relations for Money  
18 Management International and its consumer credit  
19 counseling services agencies. He works on areas of  
20 personal money management, financial literacy, and  
21 community business relations in the state of Texas.

22           So, Rudy, what are your most pressing concerns  
23 today?

24           MR. CAVAZOS: First of all, I want to thank the  
25 FTC for the invitation, and my comments derive from what



1 we see at my organization, what we see and what we hear  
2 in my non-profit credit counseling agency, the largest  
3 in the country, and so we are directly involved with  
4 these consumers and hear directly their pains, their  
5 fears, when they're in relation to collection efforts.  
6 We hear stories that are completely nightmares, stories  
7 that we can't believe that are actually occurring.

8 From my area, as I -- I deal a lot with the  
9 Latino community, and there's one thing that always  
10 comes to mind when we're talking debt collections, and  
11 that is the continuous threat of immigration  
12 retaliation. As terrible as that might sound, it's  
13 happening, and it happens every day.

14 So, I'm glad that I was invited here, and in  
15 my -- I guess my point that I am going to stress today  
16 is that there needs to be more education for the  
17 consumer. If you educate the consumer to become a  
18 better educated consumer, we don't have to deal with the  
19 issues of collections.

20 Thank you.

21 MS. HARRINGTON-McBRIDE: Excellent. Thank you,  
22 Rudy.

23 Next, to the left of Rudy, we have Dale Pittman.  
24 Dale is a consumer protection attorney based in  
25 Petersburg, Virginia. His primary practice areas

1 include FDCPA and other debt collection-related issues.

2 So, Dale, what are your most pressing concerns  
3 that you would like us to touch on today?

4 MR. PITTMAN: Well, I guess the good news for  
5 people, most of the people here today, is I'm not nearly  
6 as contentious as Bob Murphy, and I can't speak to a  
7 cause and effect. I can only speak to what I see in  
8 Virginia as probably the one person who does this kind  
9 of work across the state and from my perspective in my  
10 small town lower -- south of Richmond, but what I see  
11 after having done this for 10 or 11 years is entirely  
12 different from the perspective that was promoted by most  
13 of the panelists today.

14 I see an industry -- what I see coming in the  
15 door, is all I can speak to, is rampant abuse in every  
16 area that I see under the statute, the -- Barb Sinsley  
17 referred to technical violations. I don't know whether  
18 that would include the G-notice cases involving  
19 contradiction or confusion in the 30-day notice.

20 When I first started, we had two Fourth Circuit  
21 cases, Miller and NFS, and I then embarked on four or  
22 five years of adding to the jurisprudence in Virginia at  
23 the district court level, and I figure that's clearly  
24 going to be old news, and I'm going to have to find some  
25 other way to put shoes on my five children's feet.

1           As it turns out, now I've done a dozen or so  
2 G-notice cases in the last year, and they're not  
3 technical cases, but they're an example of tweaking the  
4 words in some way that our courts and other courts in  
5 the country have said distracts from the consumer's  
6 ability to understand and invoke her rights under the  
7 statute.

8           There was a lot of talk today about the ability  
9 using technology not to violate the statute. The --  
10 what I call the Brady violation, the E-8 violation of  
11 "deroging" someone's credit after there's a known  
12 dispute is epidemic. I routinely pay my light bill -- I  
13 see David Israel, my friend over here, some of his  
14 clients help keep my lights on, because we dispute debts  
15 and give credible disputes, and the debt, it comes back.  
16 It continues to be on the credit even though there's a  
17 clear, credible indication that this is not the person's  
18 debt. Even if it's not clear, you can't continue to  
19 say it's disputed. That's what I call the Brady case, a  
20 First Circuit case from 1998 that states that position.

21           Then the other thing that I see that no one  
22 could argue is technical is the brazen abuse and  
23 deception cases, and I say brazen because the thing that  
24 strikes me as a lawyer, and if I were one of the lawyers  
25 advising people in your industry, I would certainly say,

1 "Don't leave voicemail messages." You know, its  
2 incredible. You don't do that.

3 But, you know, I have a case right now that I'm  
4 getting ready to file where the message is, "Okay, you  
5 little punk, you're not answering the phone, I called  
6 you a minute ago. Is that because you're in bed  
7 sleeping with your sister or your cousin or your mom?"  
8 Now, this guy's parents were both taken out by a drunk  
9 driver when he was 12, and that's the message that's  
10 left on his machine. So, you know, I say brazen because  
11 that is not -- you know, it's not unusual and it's  
12 not -- it's commonplace.

13 There was a talk earlier today by someone on the  
14 panel about talk-offs that we use to monitor carefully  
15 what our collectors are doing. I have two cases now  
16 where the debt collector says, "We're going to come and  
17 take care of you in your home." This is an elderly  
18 person who called scared -- I can't use the adjective  
19 that we use in the south side of Virginia, but was very,  
20 very frightened by that.

21 And then I have someone else come in a month  
22 later, "We're going to take care of you at your place of  
23 employment." Lo and behold -- and I don't know whether  
24 the folks are here today -- lo and behold, there is a  
25 written talk-off. I could show it to you at happy hour

1 on my hard drive where this person is told to say, "If  
2 they are not going to pay, you tell them that we are  
3 going to take care of them in their home or at their  
4 place of employment."

5 Now, my all-time favorite recently, again, a  
6 voicemail, "Ms. Jones, this is Ms. Smith. I'm from the  
7 Spotsylvania Sheriff's Department. I've got the records  
8 here from your loan at Advance Payday Lender. You're  
9 way behind with those folks. If you don't pay them by  
10 4:00 today, we," being the Spotsylvania County Sheriff's  
11 Department, "are going to have to come out and arrest  
12 you." Again, something that was left on a voicemail.

13 And my -- my last example of that kind is --

14 MS. HARRINGTON-McBRIDE: Dale?

15 MR. PITTMAN: Yes?

16 MS. HARRINGTON-McBRIDE: I'm so sorry to  
17 interrupt you.

18 MR. PITTMAN: Go ahead.

19 MS. HARRINGTON-McBRIDE: But I'm concerned about  
20 the two-minute rule, and I think many of your examples  
21 are going to play really nicely into our discussion,  
22 main discussion. Could we move on at this point and  
23 just get the main views from folks and then we will  
24 double back?

25 MR. PITTMAN: Sure, absolutely. I'll save it

1 for later.

2 MS. HARRINGTON-McBRIDE: I feel like the  
3 Spotsylvania County sheriff, and so I apologize for  
4 jumping in like that.

5 MR. PITTMAN: We are coming to get you at 4:00.

6 MS. HARRINGTON-McBRIDE: I was coming earlier to  
7 get you, I apologize.

8 Okay, next to Dale we have Professor Mary  
9 Spector. Mary is Co-Director of the Civil Clinic and an  
10 Associate Professor at Southern Methodist University  
11 School of Law. Under her direction, her students in the  
12 Civil Clinic represent low-income clients in a variety  
13 of civil issues, including debt collection.

14 I would like to hear your perspective on what  
15 are the most pressing issues.

16 MS. SPECTOR: Thank you, Katie.

17 The consumers come to us most often after they  
18 have been served with a lawsuit and the case is pending  
19 in a justice of the peace court or in a county court,  
20 and we see a number of problems over and over again, and  
21 I can say that I've been teaching in our clinic for 12  
22 years, and over the last year, the number of consumers  
23 or debtors or defendants, however you want to label  
24 them, has increased dramatically, and that is a result  
25 of increased filing in the county courts, you know, the

1 bulk filings that occur routinely in our county.

2           The problems, we see three or four problems over  
3 and over again. The first would be inadequate  
4 information about the debt. One of the speakers on the  
5 previous panel said, "Gosh, we would love it if  
6 creditors gave us information." Well, so would we. You  
7 know, on the one hand, it's the debt buyer obtaining  
8 information through a contract with the creditor, but  
9 sometimes that information never, ever, ever gets passed  
10 on to the consumer, even in a petition or an affidavit  
11 supporting the petition.

12           In fact, there may be multiple parties  
13 identified as the original creditor showing up on a  
14 petition one way, an affidavit another way, and in  
15 discovery, identifying yet another party as the original  
16 creditor. So, inadequate information about the debt is  
17 a major problem.

18           The ability for consumers to actually dispute  
19 their debts and cease communication effectively, the law  
20 requires they do it in writing. Well, many consumers  
21 don't write well. They can't communicate effectively in  
22 writing, and they come to us saying, "Well, I told them  
23 to quit calling me." Well, telling them over the  
24 telephone may not be enough in many cases. So, the  
25 method of communication is important to consumers as

1 well.

2 Related to that is that the method in a  
3 different way, the language in which the communications  
4 are made. We represent many, many Spanish-speaking  
5 consumers, and they may try to assert their rights over  
6 the telephone, maybe in writing, but there is a problem  
7 with someone at the other end reading it or  
8 understanding what they're saying.

9 The use of the judicial process, as I said, the  
10 consumers come to us after they've been sued usually.  
11 We see many, many problems. I mentioned the affidavits,  
12 the petitions. Improved technology may improve  
13 compliance, but it also improves the ability to repeat  
14 mistakes over and over and over again, and those happen.  
15 You know, petitions not adequately identifying the  
16 parties, not complying with the court rules. Attorneys  
17 that practice in many jurisdictions may use pleadings  
18 that are sufficient for one jurisdiction but are not  
19 sufficient in our jurisdiction. A consumer who is pro  
20 se certainly wouldn't know how to challenge those  
21 things, and the very few that are represented, that is  
22 something that we, at times, have been able to help them  
23 with.

24 The last point I want to make about technical  
25 violation, and it was a kind of a response to



1 something -- well, actually, my second to last point, if  
2 I have got another few seconds -- that technical  
3 violation or technical compliance by creditors and debt  
4 collectors is all that the consumers have. Those are  
5 the consumer rights. And so the consumer's ability to  
6 challenge technical violations is critical to the  
7 adequate enforcement and compliance of the remaining  
8 members of the industry.

9           Okay, now for my last point, and this is a  
10 little bit different, and so I did want to raise it. It  
11 has to do with non-credit card debt. We had a pie chart  
12 earlier on the first panel talking about -- I think a  
13 small sliver of the pie was "other," 2 to 5 percent of  
14 consumer debt that's subject to debt buying or debt  
15 collection. We've seen an increasing amount in our  
16 representation of tenants who leave an apartment, a  
17 landlord will slap some charges against their security  
18 deposit, often disputed, may be not authorized by the  
19 lease, and the first time the consumer hears about it is  
20 in a call from a debt collector.

21           That's problematic, because, again, the consumer  
22 hasn't had a chance to dispute it with the creditor in  
23 the first instance. So, I would -- I would encourage  
24 increased pressure -- or not pressure, but, you know,  
25 encouraging creditors to take some action in the first

1 instance before wholesale referral of those matters over  
2 to debt collectors or debt buyers.

3 MS. HARRINGTON-McBRIDE: Okay, thank you.

4 Next, Lauren Saunders. Lauren is the managing  
5 attorney for the National Consumer Law Center's  
6 Washington, D.C. office, and NCLC works to defend the  
7 rights of low-income consumers and to help consumer  
8 advocates and policymakers achieve economic justice.

9 So, Lauren, in your view, what should we be  
10 talking about today? What are the most pressing issues?

11 MS. SAUNDERS: Thank you, and thank you for  
12 inviting me to speak today.

13 We work with attorneys and nonattorneys around  
14 the country who work with low-income consumers. We were  
15 originally formed to work with a network of legal  
16 service programs, poverty law offices, and we also work  
17 with private attorneys and nonattorneys, you know, from  
18 credit counseling services.

19 We get calls on a daily basis about questions on  
20 the law, so we have a pretty good inflow of information  
21 from around the country, and I can tell you, from our  
22 experience and the experience of the people we talk to,  
23 abuses are rampant. It's the norm, unfortunately, not  
24 the exception. We don't see a situation where there's a  
25 few bad actors. You know, I fear it's simply inherent

1 in the nature of debt collection.

2 Especially today, as credit is pushed on people  
3 without regard to ability to pay, most people end up in  
4 debt collection because they can't afford to pay, and  
5 so, you know, we really disagree with the  
6 characterization of debtors between can'ts and won'ts,  
7 you know, I think it was Gary Wood who said, "No,  
8 they're all can'ts," and we see the distinction between  
9 "can'ts no matter what you do to me" and "can'ts, but if  
10 you make it painful enough, you know, I will pay you  
11 today with my rent check for tomorrow, or I'll run down  
12 the street to a payday lender to get some cash or I'll  
13 take the money out of, you know, the money I need to  
14 send my kid to the doctor."

15 So, we see rampant abuses of the plain vanilla  
16 type that, you know, prompted the 1977 Act, the abusive  
17 phone calls and threats and harassment of employers and  
18 friends and neighbors. You talk to anybody who  
19 represents debtors, and, you know, nothing shocks  
20 anybody anymore, because they see it all all the time,  
21 and, of course, only a tiny percentage of consumers end  
22 up in the office of an attorney, so they -- you know,  
23 they get a teeny, tiny snapshot of what's going on out  
24 there in the world.

25 And then there's the whole new set of problems

1 caused by new technology, changes in the marketplace.  
2 Ironically, in this information age, often caused by  
3 lack of information. You know, as Mary Spector said,  
4 the lack of basic information about the debt, the wrong  
5 person, the wrong amount, failure to credit a payment,  
6 you know, completely inadequate verification. If  
7 somebody raises a dispute, the answer comes back, "Well,  
8 that's what the creditor says you owe them," and it's  
9 shocking to me that people can say in comments that  
10 that's okay, but I know that that's the position, you  
11 know, of the industry.

12 And then, you know, we see rampant abuse of the  
13 courts. You know, again, going to court with nothing  
14 more than, you know, a hearsay spreadsheet with a line  
15 item, no information that the person owes the debt.  
16 Again, it could be the wrong person. Sewer service is  
17 rampant, filing -- you know, we hear just repeated  
18 stories of filing cases beyond the statute of  
19 limitations, but, then of course, often, you know, you  
20 can't even tell when the statute's run, because that  
21 information isn't in the file.

22 I hope if we can come out with one point of  
23 agreement here is that we need to have more information  
24 and, you know, maybe need to start at the creditor  
25 level. That's not necessarily the responsibility of a

1 lot of you, you know, in the audience, but we need to  
2 have a lot more information before, you know, you're  
3 allowed to collect on a debt.

4 And you've seen the debtor-hell series probably  
5 in the Boston Globe about abuses of the courts there.  
6 You know, we hear the same stories from Illinois,  
7 Florida, Missouri, Ohio. We just joined a class action  
8 in Nebraska alleging, you know, routine filing of cases  
9 beyond the statute of limitations.

10 And then, you know, we have cases that just  
11 can't get to court because of the mandatory arbitration  
12 clauses, and the abuses there are even worse than in the  
13 courts. And then once you have a judgment, we see abuse  
14 of electronic collection methods. It's much easier  
15 today to serve a garnishment order on banks throughout  
16 the state and to garnish or at least freeze exempt  
17 Social Security funds. And, of course, the debt  
18 collectors also, you know, as we heard earlier,  
19 sometimes abuse electronic access to people's accounts.

20 We see abuses across the board. We see the need  
21 to strengthen the remedies of the FDCPA. It's a pretty  
22 good framework. It needs to be tightened up in a few  
23 places, but, you know, it needs much more stronger  
24 remedies, because they're clearly not sufficient to  
25 deter the violations. And we need a new framework to

1 address the more modern day problems of, you know, the  
2 current technology and current marketplace.

3 MS. HARRINGTON-McBRIDE: Okay, thank you.

4 Last, but not least, we welcome Marla Tepper.  
5 Marla is the General Counsel of the New York City  
6 Department of Consumer Affairs where she leads major  
7 investigations of consumer fraud and debt collection.  
8 In June of last year, Marla's department convened public  
9 hearings on debt collection practices, the result of  
10 which will no doubt inform her remarks here today.

11 So, Marla, welcome, and if you can maybe -- and  
12 I hate to do it to you, because it's always the last one  
13 who gets cheated, isn't it? I am a youngest child  
14 myself, so I can speak to this directly. If you could  
15 maybe wrap it up in exactly two minutes, then we will  
16 move on, and we will have enough time to hit our six  
17 major topics. We convened before, so we have got a key  
18 list, and we are going to bring to you shortly.

19 MS. TEPPER: Thank you. On behalf of the  
20 Department of Consumer Affairs, we appreciate the  
21 opportunity to engage in this constructive dialogue on  
22 behalf of the 900 and upwards businesses, debt  
23 collection agencies, that we license and the consumers  
24 around New York City that we protect.

25 The department engages in mediation efforts on

1     behalf of consumers. In the past two years, we got  
2     consumers over a million dollars back due to our  
3     mediation efforts. It suggests to us a few things that  
4     have been said here and I will reiterate.

5             First, that debts are not adequately documented.  
6     We have many debt collection agencies and particularly  
7     debt buyers pursuing debts that are not supported by  
8     documentation. We are encouraged by today's discussion  
9     that debt buyers and the industry would like to have  
10    more information before pursuing debts, and we believe  
11    that the technology is out there to do so.

12            Second, as the previous speakers have indicated,  
13    we, too, are concerned about abusive court processes.  
14    We see again and again debt collection agencies bringing  
15    consumers to court without adequate documentation. We  
16    see them garnishing debts and pursuing low income  
17    consumers' means of living, essentially going after  
18    Social Security benefits, VA benefits, and the like. It  
19    is too easy for debt collection agencies and debt buyers  
20    to file suits in court without adequate documentation  
21    and to use technology that is available to do good to do  
22    the wrong thing, and we hope that today's conversation  
23    will focus in part on that.

24            Finally, we, too, share an interest in ensuring  
25    that there's adequate communication with all consumers,

1 those who don't speak English, for example, who comprise  
2 a lot of the low-income consumers in the New York City  
3 area, and we would encourage the FTC to adopt  
4 regulations that require communication in the language  
5 in which the debt has been negotiated, and we think that  
6 would go a long way in protecting consumers.

7 We have a lot of other thoughts, and we hope to  
8 elucidate those during the panel, but I think my two  
9 minutes are up.

10 MS. HARRINGTON-McBRIDE: I appreciate your  
11 staying within the time limit.

12 Everyone on this panel has so much to say, and  
13 so that you understand we have had a process at the FTC  
14 over the last several months where we have talked with  
15 individuals. Many of you in this audience got calls  
16 from us, many of you referred us to other colleagues of  
17 yours, and we've tried our best to come up with the best  
18 agenda that we can.

19 To some extent, though, this is sort of a leap  
20 of faith on everyone's part, particularly those  
21 panelists here today. It's a little bit like singing in  
22 a round. You have to trust that if you join in and do  
23 your part at the right time, that the song is going to  
24 sound great at the end, and this workshop is to be taken  
25 wholistically.



1           Each individual panel can only cover so much in  
2 any given hour and 15 minutes. Many of the issues that  
3 we will touch on have been raised in earlier panels  
4 today. Many of them will be discussed in much greater  
5 detail tomorrow. So, we are going to keep the  
6 discussion of each of the six primary areas to something  
7 like six or seven minutes and try to leave enough time  
8 for questions.

9           I encourage any of you who have questions to use  
10 your question cards. Simply raise your hand in the air  
11 and someone will collect it and bring it to me, so at  
12 the end of the panel, if we have time, we will jump  
13 right in and ask those questions of our panelists.

14           The first area that we had discussed on our  
15 preliminary planning calls as warranting discussion is  
16 one that's going to be covered in great depth tomorrow,  
17 so I want to touch on it at least preliminarily, and  
18 that is the lack of adequate documentation for debt, and  
19 we've heard a lot this morning about the ability of  
20 technology to facilitate the transfer of information,  
21 but there are obviously some gaps in this transfer, and  
22 so I want to ask the panel a couple of questions about  
23 it, and I want to frame it this way:

24           We heard this morning about two categories of  
25 individuals, the can'ts and the won'ts. I think I want

1 to add a third category, the not-mes, because in  
2 addition to those people who can't pay a debt that they  
3 legitimately owe and those people who won't pay a debt  
4 that they legitimately owe, one of the things that we  
5 see complaints about and that I have heard from you  
6 panelists is folks who are being contacted who are, in  
7 fact, not the correct party and also people who have,  
8 indeed, paid off their debt and are continuing to be  
9 contacted. So, let's bear in mind that there is maybe a  
10 slightly broader spectrum than can't and won't and that  
11 the not-mes deserve some consideration, too,  
12 particularly in the discussion of verification.

13           There is in some instances, perhaps, a lack of  
14 documentation transferred with the original debt, and we  
15 have had a lot of conversations with many of you about  
16 this. On the panel today, what can be done to  
17 improve -- what would be the optimal amount of  
18 information transferred, and what is a reasonable amount  
19 to be transferred given that even in an information age  
20 where it's relatively cheap to transfer information,  
21 there are still some cost effects? So, what's the  
22 absolute bare minimum that needs to go with a debt,  
23 whether it's sold to a debt buyer or whether it's being  
24 collected by a contingency collector?

25           Lauren, it looks like you are ready to go.

1           MS. SAUNDERS: Well, at the risk of repeating  
2 our comments, because we gave you a nice little list,  
3 you know, it's our view that you shouldn't -- you know,  
4 collectors should be required to possess certain basic  
5 information before initiating collection efforts; proof  
6 of indebtedness signed by the consumer:

7           The date the debt was incurred and the date of  
8 the last payment; the identity of the original creditor  
9 as known to the consumer; the amount of the debt  
10 principal and an itemization of all interest, fees, or  
11 charges added to it; and a chain of title if the debt  
12 has been sold. That's sort of the bare minimum, you  
13 know, to begin collection efforts.

14           Beyond that, before -- you know, you could, you  
15 know, buy or sell a debt, we think a big problem we see  
16 is the lack of accountability. You know, we hear  
17 repeated cases of, you know, somebody who's victimized  
18 by identity theft or the amount's wrong or they paid it  
19 or maybe they, you know, get the collector, you know, to  
20 back off, because they convince them that there's a  
21 problem here, but, you know, it just goes into a pile to  
22 resell, and they have to do it again, and there is just  
23 no accountability. So, the whole file needs to transfer  
24 so that everybody's aware of and accountable for what  
25 happened before and the knowledge that was built up

1 before.

2 Defenses to the debt, you know, validation or  
3 lack thereof; any settlement that's been reached;  
4 whether the person's represented by an attorney; whether  
5 the consumer has informed them, you know, if there's a  
6 time or place that's inconvenient; whether it's been  
7 discharged through bankruptcy; any illness or disability  
8 the consumer has; any claimed violation of FDCPA.

9 I mean, this is basic information, but  
10 obviously, if you're representing a client, you know,  
11 they should have that information, and it's not fair for  
12 one collector to get that information and then, you  
13 know, shove it in a drawer and pass, you know, a  
14 line --a spreadsheet on to the next person who then can  
15 start harassing the person again.

16 MS. HARRINGTON-McBRIDE: Okay, other panelists?  
17 Yes.

18 MS. SPECTOR: But the law as it currently reads  
19 requires that the information about the original  
20 creditor not be -- does not require it be provided to  
21 the consumer unless she asks for it. One way to  
22 strengthen the existing framework would be to require  
23 that information to be disclosed at the onset, not  
24 simply on the -- not on the request of the consumer, but  
25 require it in the initial communication by the debt

1 collector.

2 MS. HARRINGTON-McBRIDE: Okay.

3 Dale?

4 MR. PITTMAN: Well, I think the -- as far as the  
5 not-mes, that there should be some requirement with the  
6 originating creditor who knows there's a dispute,  
7 because a lot of the not-mes are people who have never  
8 had a debt in their life. I represent someone right now  
9 who had an ex-fiancee, after the estrangement, take out  
10 a card in her name, and she disputed. She, herself, she  
11 paid a lawyer. She disputed with a credit card lender.  
12 Lots of documentation in that file never went to the  
13 debt buyer.

14 She disputed with the bureau, sending Certified  
15 Mail letters to the debt buyer, who then, after I sue,  
16 says we e-OSCARed this away immediately. There's a  
17 mistake. We did the e-OSCARs. They checked to verify.  
18 They didn't do what they said, but there should be some  
19 protection against an unscrupulous debt buyer, such as  
20 the one that I'm suing right now, so that when a  
21 creditor knows about an account being disputed, that it  
22 goes -- if it -- it shouldn't go in a portfolio of bad  
23 debt to start with, but if it does, there should be some  
24 record of it.

25 MS. HARRINGTON-McBRIDE: Okay.

1 Marla?

2 MS. TEPPER: We think that the checklist that  
3 Lauren and Mary described is reasonable, particularly in  
4 this modern day of technology, and that should be  
5 automatically done across the board before any debt is  
6 collected upon.

7 Further, we think that once a debt is disputed,  
8 the consumer should automatically receive from the debt  
9 collection agency a letter indicating that there has  
10 been a dispute, that perhaps the debt has been sent back  
11 to the creditor or that it has been sold, so that the  
12 debtor has confirmation of that process.

13 We heard here this morning that that will be now  
14 permissible when the consumer asks for that information.  
15 We don't think that the consumer should have to ask for  
16 that information but that it should be automatic when  
17 there is a dispute of a debt or when there is  
18 verification and the verification doesn't happen.

19 MS. HARRINGTON-McBRIDE: Okay.

20 Rudy, do you have anything on that point?

21 MR. CAVAZOS: Just one quick comment. One quick  
22 comment, only on the second part of what Marla said,  
23 that once the debtor receives some sort of information,  
24 again, from the perspective of the Latino community, it  
25 should be in Spanish. Now, the people that we're

1 talking to, some say that they do receive some of these  
2 forms in Spanish, some of these correspondences in  
3 Spanish, but they still don't understand it.

4 A lot of them say they've never received  
5 anything in Spanish, so they don't understand what  
6 they're receiving. They can't dispute. They don't  
7 understand it. And even when it is translated into  
8 Spanish, it's in a Spanish that -- it's not  
9 standardized, and I don't know if you understand, but  
10 there's a lot of different Spanish languages out there.  
11 There's Mexican Spanish, there's Cuban Spanish, there's  
12 Central American Spanish. So, standardizing these forms  
13 would be very, very helpful for that community,  
14 somewhere middle of the road, that everyone could  
15 understand.

16 And I know that when we ask for this, there's a  
17 lot of cost involved, but it comes to the end result.  
18 You'll be able to collect a debt. Everyone will be  
19 happy.

20 MS. HARRINGTON-McBRIDE: Okay, just one more  
21 point on verification. There was some discussion this  
22 morning about the practice of debt buying and how  
23 that -- maybe independent of that even -- older debt is  
24 now being pursued than used to be the case, and I wonder  
25 if any of you have anything beyond anecdotal evidence

1 that there is perhaps a correlation between older debt  
2 in the marketplace being collected and a lack of  
3 verification, because it's simply -- you know, either it  
4 was -- you know, debt was derived in the pre-computer  
5 age or it's just so old that it's gone so many hops that  
6 the information hasn't transferred with it.

7 Is that a specific part of the problem that we  
8 should be addressing, or is verification, regardless of  
9 age of debt, really the big picture issue we should  
10 focus on?

11 MS. SPECTOR: I would say regardless of age of  
12 debt, it's important.

13 MS. SAUNDERS: Yeah, I mean, I agree, it's  
14 equally -- you know, there's problems in both areas. I  
15 mean, obviously there's a bigger problem with older  
16 debt, you know, any attorney you talk to, you know, all  
17 you have to do is prick the surface of an older  
18 complaint, and then there's just nothing substantiating  
19 it.

20 And it's also just much more unfair on consumers  
21 then, because certainly they don't have their files from  
22 ten years ago. I mean, I've got a collector calling me  
23 because of one day when we were in Alaska and my son,  
24 you know, poked his eye, and Blue Cross told me they had  
25 paid it in full, but -- you know, I mean, I don't have



1 my old files to figure out, you know, the claim number  
2 and proof that -- you know, it's just unfair. So,  
3 there's a lack of information on both sides from the  
4 older debt, but it's a problem all around.

5 MS. TEPPER: I think I disagree a bit in that we  
6 think that the problem with aged debt is particularly  
7 acute, because in those instances, we see repeatedly  
8 that there are efforts to collect on debts that have  
9 been paid already, have been disputed, and because of  
10 the age of the debt, the information is not following  
11 along with the collection efforts, so we think that  
12 special efforts have to be included with regard to aged  
13 debts and perhaps should be included in the FTC's  
14 revision of the Act.

15 MS. HARRINGTON-McBRIDE: Okay. Let's turn our  
16 attention now to the impact of new technologies. I  
17 think this is one you're going to hear about in every  
18 panel. There's no escaping it.

19 We heard a little bit this morning about the  
20 need from the business perspective to contact consumers  
21 in the way that they prefer to be contacted. So, I  
22 guess let's open it up. There are a lot of specific  
23 technologies that we can talk about, but as a general  
24 proposition, what's the view of these panelists about  
25 the idea of allowing consumers to opt in to a particular

1 method of contact or a range of methods of contact at  
2 the initiation of a credit relationship? Is that  
3 something that would be beneficial or are there problems  
4 with that?

5 MS. SAUNDERS: Absolutely not. You can bury  
6 anything you want into a contract at the outset, and  
7 there are contracts of adhesion and people don't  
8 understand it, they don't read it, and they don't have  
9 any choice. I mean, I can't think of anything more  
10 terrible.

11 MS. TEPPER: Our concern would be that the  
12 communication not be allowed to facilitate more  
13 contacts. Our local law, for example, prohibits more  
14 than two contacts a week, and we think that's the cap.  
15 Whatever means of communication exist, there need to be  
16 definite caps on that method of communication.

17 We agree from our experience with consumers that  
18 having consumers opt into the type of communication will  
19 not work. They don't read closely that kind of  
20 contract. They will probably sign anything. Again, we  
21 are concerned about language issues in a city as diverse  
22 as New York and the failure of consumers to understand  
23 exactly what they're agreeing to.

24 But our major concern is not to increase the  
25 communication with consumers, but to have very firm caps

1 on that communication.

2 MS. HARRINGTON-McBRIDE: Okay. Other thoughts?

3 MS. SAUNDERS: I mean, I should just also add  
4 that, you know, I didn't hear any problems really with  
5 using the mail, unless, of course, you don't know where  
6 the consumer is, in which case you are not going to be  
7 able to text or email them either, and a consumer can  
8 pick up the phone, and if they're not communicating with  
9 you, it's probably because they don't want to.

10 And primarily we see communication as being used  
11 as a means of harassment and applying that pressure and  
12 pain to convince, you know, change the "can't no matter  
13 to," okay, "I'm really not paying, I'll pay." We fear  
14 that opening up more technologies just gives you more  
15 avenues to harass somebody and to embarrass them and  
16 cause them problems at work and all of the rest.

17 MR. PITTMAN: It would just be just another  
18 industry give-away, like mandatory binding arbitration,  
19 stuff -- put something in the stuffer that says I'm  
20 opting in, and it's a fiction that would be a huge  
21 mistake from my perspective.

22 MS. HARRINGTON-McBRIDE: Well, I suppose we can  
23 debate what "opt in" means and whether it would ever be  
24 okay to simply put the language in a contract. I hear a  
25 lot of murmuring in the audience, so I guess my point

1 was taken that this is a panel that will keep you awake,  
2 and that's a good thing, and it's okay to have  
3 disagreement at these things. That's what we're trying  
4 to tease out, is what are the points of commonality?

5           What about specific technologies? We talked a  
6 little bit about predictive dialers. There was a  
7 comment filed later in the comment period, I don't know  
8 if all of you had a chance to see it, it's by a  
9 predictive dialer manufacturer, that suggests that the  
10 failure to regulate and limit the number of dropped  
11 calls when you use a predictive dialer, there are always  
12 a certain number of calls that are nuisance calls, where  
13 there is no live operator available to take the call or  
14 almost always that's the case, that that should be  
15 remedied, and that we might want to look at limiting,  
16 with the use of predictive dialers, the number of calls  
17 that are made and then dropped.

18           What's the view of you panelists about whether  
19 that would be productive? There's a similar regulatory  
20 scheme in place in the Telemarketing Sales Rule, for  
21 example, where there's a maximum number of abandoned  
22 calls, and in those calls, a recording has to play to  
23 identify who was calling so that there's not a level of  
24 fear on the part of the person receiving repeated  
25 dropped calls. So, would that be something that would

1 be constructive to consider?

2 MS. SPECTOR: Yes.

3 MS. HARRINGTON-McBRIDE: In a word, okay. Now  
4 we're making up for lost time. Thank you, Mary.

5 Okay, calls to cellular phones, another area of  
6 great interest, and I'm in a position right now in my  
7 life where I am only a cell phone customer, and I no  
8 longer have a land line. So, I'm perhaps a little more  
9 sympathetic to the argument than I might have been when  
10 that was a hypothetical, and obviously this is not  
11 solely within the jurisdiction of the FTC. But as a  
12 matter of sort of thinking forward about technology and  
13 how it's going to be used, if the methods by which  
14 consumers communicate with their friends and with  
15 businesses they do business with and, in fact, with debt  
16 collectors are changing, does the law need to do  
17 something to keep pace with that? And what can be done  
18 that would accommodate the needs of business and also  
19 the needs of consumers?

20 MS. SAUNDERS: I think I've said my piece on  
21 that. I think it's just another avenue for abuse. You  
22 know, in addition to being able to harass somebody no  
23 matter where they are, at a place where they can't, you  
24 know, really take calls, just the expense, obviously,  
25 of, you know, for some people, depending on what kind of

1 plan you have.

2 MR. CAVAZOS: In many of our counseling sessions  
3 that we have with our consumers, we find, of course,  
4 that many of their creditors are constantly calling  
5 them, either at work, constantly calling them at home,  
6 and one of the options that we give these consumers to  
7 do is to simply write a letter asking to cease and  
8 desist and for further communication to be done by mail.  
9 So, I agree with the mail should be a primary method of  
10 communication.

11 Cell phones, we find, again, in the Latino  
12 community, many of these people carry cell phones, don't  
13 have land lines, because of the issues of documentation,  
14 trying to open up these utilities, and they can't, but  
15 they can have a cell phone that you buy with a little  
16 card that you load up with a certain amount of money,  
17 and to have that option available to collection  
18 agencies, I think that's not positive, because these  
19 folks working eight to ten hours a day or even more,  
20 receiving telephone calls on their cell phones, at work,  
21 is just not going to work.

22 MS. HARRINGTON-McBRIDE: Okay. One of the  
23 potentially bad outcomes that was enunciated this  
24 morning that happens if businesses who are trying to  
25 collect on a debt can't contact consumers in a way that

1 is meaningful is that there will be more lawsuits filed.  
2 What do you have to say about that? Any reactions?

3 MS. TEPPER: We already see a lot of lawsuits  
4 filed, so I'm not sure that that's a real fear that we  
5 have. We are concerned about the proliferation of  
6 lawsuits, the use of courts in abusive ways to collect  
7 debts, and further eroding the judicial system would be  
8 of concern to us.

9 What we see in New York City is that the courts  
10 are flooded. The debt buyers in particular are buying  
11 index numbers in bulk. The use of technology makes  
12 filing way too easy. It's abusive especially to pro se  
13 litigants, who obviously don't have the benefit of  
14 counsel. They may not have language abilities that  
15 enable them to communicate adequately in court or to  
16 mediate effectively.

17 We also understand that the hallway mediation  
18 does not favor the consumer at all, who sometimes lacks  
19 the information that they need because of inadequate  
20 documentation. So, there are a lot of concerns that we  
21 have about using the courts in an abusive way.

22 MS. HARRINGTON-McBRIDE: Okay. We're  
23 transitioning, then, neatly into our next topic, which  
24 is the abuse of the judicial system or concerns about  
25 uses of the judicial system at the very least. We had

1 talked about five separate categories when we met on our  
2 call, but I think that without going into detail on each  
3 individual category, what I'd like to do is to talk a  
4 little bit about how we might think about these  
5 potential problems with the court system and what their  
6 potential solutions are.

7 Are these solutions that can be driven by the  
8 statute? Are they solutions that need to be brokered  
9 with the courts and through education? Is this an issue  
10 where we could take it up with local bar associations  
11 and attorneys who are doing these filings? Where's the  
12 point of entry where we can make the greatest impact if,  
13 indeed, there are problems in this area?

14 MS. SAUNDERS: Well, we proposed in our comments  
15 that you should not be able to file a lawsuit in court  
16 or before an arbitrator unless you certify that you  
17 possess the basic information you need to prosecute that  
18 debt in a form admissible in court. It's shocking to me  
19 as an attorney to see how rampant it is, you know, go  
20 into court, on the day of trial, as a routine basis,  
21 with nothing but, you know, unsubstantiated hearsay  
22 evidence.

23 You know, back in my litigator days, I would  
24 have been terrified to do that. I would have been  
25 tossed out on my heels and in fear of, you know, risking



1 my bar license, but it's the way it works these days,  
2 and, you know, in the debt buyer's defense, I know you  
3 may not, you know, have the information, and we need to  
4 mandate that the creditors have it and pass it onto you,  
5 but, you know, you have got to -- you know, we think you  
6 ought to have to certify in the complaint that you have  
7 it in admissible form before you can go to court.

8 MS. HARRINGTON-McBRIDE: Okay. So, the  
9 attorneys may be part of the solution. Who else? What  
10 else could be a potential part of the solution here?

11 MS. TEPPER: We have been meeting with the  
12 judiciary in New York City to discuss some of these  
13 problems, and we think that's a solution or an approach  
14 to a solution that is effective, because we hear from  
15 them what the real problems are. One of the areas of  
16 concern to the judiciary is improper service. They have  
17 repeated what has been heard here today about sewer  
18 service.

19 Our agency licenses process servers, and we  
20 think that the debt collection industry has an  
21 obligation, at least in those jurisdictions in which  
22 process servers are licensed, to use licensed process  
23 servers and make sure that they are complying with the  
24 rules for serving process properly. That's a very  
25 minimal requirement. If you are serving repeatedly with

1 one company and they are the subject of traverse  
2 hearings or answers that include denials based on  
3 service, that should trigger a concern, and we hope that  
4 the FTC will address that in some way.

5 Second, we think that conversations with the  
6 judiciary would enable the courts to be part of a  
7 conversation about increasing literacy, not only about  
8 court procedures, but about financial literacy and debt  
9 generally. In New York City, we hope to provide  
10 information that is available to litigants in the  
11 courthouse, particularly, as I said, pro se litigants  
12 who are lacking in information.

13 Third, we're very concerned about exempt funds  
14 and pursuit of those funds. Earlier this month or last  
15 month, the OCC testified before the Senate Finance  
16 Committee on that issue. We know that it's an issue  
17 that must bring together several relevant agencies,  
18 including the Veterans Administration and the Social  
19 Security Administration, but that doesn't mean that the  
20 debt industry is off the hook.

21 If the debt industry, debt collectors, know that  
22 they are proceeding on exempt funds, that should not be  
23 permissible, and in many instances, where debt  
24 collectors are having conversations with debtors, they  
25 know exactly what the income is that those debtors have,

1 and they should be prohibited from pursuing those funds.  
2 That's a complicated issue, but that doesn't mean it's  
3 one that we should overlook or ignore, and it's one of  
4 great concern, particularly to low-income consumers.

5 MS. SPECTOR: I'd like to, you know, support  
6 what Lauren said about attorney certification before  
7 filing in court. I mean, those of you who are lawyers  
8 are going to say that your state court rules or the  
9 federal court rules already require you to do that under  
10 Rule 11 in the federal system, Rule 13 in my state, but  
11 those standards aren't as rigorous as the standards that  
12 Lauren had suggested, and I think that simply relying on  
13 the bar associations is not going to be enough, that  
14 there should be increased, you know, requirements placed  
15 on the parties before they bring the suits into FDCPA.

16 I mentioned the kind of abuses that we've seen  
17 in court papers filed by law firms who engage in nothing  
18 but debt collection. You know, I teach in a law school  
19 clinic, and so what we try to do is show our students  
20 the right way to do things. Well, you know, some of the  
21 lawsuits have been showing them the wrong way to do  
22 things, and, you know, I hate to say that, but they're  
23 learning a lot about what to do and what not to do.

24 MS. HARRINGTON-McBRIDE: One of the figures that  
25 was mentioned by an earlier panelist on a previous panel

1 was 90 -- I want to get this right, so if I'm wrong,  
2 somebody jump in -- but 95 percent of the cases pending  
3 in his county in Florida, in Broward, had to do with  
4 debt collection. Is that a figure that resonates with  
5 you as being plausible? I mean, I'm not doubting his  
6 word, but, I mean, is this something that you're seeing  
7 in your jurisdictions, where there's that many suits?

8 MS. TEPPER: We're definitely hearing that in  
9 New York City. The judges feel inundated by the number  
10 of debt collection cases, and in New York, the  
11 process -- and I'm not sure what it is elsewhere -- is  
12 that a litigant goes to court and buys an index number.  
13 At one point, it was reported to us that there was one  
14 company that was going to buy upwards of 300 index  
15 numbers at one time. That's an awful lot in one day and  
16 obviously is of concern to the courts, particularly  
17 because the litigants there are often pro se and require  
18 more assistance.

19 MS. HARRINGTON-McBRIDE: Dale, how about in  
20 Virginia?

21 MR. PITTMAN: Well, I think this is a problem  
22 that's going to come back to hurt the industry. We have  
23 a very good bench in Virginia. One of my local courts  
24 has had to -- they had an industry that -- a company  
25 that we've actually shut down. They were suing people

1 from all over Virginia in one place of improper venue.  
2 The court had to set up a separate day, Friday, we were  
3 only doing this company. You know, the question is what  
4 do they do when they contest a case? Well, if anybody  
5 contests a case, they drop it.

6 And so I went and watched, and the judge says,  
7 you know, this person's in default, just like these  
8 other people before, these other 15 cases. I don't have  
9 anything in this file. The guy says, nonlawyer says,  
10 "Judge, we've been doing this for three or four years  
11 here," which I thought was a very bad way to respond to  
12 the judge, "and we -- that's called media. We don't  
13 have it in there, we would have to pay for it, but you  
14 don't need that to give me this judgment." Of course,  
15 this guy didn't get his judgment. So, that court called  
16 me and said, what can we do to stop -- to force these  
17 folks to bring in an original contract before we give  
18 judgment?

19 Another judge has called and said, can you come  
20 to our judicial conference and talk to us about  
21 shenanigans we think are going with mandatory  
22 arbitration? Then finally, recently, a guy who  
23 represents a huge national collector, a guy I went to  
24 law school with 35 years ago, he said, "Look, I'll deny  
25 I ever said this, but just between you and me, if anyone

1 ever contests these, we drop them."

2 So, collection lawyers who are ethical, and  
3 we've got lots and lots of fine collection lawyers in  
4 Virginia, say it really pains me when I see this big  
5 firm that has bought all these things and they know  
6 they're not going to prove these, so -- and they are  
7 going to drop them if anybody comes to contest it. So,  
8 something needs to happen, and I think in Virginia  
9 anyway, because of the strain on the system, the judges  
10 are going to figure out a way to take care of it for  
11 themselves.

12 MS. HARRINGTON-McBRIDE: Actually, it's a good  
13 moment to interject a question from the audience and I  
14 appreciate all the questions that are coming in. They  
15 are actually stacking up. I may not be able to see the  
16 audience soon.

17 Shouldn't it be the responsibility of the courts  
18 to determine if adequate proof has been submitted before  
19 awarding a judgment? Shouldn't the courts be  
20 responsible for monitoring the few? And I think you're  
21 getting to some of that.

22 MR. PITTMAN: And that's what I think our judges  
23 are asking themselves the same question.

24 MS. SAUNDERS: But they are just overwhelmed,  
25 they can't by the numbers -- I mean the Boston Globe

1 series talked about that, you know, quoted the courts as  
2 saying, you know, they're just -- they're overwhelmed,  
3 they're swamped, the numbers -- you can't get through  
4 your docket if you, you know, ask to see the contract on  
5 every single case, and some judges may be inclined to do  
6 it, others aren't, but, you know, it's -- in an ideal  
7 world, yeah, in an ideal world, the consumer would show  
8 up with an attorney who would say, "Show me the  
9 contract," but the reality is, in a default situation,  
10 you know, they just want to get it out the door and  
11 clear the docket.

12 And we -- you know, asking about whether it's  
13 widespread, of course, the Globe series talked about the  
14 problems in Massachusetts, and, you know, we have an  
15 anecdote from Missouri in our comments about an attorney  
16 who walked into a courtroom, you know, one courtroom,  
17 one day, took a count of what was on the docket, and 330  
18 out of 500 cases were, you know, a known debt buyer,  
19 and, of course, many of the others may have been, too.

20 MS. HARRINGTON-McBRIDE: Mary?

21 MS. SPECTOR: Attorneys have an obligation to  
22 certify -- when they sign a pleading, to make sure that  
23 they have the evidence and the law to support their  
24 claims. It's required under the rules, and I think it  
25 is the duty of the attorneys to do so, particularly in

1 the area where they know that the case will be -- there  
2 will not be someone who's represented by counsel on the  
3 other side.

4 MS. HARRINGTON-McBRIDE: Okay. Let's talk a bit  
5 now about the traditional FDCPA violations, and this may  
6 be one that I would prefer to cut short, because the  
7 other two issues are not going to to be handled so much  
8 in other panels, and I think these topics will come back  
9 up.

10 We talked a little bit about what are the sort  
11 of core violations that are being committed of the  
12 existing FDCPA. You all have spoken a little bit about  
13 harassment and threats. Dale, you've mentioned this  
14 kind of abuse on the phone. To what extent is this a  
15 growing problem, or has this been steady-state since the  
16 inception of the Act and there's always going to be a  
17 certain amount of bad actors out there? Are there  
18 trends that you can perceive, even if anecdotally?

19 MR. PITTMAN: Well, my experience anecdotally,  
20 as I said to begin with, is that it's getting worse, and  
21 so I can't point to trends, but the -- I described the  
22 deception and abuse earlier with the -- from the  
23 Sheriff's Department, which is -- well, that's not true,  
24 but I recently had one where they said, "Ms. Jones, you  
25 are in Virginia, which is a commonwealth state --" now,



1 this is -- the defense from the lawyer was actually,  
2 "Well, Dale, that's true, it's the Commonwealth of  
3 Virginia."

4 "But that means, ma'am, that it doesn't make any  
5 difference that you never had anything to do with your  
6 husband's premarital debt," and so I sued on that, and  
7 they said, "Look, we don't believe you. They didn't say  
8 that, and if they did, we'll get rid of this bad apple."  
9 Well, before we settled that, I had another case come in  
10 with exactly the same thing that was brought to me on  
11 tape. "Mrs. Adams, you are in Virginia, which is a  
12 commonwealth state. That means you have to pay your  
13 husband's debts regardless of the fact that you didn't  
14 know anything about this debt until you married the  
15 gentleman."

16 And so clearly they were playing off a talk-off,  
17 and so to me, that's another anecdotal, nonempirical  
18 indication, in my mind, that there is rampant deception.

19 MS. HARRINGTON-McBRIDE: I'm sure everyone here  
20 knows, but talk-off meaning?

21 MR. PITTMAN: Talk-off means that the collector  
22 is sitting there in a cubicle to -- someone referred to  
23 it as monitoring. I think it is to -- probably maybe to  
24 monitor compliance, but it's to increase profitability,  
25 has been told to use a script, and there will be a

1 script that says, "Say that you have to pay your  
2 husband's debts, because Virginia is a --" whatever a  
3 commonwealth state is.

4 And my earlier example of a talk-off was where  
5 they said, "We're going to come and take care of you in  
6 your home," and there was a written talk-off produced in  
7 discovery to show that that's what the collector was  
8 told by her supervisor to say.

9 MS. HARRINGTON-McBRIDE: So, this would counter  
10 the sort of rogue collector defense; this is actually in  
11 the training materials. This is part of the practice.

12 MR. PITTMAN: Oh, this is the core of what this  
13 industry does in my personal opinion.

14 MS. HARRINGTON-McBRIDE: Marla?

15 MS. TEPPER: I think that our experience is that  
16 consumers don't always report to us the kind of threats  
17 or statements that are made to them over the phone, and  
18 we know from the advocates and those who testified at  
19 our hearing that comments are being made that are  
20 inappropriate.

21 What we heard this morning is that the industry  
22 does not want to sanction that conduct. So, we think  
23 it's appropriate for the industry to engage in the type  
24 of auditing that was discussed this morning, to really  
25 train their collectors not to engage in that type of

1     conduct, and to take action against those who engage in  
2     that type of conduct. We would really encourage the  
3     industry to take care of that from their end, and then  
4     for the FTC, perhaps, to survey consumers and advocacy  
5     groups on the results of that process.

6             We also know that the forms that are sent out  
7     generally conform to the legal requirements, because as  
8     we heard this morning, it's easy for the industry to  
9     send out forms that are compliant, and we are encouraged  
10    by that. We would also like to see those forms be in  
11    Spanish and any other language in which the consumers  
12    have transacted business.

13            MS. SAUNDERS: One suggestion we made that maybe  
14    there would be some agreement on is that everybody be  
15    allowed to record calls. You know, consumers in most  
16    states, you know, can't without permission, and, you  
17    know, if you thought you were being recorded on the  
18    other end, maybe you wouldn't say it.

19            Now, I was heartened to hear this morning that,  
20    you know, some collectors on a routine basis record  
21    their calls, you know, which is a good practice, because  
22    obviously you don't want Dale discovering the calls in  
23    discovery if, you know, if they're reading off of a bad  
24    talk-off script.

25            MS. HARRINGTON-McBRIDE: Okay. We also talked a

1 little bit about the practice of falsely representing  
2 the character, status, or amount of a debt. To what  
3 extent is that problematic? And, again, I mean, are  
4 there trends that can be noted here? One of the  
5 questions that came in was, does anyone on the panel  
6 have any actual statistical data to support their  
7 assertions?

8 I think one of the -- and I won't answer for  
9 you, but I know that in the comments that we requested,  
10 one of the difficulties I think on both sides is, and it  
11 was noted this morning in the first panel, is that  
12 there's not a tremendous amount of empirical research in  
13 this area, and so companies, to some extent, have data  
14 about their own practices, but perhaps not  
15 industry-wide; associations may have some better data  
16 industry-wide.

17 From your perspective as consumer advocates,  
18 what kind of statistical information do you have to back  
19 this and/or what has been collected that you find useful  
20 to refer to?

21 MR. PITTMAN: I don't do statistical data. I  
22 just get cases that walk in the door. But one thing  
23 that we could ask maybe the next panel is something I  
24 really don't understand given the ease of technology, is  
25 why, when someone disputes the debt, whether they do it

1 on the telephone, which is enough, or whether they write  
2 a letter, which is enough, or whether they write a  
3 letter and have a green card showing they sent the  
4 letter, why they aren't marked "disputed"?

5 I mean, if you put a debt on someone's credit  
6 and say it's disputed, it's still on their credit, but  
7 if you say it's disputed, you're not going to deal with  
8 the Dale Pittmans or the Bob Murphys or the Cary  
9 Flitters of the world, and I really -- it's a question.  
10 I'm not hurling an invective this time. I'm just asking  
11 what it is -- why is it that that can't happen?

12 I know that lots and lots of the larger  
13 companies have people leave, and a lot of those people  
14 will go to people like -- I can't remember the guy's  
15 first name, Mr. Hibbs (phonetic), I believe, in Texas,  
16 and will say to him, "I worked for so and so, and they  
17 don't make any effort to mark a debt as derogatory when  
18 they send it out to the bureaus in the next cycle." So,  
19 I just -- it's a question.

20 I'd like to know why you allow that to happen if  
21 you -- maybe you make more money by paying me every once  
22 in a while and wrecking people's credit, but it seems to  
23 me it's an easy way to avoid dealing with me by simply  
24 marking it -- having your software mark it next month as  
25 disputed.

1 MS. HARRINGTON-McBRIDE: Well, I note that my  
2 colleague, Alice Hrdy, is busy over there jotting notes,  
3 and she is going to be moderating the next panel, so I  
4 would expect that that may be something that is  
5 responded to in that panel.

6 For our next 15 minutes, let's talk about a  
7 couple of more issues that we had identified as being  
8 key from the consumer's perspective. One that is  
9 interesting is the payments issue, some  
10 technology-assisted payments methods that maybe cause  
11 consternation. We had talked about e-collections. What  
12 are some of the concerns there and with electronic  
13 access to consumer accounts? What are the abuses that  
14 you're seeing, and what are some proposed remedies?

15 MR. CAVAZOS: Just quickly, my comment on that  
16 is -- and, again, I am dealing with the Latino  
17 community. You are going to find that many of these  
18 consumers don't have bank accounts. They don't trust  
19 the financial institutions. So, they're caught between  
20 a rock and a hard place. How do they get money to you?  
21 It's going to have to be take time off work, run down,  
22 buy a money order, and then send it to me, which is then  
23 more expensive for them.

24 MS. HARRINGTON-McBRIDE: Okay. Other thoughts  
25 on payments issues?

1 MS. SAUNDERS: Well, you know, I think Marla had  
2 mentioned and I mentioned, also, the problem with, you  
3 know, garnishment of Social Security funds, you know,  
4 which is really an issue not so much for those of you in  
5 the audience. I mean, the Senate held a hearing about a  
6 month ago about banks who will just freeze an account  
7 for three weeks or longer in response to a garnishment  
8 order, even if they're getting direct deposit from the  
9 Social Security Administration. We have been trying to  
10 hammer on the banking agencies to stop the banks from  
11 doing that. So, if all of you, you know, who may or may  
12 not know the source of income could weigh in on that, we  
13 would appreciate that.

14 We also see abuses, as Jean Ann Fox talked about  
15 this morning, abuse of, you know, electronic access to  
16 consumer accounts, and even though it's a little far  
17 afield from debt collection, we do think that the FTC  
18 could prohibit some, you know, abuses that the payday  
19 lenders use to coerce collections, like, you know,  
20 taking post-dated checks or deferred electronic access  
21 to the account. And in general, we would like to see  
22 Congress strengthen the rules against reaching into a  
23 consumer account.

24 Earlier this morning, one of the panelists, when  
25 hearing about the -- I think it was the service member

1 whose account had been dinged repeatedly, they said,  
2 "Well, that's illegal," but unfortunately, the banks say  
3 they can't stop it and they let it happen, and actually,  
4 the protections aren't there in the law, and they need  
5 to be strengthened, and it may take more than those  
6 present in the room here to do it, but we need to have  
7 more secure consumer accounts.

8 MS. HARRINGTON-McBRIDE: Okay. Other thoughts?

9 MS. TEPPER: Sort of related, I think that any  
10 payment methods have to be particularly careful to make  
11 sure that the consumer's privacy is protected and also  
12 that steps are in place to prevent identity theft, an  
13 issue that we're grappling with across the board and are  
14 very concerned about.

15 MS. HARRINGTON-McBRIDE: I think that's also  
16 something you'll hear about in the next panel.

17 MS. SAUNDERS: Oh, actually, one other  
18 recommendation we made is that debt collectors should be  
19 required to obtain written confirmation of any oral  
20 authorization to access a consumer's account. You know,  
21 we understand maybe you reach an agreement on the phone,  
22 and you say, "Okay, you know, give me the information  
23 right now, we'll withdraw it." You ought to have to  
24 back that up by some sort of written documentation to  
25 confirm that the consumer actually agreed to that and



1 the amount and the duration.

2 MS. HARRINGTON-McBRIDE: Okay, and let's wrap up  
3 before we take some questions by talking about concerns  
4 about specific populations. Rudy, you've talked a fair  
5 amount about Latinos. Some of the other populations  
6 that are mentioned in some of the comments that were  
7 submitted are students who increasingly are taking on  
8 debt at earlier and earlier stages in their lives, and  
9 senior citizens, who perhaps, atypically, maybe now that  
10 the baby boomers are a rising generation, haven't  
11 typically been a generation that was laden with debt,  
12 but now may be becoming one.

13 What are some of the concerns about these  
14 specific populations, not so much being in debt, but  
15 being subject to debt collection? Are there specific  
16 concerns either that could be cured with better consumer  
17 education materials that are directed? Are there  
18 practices that are particularly devastating to these  
19 populations? Let's talk about some of those issues.

20 MS. SPECTOR: Well, I think someone on the panel  
21 or one of the panels tomorrow has particular experience  
22 with senior citizens. Gina Calabrese is going to be on  
23 a panel tomorrow.

24 We've had some experience with seniors who --  
25 the problems they face, it's often a widow living alone,

1 you know, the widow is the great -- you know, the most  
2 vulnerable in all the legal cases, right? But she's  
3 living alone, and she's getting phone calls, and she's  
4 getting a Social Security check, and no, I don't have  
5 empirical data, but I do have, you know, the cases that  
6 come in to my clinic and, you know, the -- and they are  
7 particularly vulnerable. They're worried someone's  
8 going to come and hurt them. They don't understand how  
9 to say no. They're sweet little old ladies sometimes.  
10 They can be cranky old ladies, too, but that shouldn't  
11 matter.

12 And, you know, when the debt collector says,  
13 "Well, you know, so don't pay your electric bill this  
14 month or don't pay your -- or don't pay your rent, pay  
15 us instead," you know, they start to get frightened, and  
16 so there are some -- I think seniors have particular  
17 issues. I expect we'll hear about some more of those  
18 tomorrow.

19 We also work with Spanish-speaking consumers,  
20 and, again, not understanding what's happening, not  
21 understanding -- you know, even people who aren't afraid  
22 -- you know, where immigration is not an issue, they  
23 just don't speak the language, and so those are problems  
24 as well.

25 MR. PITTMAN: And, of course, with the elderly

1 and widows, the shenanigans of collectors attempting to  
2 collect on an estate by migrating over to the survivor  
3 debt that was never the survivor's in the first place or  
4 the "reputable" law firm from the Midwest sending the  
5 survivor papers that pretend to be estate filings in her  
6 state. Lots of that goes on, and, again, it's really  
7 traumatic when you're dealing with the death of a spouse  
8 you have had for 50 years now to get letters saying that  
9 you're somehow in trouble with a probate person in  
10 Virginia, which just ain't the case.

11 MS. HARRINGTON-McBRIDE: Marla, I see you  
12 nodding. Is that something that is also familiar to  
13 you?

14 MS. TEPPER: Yes, I'm sorry, we have concerns  
15 both about the elderly and people with disabilities.  
16 Sometimes both groups face the same problems. The  
17 exempt funds issue, which has been discussed here,  
18 particularly impacts on those two groups of people.

19 Second, they're vulnerable to the tactics which  
20 others might be able to resist, including those types of  
21 so-called technical violations of the Act, so we have  
22 concerns about preying on people's vulnerabilities.

23 Third, the debt collection agencies may have  
24 information that it surprises the consumer who is  
25 hearing that the debt collection agency knows this about

1       them. So, they are particularly susceptible because  
2       they're not used to being in this universe.

3               So, we have concerns about the vulnerabilities  
4       of that population as well as their inability to  
5       effectively represent themselves when the process takes  
6       them to court.

7               MS. HARRINGTON-McBRIDE: Rudy?

8               MR. CAVAZOS: Regarding to students, you know,  
9       in my organization and the organization I work for,  
10       that's my primary focus, is financial education, and I  
11       know that in elementary, junior high, high school,  
12       college, you don't receive the financial education that  
13       you need. So, you have a lot of students graduating  
14       from high school, graduating from college, without any  
15       information on how to handle credit, how to handle and  
16       manage their own money.

17               We work on collaboratives with financial  
18       institutions all across the country to promote financial  
19       literacy, but I'll tell you, honestly, you can have the  
20       best speaker, you can have the best venue, you can have  
21       great door prizes, people just don't come. They don't  
22       attend. It's very difficult for me to get people to  
23       teach them this information.

24               So, what happens? I mean, you still have a  
25       consumer, a young consumer out there, unknowledgeable on

1 money management and credit, and let me just give you a  
2 very hard core example.

3 Our military, our young military soldiers, have  
4 no idea how to manage this new money that they're coming  
5 into. They're getting caught up in the payday loan  
6 things. They don't know how to save. And I can't tell  
7 you how many times the military has come to me and said,  
8 "What can we do to teach these young soldiers how to  
9 better manage their money and credit?" I give them a  
10 great plan, and that's it.

11 So, we all talk about how wonderful financial  
12 literacy is and how everyone should know it, not only  
13 young adults, youth, and general market and Latinos and  
14 everybody else, but that's where it is. There's just  
15 not enough out there.

16 MS. HARRINGTON-McBRIDE: Okay. With our  
17 remaining few minutes, I'd like to take on a few  
18 questions from the audience, because, again, there were  
19 an extraordinary number at this session, and I  
20 appreciate everyone's participation. So, the first  
21 question relates to payments.

22 New technologies permit taking payments in the  
23 future that are not checks or payment instruments, for  
24 example, ACH. Should Section 808-2 be expanded to apply  
25 to those and add electronic transfer as well?

1           I know it's a fairly specific question, and you  
2 haven't had time to think a long time, but generally  
3 speaking, are there modifications to the Act that might  
4 make it a better fit for some of the newer payment  
5 methodologies, or are the banking regs which cover  
6 payments sufficient?

7           MS. SAUNDERS: I'm afraid I'm new enough to this  
8 that I don't recall 808-2.

9           MS. HARRINGTON-McBRIDE: Well, you know, we did  
10 give out the gold copies of the new FD CPA, all  
11 updated -- no, I don't want to trouble everybody to look  
12 at their copy, but to the extent you have thoughts on  
13 that, why won't we hold it, think about that, and we'll  
14 move on to the next question. I don't want to stump the  
15 panel.

16           This one was specifically directed to Lauren but  
17 I think it would be fair to say any of you could answer.  
18 Regarding technology, is it an avenue for abuse or  
19 consumer friendly, the FD CPA allows for consumers to  
20 dictate when and where they are contacted, why not the  
21 method? So, again, we have talked about that issue a  
22 little bit, but perhaps if the -- when the credit is  
23 granted is not the right time, and, you know, in  
24 something that could be considered a contract of  
25 adhesion, is there another moment at which consumers

1 could opt in, clear and conspicuous notice, opt in to  
2 communication in a variety of ways that might be  
3 advantageous to the consumer and to the business?

4 MS. SAUNDERS: Well, I'm going to object to  
5 anything that you call an "opt in," because I think no  
6 matter how you frame it, it's going to have the problems  
7 that I jumped on earlier. I think the way that they opt  
8 in is, you know, if they get a letter, then they figure  
9 out how to contact you if they want to, and they can  
10 pick up their cell phone and call you and say, "Call me  
11 back at this number," but I think anything you try to  
12 standardize in terms of, you know, a general opt in is  
13 going to lead to abuses.

14 MS. HARRINGTON-McBRIDE: Okay. Other thoughts  
15 on that?

16 MR. CAVAZOS: I don't know if this is -- if it  
17 relates to it, but it's kind of an example. Down in  
18 Texas where I'm from, we have a lot of refineries, and  
19 credit unions do something like you guys are talking  
20 about where every loan that every credit union member  
21 makes, it's automatically deducted from their payroll,  
22 automatically, and the sad thing about it is, when the  
23 overtime ceases to exist at the refineries, their  
24 paycheck is about this small (indicating), because  
25 everything is payroll-deducted. So, there are some

1 serious consequences to opting in, if you will.

2 MS. HARRINGTON-McBRIDE: Okay. Other thoughts  
3 about potential ways that consumers who might prefer to  
4 be contacted other than by mail could do that in a way  
5 that would be advantageous to consumers and potentially  
6 also to businesses?

7 MS. SPECTOR: Well, I think that if I'm  
8 understanding Lauren correctly -- and I think -- I mean,  
9 the problem with an "opt in" system is that it's  
10 difficult to ensure that it's truly voluntary, and if it  
11 is -- I mean, if we really want it to be voluntary, when  
12 the debt collector first contacts the consumer, by mail  
13 or over the telephone if there is a land line, they can  
14 ask, "Can we reach you by email?" Or you can -- "Can I  
15 call you -- is there a cell phone number where I can  
16 reach you?" But to have it on a credit agreement,  
17 required before granting the credit, which I suspect it  
18 would be, would be very problematic.

19 MR. PITTMAN: It would have to be written  
20 somehow into -- and I'm not a policy person, I shouldn't  
21 even be talking -- but it ought to be -- it would have  
22 to be written into 1692-C somewhere so someone could  
23 change and adjust it as -- you know, "I need an email  
24 now but maybe later a phone call or something." I  
25 don't -- if it were done, it would have to be done that



1 way, and clearly not by an adhesion stuffer.

2 MS. SPECTOR: Katie, I also want to say that,  
3 you know, I said earlier, I think some consumers would  
4 rather talk on the telephone. They want to dispute  
5 things on the telephone, they want to ask for validation  
6 on the telephone, and they should be allowed to do that,  
7 so that any changes ought to be comparable on both sides  
8 and not unduly favor one side or the other if there were  
9 to be changes made in that area.

10 MS. HARRINGTON-McBRIDE: Okay. One last  
11 question from the audience. It was suggested that a  
12 debt collector needs to provide proof of indebtedness,  
13 for example, a copy of a contract signed by the debtor.  
14 That may be feasible in real estate and/or auto  
15 transaction but very difficult with unsecured credit, as  
16 many unsecured debts are obtained electronically,  
17 without a signature. Your thoughts?

18 MS. SAUNDERS: Whatever the original  
19 documentation of the existence of that debt and the  
20 agreement of the consumer to it. It may take different  
21 forms, but there is, you know, there is something that  
22 exists that can establish in admissible form that this  
23 is a valid debt this person took on and agreed to, and  
24 whatever that is, you know, needs to be preserved and  
25 passed along through the nature of the debt, of the life

1 span of the debt.

2 MR. PITTMAN: Otherwise, you're saying, you  
3 know, "Your Honor, take our word for it."

4 MS. HARRINGTON-McBRIDE: Okay. Well, with that,  
5 I think we've brought it in on time. Thank you all very  
6 much, panelists.

7 (Applause.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CONCERNS ABOUT DEBT COLLECTION:

2 COLLECTORS' PERSPECTIVE

3 MR. KANE: Thank you, Katie, and members of the  
4 panel. Now that we have heard some of the concerns --  
5 actually, we don't have a break at this moment. We are  
6 going straight into the next panel.

7 Now that we have heard some of the concerns  
8 about debt collection from the consumers' perspective,  
9 we will hear the concerns from the debt collectors'  
10 perspective, and moderating this panel will be Alice  
11 Saker Hrdy, an Assistant Director in the Division of  
12 Financial Practices, and I'll invite Alice and the  
13 collectors' panel to come on up.

14 I also want to say that there are some folks --  
15 anybody in the back who wants to move up now, this is a  
16 good opportunity. There are some empty seats. I have  
17 heard there are some people sitting on the ground. We  
18 definitely don't want anybody sitting on the ground.  
19 So, please move on up.

20 MS. HRDY: We will go ahead and begin. Thank  
21 you, Tom Kane, for the introduction, and I'm delighted  
22 to moderate this panel of very distinguished members of  
23 the industry who have much, much to share. Our work is  
24 cut out for us in the next hour and 15 minutes.

25 I thought we would start by having each panelist

1 tell us a little bit about himself, what segment of the  
2 industry they represent, what their experience in that  
3 industry is, and then just give us just -- I think we've  
4 agreed -- three minutes, three or so minutes, of a  
5 statement of sort of what's on their mind, what's the  
6 most pressing issue. So, we're going to go ahead and  
7 why don't we go ahead, Stacey, and start with you.

8 MR. SCHACTER: I will say I went to the Bill  
9 Clinton School of Public Speaking. I decided to limit  
10 my remarks to 45 minutes.

11 My name is Stacey Schacter. I'm on the board of  
12 directors of DBA International, which represents the  
13 interests of debt buyers in the industry. I will keep  
14 within the three to four-minute mark for you, Alice.

15 MS. HRDY: Great, thanks.

16 MR. SCHACTER: I am president of a receivable  
17 purchasing company and a member of the DBA International  
18 board of directors, a nonprofit association primarily  
19 representing the interests of those who purchase  
20 receivables, and secondarily, others who serve the  
21 industry.

22 The industry serves an important function in the  
23 economy by working with lenders to help keep in check  
24 losses, thereby reducing the cost of credit to those who  
25 utilize the credit markets. Most people would agree

1 that those who borrow money are responsible to repay  
2 what they borrow, along with an appropriate amount of  
3 interest and fees. Without the credit markets,  
4 consumers would find making purchases for essential  
5 items like cars, furniture, electronics, and homes  
6 nearly impossible.

7 I've spent years as counsel to consumers who  
8 found themselves in difficult financial circumstances,  
9 usually due to the loss of a job or unforeseen medical  
10 problem. They almost universally said that they wanted  
11 to repay the money and only sought help after feeling  
12 they had no other option.

13 Those who purchase debt at a discount have the  
14 ability to provide consumers options that financial  
15 institutions cannot offer. Our industry's customer  
16 service reps have the ability to distinguish between  
17 those who can't pay versus those who won't pay. Once  
18 they determine that, they have a large tool box  
19 available to customize a repayment plan to help keep the  
20 consumer situation from worsening and keep the consumer  
21 out of bankruptcy.

22 Unlike what some may want you to believe, the  
23 consumer's bankruptcy results in losses for the  
24 receivable company as well. No ethical receivable  
25 purchasing company expects payment from those who can't

1 pay. Indeed, the industry writes off or warehouses  
2 accounts once it is established that the consumer can't  
3 pay. Moreover, responsible receivable purchasers want  
4 and need to comply with all laws and regulations while  
5 being respectful to consumers.

6 In preparing for this panel, the DBA solicited  
7 its membership for input, and the results were not  
8 surprising. Our members desire to be responsible while  
9 attempting to comply with a bewildering web of laws,  
10 regulations, court decisions, and an overly aggressive  
11 plaintiff's bar, which makes it very difficult for our  
12 industry to play its part in the economy.

13 Receivable purchasers want to play by the rules,  
14 but they need to have clarity as to what those rules  
15 are. Federal laws conflict with other federal laws,  
16 federal laws conflict with state laws, conflicting  
17 federal and state laws result in confusing or poorly  
18 reasoned case law and too many cases being filed to  
19 burden our strained court system.

20 Our industry needs clarity regarding ways in  
21 which we can contact our customers. The FDCPA was  
22 constructed in the 1970s for a 1970 society that had no  
23 inkling of cell phones, email, voice over IP, and other  
24 technological advances that would never have been  
25 imagined at that time. The industry longs for

1 uniformity on compliance matters as a maze of state  
2 regulations and court cases can be very daunting to  
3 understand.

4 Contact verification is important. We only want  
5 to speak to those who are responsible for the  
6 obligation. We only want to speak to those who want to  
7 speak to us. Correct contact verification absolutely  
8 depends upon access to Social Security numbers so that  
9 we can assure that we are speaking to John Q. Public,  
10 not John Q. Public, Junior.

11 The antiquated FDCPA and its case law created an  
12 inappropriately harsh regulatory environment for  
13 receivable buyers. The environment is damaging both for  
14 consumers and the debt-buying industry.

15 According to former FTC Chairman Timothy J.  
16 Muris, many fail to appreciate that the average American  
17 today enjoys access to credit and financial services  
18 that earlier Americans will never have imagined. The  
19 nation has a profound economic and social stake in  
20 informing the environment for the secondary market for  
21 the sale of debt. The FTC has recognized that the  
22 timely payment of debts is important to creditors and  
23 that the debt collection institute offers useful  
24 assistance toward that end.

25 As soon as I turn the page, I will conclude. To

1 conclude, the DBA group certainly recognizes that the  
2 FDCPA is now 30 years old. The DBA also recognizes that  
3 the FDCPA has been outflanked by technology changes  
4 causing problems, for example, with telephone contact  
5 with consumers. The FDCPA is a harsh statute which  
6 places over-reliance on class actions, private rights of  
7 action, strict liability as policy-making tools.

8 We appreciate the proposals for FTC reform  
9 offered by the ACA, NARCA, and by the FTC. In addition,  
10 of course, various consumer groups have made proposals.  
11 We believe all of these proposals, as well as the record  
12 of these workshop, and other sources merit careful  
13 attention and study, but we are encouraged by the  
14 involvement of the FTC in conducting this workshop.

15 MS. HRDY: Thanks, Stacey.

16 Bob Markoff.

17 MR. MARKOFF: Thank you. Good afternoon. My  
18 name is Bob Markoff. I'm the president elect of the  
19 National Association of Retail Collection Attorneys. My  
20 law firm is based in Chicago and practices throughout  
21 the State of Illinois. We specialize in debt  
22 collection.

23 I would like to focus my remarks on the special  
24 concerns of attorneys engaged in the litigation of debt  
25 collection cases. One of this nation's most respected



1 citizens and presidents was a collection attorney in  
2 Illinois. Yes, Abraham Lincoln was a collection  
3 attorney prior to his becoming president of the United  
4 States. Sixty percent of his known cases dealt with the  
5 collection of past due notes and accounts.

6 Attorney Lincoln's greatest concern about  
7 collection proceedings did not deal with issues in the  
8 courtroom, but rather, the enforcement process. The  
9 sheriff was slow to sell real estate and other personal  
10 property to enforce a judgment. Some of his same  
11 concerns remain today; however, we do know that he did  
12 not face the consequences or the unintended consequences  
13 of the Fair Debt Collection Practices Act as it's  
14 applied to attorneys practicing law.

15 Representative Annunzio, in comments made  
16 relating to the removal of the exemption for attorneys  
17 from the FDCPA, stated that the Act was meant to  
18 regulate back room conduct of attorneys, not their  
19 courtroom conduct; however, as has been the history of  
20 the Act, courts have added layer upon layer of  
21 additional interpretations that have nothing to do with  
22 the Act's original intent.

23 Nowhere in the Act does it state that all  
24 collectors shall be treated equally except if one is an  
25 attorney who also serves as a debt collector. The issue

1 here is meaningful involvement. Why should an attorney  
2 be expected to interrogate a client relating to a claim?  
3 Nonlawyer collectors simply accept the accounts and send  
4 their letters. A purpose of sending out the initial  
5 FDCPA notice is to determine whether or not there is a  
6 dispute. Therefore, the concept that an attorney must  
7 be meaningfully involved in the presentation or  
8 preparation of a demand letter has no place in the Act.  
9 It is a matter of contract between the attorney and  
10 client that regulates the attorney's involvement in such  
11 matters.

12 The FDCPA should not apply to any aspects of  
13 courtroom procedure. We should not need to quibble over  
14 what constitutes a legal pleading. Is it limited to the  
15 complaint or does it include summons, notices, motions,  
16 or other documents filed in the proceedings?  
17 Furthermore, attorneys should not have to tell other  
18 lawyers that they are acting as debt collectors. The  
19 consumer's attorney already knows that we're acting as a  
20 collector.

21 The FDCPA has other unintended consequences as  
22 relates to state statutory notices. Eviction law is a  
23 very good example. A five-day notice clearly  
24 overshadows an FDCPA-required notice. Venue is another  
25 area of concern for lawyers enforcing judgments. The

1 FDCPA does not allow for enforcing judgments against a  
2 consumer's wages or assets in a county or state in which  
3 they do not reside or in which the contract was not  
4 entered into.

5 In conclusion, I am not advocating that  
6 collection lawyers be exempt from the FDCPA. I am  
7 recommending that the Act be amended in accordance with  
8 the proposal submitted by the National Association of  
9 Retail Collection Attorneys so as to clarify the role of  
10 the litigation process and eliminate unintended  
11 consequences.

12 Thank you.

13 MS. HRDY: Thanks.

14 Rich Leibert?

15 MR. LEIBERT: Thank you. My name is Rich  
16 Leibert -- can you hear me? Is this on? -- and I'm  
17 the managing partner of a Connecticut law firm, and I  
18 also serve as the current president of the USFN --

19 MS. HRDY: Okay, it's not working.

20 MR. MARKOFF: Take this one.

21 MS. HRDY: Thanks.

22 MR. LEIBERT: This is better.

23 I'm the current president of the USFN, which is  
24 a national not-for-profit trade association of mortgage  
25 banking, law firms, and trustee companies that primarily

1 concentrate their practices in the representation of  
2 secured mortgage lenders in connection with  
3 foreclosures, bankruptcies, and loss mitigation efforts.  
4 These loss mitigations can be in the form of loan  
5 modifications, forbearance agreements, pay-offs,  
6 reinstatements, and other resolutions.

7           It is important to recognize that the  
8 representation of mortgage holders in foreclosure  
9 proceedings is very different from the representation of  
10 unsecured creditors in the collection of unsecured  
11 debts. Collection attorneys representing unsecured  
12 creditors are generally paid a percentage of what is  
13 recovered on a contingent fee basis. There is no  
14 collateral securing their debt.

15           In a foreclosure proceeding, attorneys for  
16 mortgage holders are paid on a prorated flat fee basis  
17 by the mortgage holder regardless of whether payments  
18 are tendered by the consumer. The balance due on a note  
19 in a foreclosure has no bearing on the fee paid. There  
20 is no incentive for a foreclosure attorney or trustee to  
21 aggressively and creatively dun consumers in order to  
22 collect more from them.

23           With the ever-increasing mortgage defaults,  
24 mortgage holders are trying to facilitate as many  
25 resolutions as possible and often ask local counsel to

1 communicate them to the borrower or the borrower's  
2 attorneys. Such communications can appear complex to  
3 the FDCPA's hypothetical least sophisticated consumer.  
4 The Fair Debt-related cases addressing overshadowing and  
5 confusion claims do not provide clear guidance for their  
6 avoidance. USFN members and all attorneys who provide  
7 services on behalf of mortgage holders simply want  
8 consistent guidance regarding how they can comply with  
9 the law when providing loss mitigation information.

10 One example: It remains unclear how we can --  
11 how counsel representing secured creditors are to  
12 provide information after a consumer's been discharged  
13 in bankruptcy.

14 Recommendations: We would like to see the FTC  
15 draft model safe harbor letters that remove the risk of  
16 running afoul of Fair Debt, or, alternatively, amend the  
17 definition of "debt collector" to exclude attorneys who  
18 pursue debtors solely through litigation or similar  
19 legal practices or simply exclude attorneys who pursue  
20 the enforcement of security interests solely through  
21 litigation or similar legal practices. Furthermore,  
22 exempt from the definition of "communications" letters  
23 setting forth reinstatement or pay-off information.

24 The complete text of my opening remarks are on  
25 the back table outside the room here and will also be on

1 the FTC website, but in conclusion, foreclosure  
2 attorneys and trustees want to work with the borrower to  
3 save their home, when reasonably possible, before the  
4 finality of foreclosure. Attorneys and trustees also  
5 want to comply with the law. Help us do so either by  
6 amending the FDCPA or provide consistent written  
7 guidance as to how to avoid its violation.

8 MS. HRDY: Thanks.

9 Larry Laskey?

10 MR. LASKEY: Thank you. Can everybody hear me?  
11 Is this on? Hello?

12 MS. HRDY: Yes, it works.

13 MR. LASKEY: Thank you. Good afternoon. My  
14 name is Larry Laskey, vice president and counsel of Van  
15 Ru Credit Corporation in Des Plaines, Illinois.

16 In 1977, communication was through the U.S. mail  
17 or by land line telephone. You knew who you were  
18 talking to and with whom you were leaving a message.  
19 You knew the local time and where they were when you  
20 talked to them.

21 However, today, consumers rely on email and text  
22 messaging to communicate. Instead of land lines, they  
23 use cell phones. Instead of answering their phones,  
24 they use caller ID and voicemail to know who called and  
25 why before calling back, if at all, in the privacy and

1 time of their choosing. Internet services allow  
2 consumers to direct incoming calls to multiple phone  
3 numbers depending on the caller and to manage their  
4 voice and text messages from anywhere.

5 Van Ru is a national accounts receivable  
6 management company. We work with consumers in all  
7 stages of delinquency and on all types of indebtedness,  
8 including federal student loans, working with state  
9 agencies, the U.S. Department of Education, and as a  
10 member of the National Council of Higher Education Loan  
11 Programs.

12 We don't just ask consumers to repay a debt. We  
13 also offer information to the at-risk consumer to help  
14 keep them on track to avoid a default. We also offer  
15 information on how to resolve defaults through  
16 alternatives, such as loan discharge, rehabilitation, or  
17 income-contingent repayment options.

18 The student loan market alone is an \$85 billion  
19 a year industry and growing. The average student debt  
20 is over \$20,000. A \$50,000 undergraduate debt burden is  
21 not uncommon. Every year, our industry helps hundreds  
22 of thousands of student borrowers avoid default and  
23 helps return billions of defaulted dollars to the  
24 federal program. Effective use of 21st Century  
25 technology in loan counseling and collection is

1 essential if we are to succeed in helping consumers to  
2 borrow responsibly and to manage their debt.

3 Application of 20th Century laws to the facts of  
4 20th Century technology impair our ability to promote  
5 efficiency, to communicate through the means consumers  
6 use and prefer, to provide consumers with information  
7 they need, and to amicably resolve their debts.

8 Some examples: Cell phone users could be  
9 anywhere when we call. Area codes no longer are  
10 reliable indicators of location. A land line number  
11 today could be ported to a cell phone tomorrow. If we  
12 don't know their location, we can't know the local time  
13 for FDCPA purposes.

14 Setting privacy concerns, regulatory  
15 interpretations suggest that, absent consent, we can't  
16 use predictive dialers to call cell phones. We  
17 similarly can't send them automated voice or text  
18 messages. We can't get consent if we can't reach the  
19 borrower, and there are questions about what consent is  
20 required and whether further consent is needed to avoid  
21 violating third-party communication rules in the  
22 messages that we leave.

23 Courts struggle to apply the FDCPA to new  
24 technologies like automated messaging, voicemail, and  
25 caller ID. When the FDCPA was enacted, placement of



1 telephone calls under Section 806 meant talking to  
2 someone. Now, it means a message on an answering  
3 machine or the mere presence of information on an  
4 automatic number identification screen, caller ID,  
5 triggering debt disclosures that create exposure to  
6 violation of third-party communication rules.

7 Email presents more of the same. Absent a prior  
8 arrangement that you can't establish if you can't  
9 contact a consumer, there is no real way to assure  
10 consumer identity, again leading to the risk of strict  
11 liability for unintended third-party disclosures.

12 As consumers move from U.S. mail to email and  
13 texting and from land lines to cell phones, as consumers  
14 manage phone communications with automatic number  
15 identification and voicemail, and as courts continue to  
16 struggle with the application of laws that do not  
17 reflect the reality of a growing technology-driven and  
18 global economy, we will be forced to abandon new  
19 communication methods and technology available  
20 efficiencies and at some point to effectively cease  
21 communication altogether, leading to an increased cost  
22 of credit, lack of consumer information, and an increase  
23 in litigation.

24 Thank you.

25 MS. HRDY: Thanks, Larry.

1 Chris Wunder?

2 MR. WUNDER: Good afternoon. My name is Chris  
3 Wunder. Despite my obvious youth, I've owned and  
4 operated a collection agency for 26 years, and we  
5 specialize in the health care area. Today, though, more  
6 importantly, I stand before you as the President of ACA  
7 International, which is the association of credit and  
8 collection professionals.

9 To evaluate the collection industry, many of you  
10 know that consumer groups, legislators, and regulators  
11 rely heavily on the FTC's Report to Congress. Some  
12 contend that this report indicates that complaints  
13 regarding third-party collectors are increasing at an  
14 alarming rate; however, it is worth noting that the FTC  
15 expressly states in its report, as did the Chairman this  
16 morning, that these complaints do not necessarily  
17 represent law violations. Clearly, this situation must  
18 be better understood.

19 Without casting any aspersions on the FTC's  
20 complaint reporting process, let's consider another way  
21 to look at this issue. Virtually the same type of data  
22 was not only accumulated but also analyzed by a  
23 nationally recognized and completely independent  
24 organization, the National Council of Better Business  
25 Bureaus. Across the over 3600 industries that they

1 monitored in calendar year 2006, the BBB reports that,  
2 on average, 72.5 percent of all complaints were later  
3 determined to be resolved to the satisfaction of the  
4 consumers. So, we must ask ourselves, how does the  
5 collection industry fare under the same scrutiny?

6 Well, during that same time span, the Better  
7 Business Bureau logged 280,503 inquiries regarding  
8 collection agencies. Of that total, only 14,322 were  
9 classified as actual complaints or barely 5 percent of  
10 the total inquiries. More to the point, the Better  
11 Business Bureau points out that complaints against  
12 collection agencies were, in fact, resolved to the  
13 satisfaction of the consumer an impressive 85 percent of  
14 the time, and that's right, 85 percent of complaints  
15 resolved to the satisfaction of the consumer regarding  
16 collection agencies versus only 72 and a half percent  
17 for all other industries combined, and I would submit  
18 that this statistic cannot be minimized or ignored.

19 With the above as a backdrop to the collection  
20 industry's track record, as an industry committed to  
21 complying with applicable laws, as well as respecting  
22 the rights of consumers, let me share a few suggested  
23 changes to the FTC we believe will be beneficial to both  
24 third-party collectors and consumers.

25 First, and in keeping with what we just said, an

1 agreement on third-party dispute resolution process to  
2 allow for responsible reporting, investigation, and  
3 resolution of complaints.

4           Secondly, in a highly mobile society, variances  
5 in state laws make it confusing for both consumers and  
6 collectors to understand their rights and  
7 responsibilities. We would suggest federal preemption  
8 for the FDCPA, effectively making it the law of the  
9 land. This has worked well with the Fair Credit  
10 Reporting Act and would, in this instance, improve the  
11 environment within which creditors, consumers, and  
12 collectors interact.

13           Thirdly, for the last 30 years, technology  
14 has -- we have heard a lot about it today -- technology  
15 has improved most businesses and literally given birth  
16 to others. The internet, email, and cellular technology  
17 has allowed us as employers and employees, parents and  
18 children, sellers and consumers, friends and  
19 acquaintances, to conduct our interaction in a way that  
20 is efficient, useful, and timely. The FDCPA should  
21 allow creditors, consumers, and collection agencies to  
22 make full use of these technologies to the benefit of  
23 all involved.

24           On behalf of myself and ACA international, I  
25 want to thank the FTC for taking the initiative to

1 conceive and host this workshop, and we certainly look  
2 forward to an outcome that achieves positive results for  
3 all the stakeholders.

4 MS. HRDY: Thanks, Chris.

5 So, I thought what we would do now is the goal  
6 of this panel, as described in the agenda, is to  
7 highlight the key restrictions on debt collection  
8 practices, as identified by these members of the  
9 industry, that they believe unduly limit their ability  
10 to carry out legitimate debt collection activities, and  
11 as I'm sure many of you have looked at the comments on  
12 the record, they're replete with very detailed,  
13 thoughtful comments from all of the commenters.  
14 Particularly, the industry members here have given, you  
15 know, almost, in fact, section-by-section suggestions,  
16 and we're going to -- we have a challenge here to be  
17 both meaningful in addressing some of those ideas, but  
18 also being concise so we can cover as much as possible.

19 But what I -- my challenge to each panel member  
20 right now is to briefly, each of you, just address if  
21 you could only have one change in the law that would  
22 benefit both your business model and consumers, what  
23 would that change be? It's sort of like a Miss America  
24 kind of question. Just one change. What would it be?

25 MR. SCHACTER: Alice, if I had to select one

1 item -- and I think you've heard this all day, from all  
2 panel members in every session -- it deals with  
3 clarification on how to communicate with the consumer,  
4 and the FDCPA has not kept up technology-wise with  
5 everything. We've talked about email, we've talked  
6 about voice over IP, et cetera, and I think that as long  
7 as the consumer is willing to allow us to communicate  
8 with them via email, if the consumer -- or any other  
9 means, if a consumer wants us to communicate with them,  
10 then we should be permitted to communicate with them in  
11 that fashion, and that consent can be provided to the  
12 debt buyer, it can be provided to the collector, or it  
13 could have been provided to the original creditor, but  
14 however they want to get it really handles what -- I  
15 mean, we're supposed to be trying to provide, in part,  
16 what consumers want, and what consumers want is a way to  
17 be communicated with, and I'm not sure if we should be  
18 imposing our will on them as much as hearing what they  
19 want to ask.

20 MS. HRDY: Okay.

21 Bob?

22 MR. MARKOFF: Well, my --

23 MS. HRDY: Thank you for the brevity, Stacey.

24 MR. MARKOFF: -- my wish would be that all my  
25 colleagues' wishes be granted.

1 MS. HRDY: Okay, terrific. Moving on to Rick.

2 MR. MARKOFF: But I won't go so easily.

3 MS. HRDY: Okay.

4 MR. MARKOFF: I am a practicing collection  
5 attorney. I get into the courtrooms. I get my hands  
6 dirty, so to speak. I talk to people. I resolve cases.  
7 I am one of the attorneys that comes to court with a  
8 large number of cases and actually talks to people and  
9 presents my file, my case, to judges.

10 To worry about my backside and have to choose my  
11 words because of a federal act or to what I can put in a  
12 letter or a court document is just downright silly. My  
13 code of conduct is -- well, my conduct is governed by  
14 the FDCPA but also by the Supreme Court of the State of  
15 Illinois. I have a reputation in this area of practice  
16 over 30 years.

17 Documentation, if I can just address one issue  
18 that was raised, I love when my clients present the  
19 documents, and one of my major credit grantors would  
20 habitually give me hundreds and hundreds of pages of  
21 documents. With modern technology, we now scan into our  
22 system, and we hold all of this documentation, but to  
23 what use? Less than 1 percent of all of our claims have  
24 any dispute relating to the documentation. The  
25 man-hours, the trees, the forests that are cut to

1 produce the documents for us to scan, to hold in reserve  
2 for a day that will never come, and then to worry about  
3 how do we destroy this when we don't use it because of  
4 privacy concerns, I mean, we're going overboard here.

5 I figure out pretty fast which clients are not  
6 going to provide documentation or show up in court. We  
7 stop suing. I make those decisions as an attorney. I  
8 don't want to proceed on a case that's not collectible.  
9 So, therefore, for a lawyer, this really isn't an issue.  
10 Yes, some cases are filed and I don't have sufficient  
11 documentation, but I learned my lesson, and I stopped  
12 filing those cases.

13 In addition, on defaults, many consumers know  
14 they owe the money. It is not shocking that there is a  
15 default. This is not the end of the world, you're  
16 right, but volume filing? I've been doing this for 30  
17 years. This is nothing new. So, this is not a  
18 surprise. The technology may be new, the ability to  
19 retain documents, but on the whole, this is a very small  
20 part of the collection industry. The few horror stories  
21 that -- alleged horror stories that we hear, this is not  
22 the general rule.

23 MS. HRDY: Okay, thanks, Bob. We'll get back to  
24 some of those points in a second.

25 Rick?



1           MR. LEIBERT: The industry that I'm here today  
2 representing is really a little different from the  
3 unsecured creditor industry. To complete the  
4 foreclosure file, we really don't have to speak to a  
5 borrower. We don't have to make outbound calls. So,  
6 listening to the rest of the panelists whose job really  
7 requires them to speak to borrowers in order to collect  
8 a debt, we simply are in a different position.

9           Our problem is we'd like to speak to the  
10 borrowers. We'd like to help the borrowers save their  
11 home. We want to talk to them, and typically in a  
12 foreclosure proceeding, in a judicial state, there's a  
13 complaint that's served on the borrower, and it's very  
14 typical, within 24 to 48 hours after the borrower  
15 receives that complaint, they're on the phone calling  
16 the lawyer, wanting to know what they can do to save  
17 their home.

18           Well, there are some problems there, because  
19 we've sent out a debt validation notice. There's the  
20 claim of confusion and overshadowing if we start to  
21 explain to them some of these loss mitigation techniques  
22 that are out there for them, but we want to. So, when  
23 you ask, what's one change in the law that we would like  
24 to see in our industry, is some sort of safe harbor to  
25 be able to speak to a homeowner who's facing the loss of

1 their house. I mean, what can be more serious than  
2 losing your home without worrying about a technical  
3 violation of the Fair Debt law?

4 MS. HRDY: Thanks.

5 Larry?

6 MR. LASKEY: Well, I had to talk fast to get it  
7 all in four minutes, but I could I suppose come back and  
8 say it more simply, the one thing I would like to see is  
9 a recognition in the law that technology and consumer  
10 preference has blurred a statute that was created at a  
11 time when communications were by U.S. mail or face to  
12 face by telephone and recognize that consumers don't  
13 answer their phone. They look to see who's calling.  
14 They let it go to message. And we need to be able to  
15 leave messages.

16 That would be my number one concern, that the  
17 law reflect the reality of that's how consumers want to  
18 communicate, and that is the technology that's out there  
19 that makes communication available; a change that would  
20 find that a nonsubstantive communication is not a  
21 communication as defined in the FDCPA, things along that  
22 line.

23 MS. HRDY: Thanks, Larry.

24 Chris?

25 MR. WUNDER: Well, contrary to a lot of the

1 discussion earlier, I would like to make something  
2 clear, and this is very, very important to understand,  
3 that the reason why the collection industry, as a  
4 general rule, works very hard to comply to all  
5 applicable laws and regulations, certainly including  
6 FDCPA, is not because we're afraid of being sued by any  
7 attorneys. We do it because it's a good business  
8 practice. It makes good sense. Doing things that, you  
9 know, many things we heard described today, I find  
10 myself a little flabbergasted in that I don't think you  
11 collect any more money by doing that, and that's the  
12 business I'm in.

13 But if I had to choose one thing, I think  
14 it's -- for us at ACA and most of the people that I  
15 speak to in the industry, which is a fair sum of them,  
16 what we really need is federal preemption for FDCPA.  
17 There's a lot of talk today, and I'm sure it will go on  
18 the next day and a half, in that consumers really  
19 aren't educated -- consumers don't understand what's  
20 going on, and I think the myriad of state laws and  
21 federal laws and conflicting laws that are out there  
22 make it even more difficult for them to understand that,  
23 as it does for people who were acting in good faith.

24 And I think, you know, something else to  
25 understand is that I believe that the people in this

1 industry sincerely believe that the people that we call  
2 up really aren't trying to dodge us. I mean, they -- I  
3 think they, in good faith, bought something or they know  
4 in good faith they owe a debt, and oftentimes, they just  
5 don't know how to get out of it, and we need to  
6 communicate, but I think a lot of the ambiguity and  
7 confusion will be taken away when we have federal  
8 preemption for FDCPA.

9 MS. HRDY: Okay, thank you, we have our wish  
10 list, and now the questions are pouring in, and I also  
11 have some of my own, and I think it would be great to  
12 tackle the issue that's a common theme, which is the  
13 communication and technology-related issues, and I've  
14 heard a number of different interesting things.

15 Larry mentioned that consumers don't answer  
16 their phone. They've got technology that allows them to  
17 figure out who's calling, and, therefore, they don't  
18 answer their phone. What we haven't heard -- and yet we  
19 want consumers to be able to express a preference on  
20 which communication channel -- really, is that it that  
21 bad? Karen Hichey is going to find out why I'm  
22 staticky. It just happened when I'm starting to talk.

23 UNIDENTIFIED SPEAKER: Press the mute.

24 MS. HRDY: It's like when only I speak. It  
25 doesn't like me. I won't take it personally. Why don't

1 I just talk through it and see how that works.

2 So, there's a statement that consumers should be  
3 able to express their preference --

4 MR. WUNDER: We deserve equal time, come on.

5 MS. HRDY: Are we better over here? Maybe it's  
6 that microphone.

7 Okay, I think we should just keep going and we  
8 will try and ignore as best possible. That's always  
9 what I do, just ignore it.

10 But we have questions here. What about the  
11 postal mail? It was raised at the previous panel, and  
12 in the discussions we've had today, there really hasn't  
13 been an extended discussion as to why is, as the ACA  
14 calls it, postal mail becoming a relic? Why is it that  
15 it is not a good way to at least begin conversations  
16 with consumers? It's as if in all these discussions, we  
17 know consumers have access to the latest technology.  
18 Chances are they still live somewhere with a postal  
19 address.

20 So, I'll just throw it open, Stacey, if you want  
21 to start, why is it -- as someone said, the mailbox rule  
22 is still the best evidence rule, and it's the best way  
23 to contact someone. What's the consternation with  
24 writing a letter? Why do you need the ability to make  
25 contact through a phone call or electronic methods?

1 Skiptracing makes addresses readily available.

2 MR. SCHACTER: I am going to try and use this  
3 electronic mike and hopefully it's going to work okay  
4 for us.

5 When we think about technology today, postal  
6 mail is one of the few things that doesn't travel with  
7 you anymore. A cell phone travels with you. I just  
8 moved from Massachusetts down to Georgia. I took my  
9 email with me. All forms of -- the idea here is to be  
10 able to talk to the consumer and have the consumer be  
11 able to talk to us. If you can't get that right party  
12 contact, you're left with very few alternatives to  
13 collect. Therefore, you have to sue.

14 MS. HRDY: Can I interject and just say, do you  
15 have any kind of -- I presume proprietary data, but any  
16 information you can share with us to say this -- because  
17 I think everyone has to -- there should be agreement  
18 around the idea that communication is important. To  
19 have the communication be at the courthouse is obviously  
20 not an effective way to try and administer legitimate  
21 debt collection activities that are important to our  
22 economy, but do you have any more information other than  
23 -- we know if I have a cell phone in my pocket, yeah,  
24 you are going to reach me faster than sending a postal  
25 mail to my address, but other than just the efficiency,

1 is there any evidence or anything you can share with us  
2 to say, if someone cannot the answer the phone because  
3 they have caller ID, they can also toss the letter.

4 I mean, where is the real benefit to being able  
5 to reach a consumer on a cell phone as opposed to just  
6 basically deep-sixing the postal mail? Because if  
7 you're going to amend the FDCPA to try and account for  
8 technology, you do have to be careful that you don't  
9 make it obsolete as soon as the ink is dry on the page,  
10 because technology will always be changing. So, I  
11 just -- before we throw out the old technology of mail  
12 that still works, I just wanted to get some more  
13 elaboration on that point from any of the members.

14 MR. MARKOFF: Well, if you live --

15 MS. HRDY: I think you have to use the next one.

16 MR. MARKOFF: Is this one working?

17 UNKNOWN SPEAKER: Yes.

18 MR. MARKOFF: Okay. If you live in the City of  
19 Chicago or in the area of Northeast Illinois, you would  
20 know that our mail service is the worst in the country.  
21 We're no longer guaranteed that our mail is getting  
22 through to anyone, and, in fact, we have been talking to  
23 our judges where we have a five-day mail rule on the  
24 delivery by mail of notices of motion. Five days just  
25 isn't long enough anymore. I've often wondered how many

1 checks our office never receives for the poor quality of  
2 our mail service, and, therefore, the point is we cannot  
3 rely on mail.

4 In addition, we're talking about additional  
5 forms of communication. No one here is suggesting that  
6 we scrap sending an FDCPA notice by mail. We're talking  
7 about additional methods of reaching the consumer,  
8 additional opportunities in which to resolve a matter,  
9 and that's the point of this discussion, and that after  
10 we try and mail, yes, a consumer can choose not to  
11 respond. That is their privilege. Perhaps a phone  
12 call. Maybe they would like to talk to a real person.  
13 Maybe that will generate a response.

14 But I guarantee that no response and an  
15 indication of assets, I promise a lawsuit. I don't  
16 threaten one; I promise one. And that's not the  
17 preferred method of resolving cases.

18 MS. HRDY: Right, okay, thank you.

19 Rich, do you have a reaction?

20 MR. LEIBERT: Yeah. Most mortgage documents  
21 require all notices to be delivered to the property  
22 address by mail, regular mail. So, that's our first  
23 requirement, but we would like to see if the consumer  
24 who responds to our written letter calls or emails us,  
25 and many times that's what we get back. We'll get an



1 email to our office wanting to discuss their loan with  
2 us. We'd like the ability to do so without worrying  
3 about the violation.

4 MS. HRDY: Larry?

5 MR. LASKEY: Yeah. We are not, as we said  
6 previously, saying that mail should not be used. What  
7 we're saying is, the law doesn't need to remain firmly  
8 rooted in the 1970s when we didn't have email, and we're  
9 not suggesting that cell phones replace mail. We're  
10 suggesting that email be an option, that cell phones be  
11 an option, that messages be an option that we can  
12 utilize.

13 On the issue of mail, I can't quote you  
14 statistics, but I can give you a lot of anecdotal  
15 evidence of situations where we have sent the validation  
16 notice, we have proof that it's gone out, we have  
17 subsequently talked to the consumer who says, "Gee, I  
18 didn't get it," and we say, "Well, are you still at such  
19 and such address?" "Yes, I am." "You haven't moved?"  
20 "No, I haven't." And then some arrangement is made.  
21 And they got the settlement letter, but they're not  
22 opening their mail. They're getting it. They're not  
23 opening it.

24 And I can't quote you statistics that I can back  
25 up formally, but I'm sure everyone has got a lot of

1 stories about situations where it's clear they're simply  
2 not opening the U.S. mail.

3 MS. HRDY: And I guess the point I'm just trying  
4 not to harp on too much, but they're not opening their  
5 mail, they can screen their calls, they can let it go to  
6 voicemail, they can delete your voice message. Isn't  
7 it -- whether it's technology-driven or it's U.S. mail,  
8 we have the same issue, which is how do you best  
9 communicate with consumers and how do consumers best  
10 communicate with you?

11 MR. LASKEY: You have that issue, but some would  
12 also argue that the electronic means of communication  
13 actually afford more privacy than the current means of  
14 communication, because you can let something go to  
15 message and not call it back, decide not to, I don't  
16 want to talk to those people. I don't want to talk them  
17 now; I don't want to talk to them later.

18 One of the commenters said, "Well, gee, cell  
19 phones, you shouldn't be able to call me. I could be at  
20 my friend's house." You're absolutely right. That's a  
21 great point. That's why we should be able to leave  
22 messages, so you don't have to talk to me now. You can  
23 talk to me later.

24 MS. HRDY: So, Larry, I'll put you on the spot.  
25 What is your specific suggestion to address this issue

1 in the context of the FDCPA?

2 MR. LASKEY: Actually, it's consistent with some  
3 of the suggestions that ACA has made. First, one  
4 consideration is if you have a nonsubstantive  
5 communication, that is, one that doesn't disclose the  
6 fact, existence, or amount of the debt, that is not a  
7 communication; thus, you won't trigger the disclosure  
8 requirements.

9 In addition, you either eliminate the meaningful  
10 disclosure rule or you say that meaningful disclosure  
11 doesn't have to occur until after you've authenticated  
12 who you're talking to. So, just like in the old days,  
13 back in the seventies, you know who you're talking to  
14 when you're saying something, eliminating some of the  
15 distinction, some of the blur.

16 Another option, if that option won't work, is  
17 keep the current -- excuse me, keep the current rules in  
18 place, but have a rule that also says that the debt  
19 collector is not responsible for third-party  
20 interceptions of communications. Keep in mind, you're  
21 currently talking about a strict liability statute. I  
22 shoot the arrow in the air, and I don't know where it  
23 goes, but I'm liable whoever it hits? Fair enough.

24 But in this context where the consumer controls  
25 who has access to their email, who has access to their

1 voicemail, who has access to their messaging, their text  
2 messaging system, at least don't make the debt collector  
3 responsible for the interception of that communication  
4 by a third party.

5 MS. HRDY: Chris, do you have a comment on that?

6 MR. WUNDER: Well, let's aside the fact that if  
7 someone doesn't want to communicate with us, a consumer  
8 doesn't want to communicate, they won't. I agree. But  
9 that really isn't what this industry is about. It's  
10 about the people who want to work together, who  
11 recognize their responsibilities. And let's assume I  
12 get a phone call from -- I said I do a lot of health  
13 care -- I get a phone call from a patient who really  
14 would like to get the information, the itemized bill and  
15 a pay record that shows what they paid. Luckily, in the  
16 health care arena, getting that information is typically  
17 not difficult at all. Oftentimes, I have it on my  
18 system.

19 But imagine how much more convenient and helpful  
20 it would be for that patient who wants to cooperate, who  
21 I'm able to say, "Okay, here's -- I'm going to have this  
22 scanned," or it may already be scanned, "let me have  
23 your email address, I'll shoot this right to you, you  
24 can get that, we can have a communication within a  
25 matter of minutes and get that resolved to everyone's

1 satisfaction." And I think that's what we're here to  
2 do. I'm convinced that that's what the vast majority of  
3 our industry has a real investment in doing.

4 MS. HRDY: Well, Chris, can you tell us a little  
5 bit more about how that model works that you've just  
6 described, the consumer who wants to communicate and  
7 you're engaging with them? In that model -- because  
8 that's the model you --

9 MR. WUNDER: Well, it could have been a text  
10 message I sent them and they called me back on, but  
11 probably -- yeah, but -- no, it could -- yeah, they  
12 could have called us or we could have called them and  
13 they said, "Well, you know, I've been in the hospital a  
14 lot, I'm not sure which visit this was for, could you --  
15 you know, I need some information that tells me what  
16 that was so I can distinguish it from some others that I  
17 think I've paid."

18 MS. HRDY: Okay. So, to the extent you all are  
19 using email and these kinds of technologies with  
20 consumers who are trying to work with you to either get  
21 the debt validated or to arrange some kind of payment,  
22 what are the success stories, then, if this is something  
23 that a statute should be amended to address the  
24 limitations you're talking about?

25 In other words, are you quantifying this in your

1 business model as to when you are able to email or text  
2 or leave messages, it results in this uptick in  
3 beneficial results for consumers and your bottom line?

4 MR. WUNDER: Here's what I would hate to have  
5 this incredibly useful forum reduced to, to see who has  
6 the best anecdotal information --

7 MS. HRDY: And I am not asking for anecdotal.

8 MR. WUNDER: I know, let me finish, you know,  
9 who has the best anecdotes, you know, that they can  
10 supply, and then that group is going to probably --  
11 maybe fare better this whole thing. I don't know  
12 anything in any industry, any personal relationship, in  
13 any communication involved that if you have an  
14 opportunity to increase the level of communication, you  
15 don't increase the quality of the interaction for  
16 everyone involved, and that's all -- and I can't -- it's  
17 hard to sit here and lay out much of -- it's hard to  
18 give you a lot of answers, because much of this we're  
19 not permitted to do, but to the extent that we -- you  
20 know, I think we'll find we'll be able to come back, you  
21 know, after some changes have hopefully been made, we'll  
22 be able to come back and say, "Wow, these are some  
23 incredible benefits that we derived from this," and I'm  
24 just --

25 MS. HRDY: And you are not able to share it

1 because it's proprietary?

2 MR. WUNDER: No, no, no, I can't share it  
3 because I'm not allowed to do it. I can't send that  
4 email.

5 MS. HRDY: Oh, I see.

6 MR. WUNDER: I can't send that text message.

7 MS. HRDY: So, you are not doing any of that  
8 right now?

9 MR. WUNDER: Well, no. I am certainly not going  
10 to say it in this room that I'm -- no, certainly not.

11 MS. HRDY: What I'm saying is if consumers are  
12 consenting, if you have consumers who call you up, as  
13 was posited in an earlier panel, "Please just call me on  
14 the cell phone, go ahead and leave a message," I mean,  
15 what I'm looking for is --

16 MR. WUNDER: It's risky business, and we make a  
17 practice not to do things that put us in harm's way,  
18 even though the patient has crossed their heart and  
19 hoped to die that it's okay.

20 MS. HRDY: Okay. Stacey is yielding to Larry.

21 MR. LASKEY: Oh, thank you, Stacey.

22 MR. SCHACTER: I saw you had your hand up.

23 MR. LASKEY: Well, I think some of the comments  
24 filed go beyond mere anecdotal evidence. In terms of  
25 communication preference, the International Association

1 for Wireless Communication has reported that 76 percent  
2 of the U.S. population has cell phones, 13 percent of  
3 those households are exclusively cell phones, and to put  
4 it into the student loan context, kids who are in  
5 college or college age are twice as likely to be  
6 exclusive cell phone users as the rest of the  
7 population.

8 Furthermore, Student Monitor, which is a  
9 marketing research company, has reported that 88 percent  
10 of college kids have PCs and are regular email users; 89  
11 percent of college-age consumers use cell phones; and  
12 automatic number identification, caller ID, is the most  
13 used feature. Those are statistics that come from  
14 outside of our industry that report on the preferences  
15 and trends of communication.

16 Now, we --

17 MS. HRDY: And I think we are all in agreement  
18 that that technology has moved to that level.

19 MR. LASKEY: But we can't -- but we can't -- to  
20 Chris' point, we can't give you a whole lot of stories  
21 because we're barred in many respects.

22 MS. HRDY: Okay, someone just handed me a  
23 question.

24 MR. MARKOFF: If I may say, I'm not afraid to  
25 tell you that I respond to consumer emails.



1 MS. HRDY: That was this question.

2 MR. MARKOFF: When I receive a consumer email,  
3 that is how they have contacted me or my office, and I  
4 am willing to respond, although my response tells them  
5 that I am acting as a debt collector. I have a  
6 situation where we'll send emails back and forth to  
7 negotiate a payment plan or a resolution. In every  
8 response, do I say this communication is from a debt  
9 collector or is that one response of my initial response  
10 sufficient? This is silliness.

11 I'm not afraid as an attorney to take  
12 responsibility for my actions, and I'm not afraid to  
13 respond to a consumer that has contacted me by email. I  
14 have not had any text messages. I am going to be  
15 acting -- my conduct is going to be above reproach. If  
16 it violated the FDCPA, I'm sorry, I didn't mean to do  
17 it, but I'm responding to the consumer, and that's why  
18 the whole aspect or the whole idea of unintended  
19 consequences, we're supposed to talk to each other, not  
20 be barred.

21 MS. HRDY: Stacey, sorry.

22 MR. SCHACTER: Yeah, no, that's okay. If I may,  
23 Bob mentioned unintended consequences, and I think we  
24 want to make it clear that debt buyers, debt collectors,  
25 everybody on this panel want to comply with the law as

1 long as we know what it is. It's like driving down a  
2 highway, and you see a speed limit sign that says, you  
3 know, "65 miles per hour sometimes," and then you get  
4 pulled over for doing 60, and why? Why did I get pulled  
5 over? Well, the Yankees lost today, and I've just got  
6 to pull you over.

7 What we really want to do is make sure that we  
8 don't have mistakes of law, and the only way to be able  
9 to do that is to have a defense for that and for  
10 everybody to understand clearly how we can communicate  
11 with people.

12 MR. LEIBERT: One comment I would make, in the  
13 foreclosure business, there are states where within 60  
14 days from the referral of the foreclosure to the law  
15 firm or trustee, the homeowner could lose their  
16 property. So, it's a very quick process in some of the  
17 nonjudicial states. So, speed of communication is  
18 essential to help the homeowner save their home.

19 If you rely on the regular mail system for that  
20 communication, it may be too slow. So, that's why I see  
21 email as having a very positive role in the speed of  
22 communicating the data back and forth between the  
23 homeowner and the attorney firm.

24 MS. HRDY: And, Rich, how would you accomplish  
25 that in your -- does that require a change in the law

1 for you?

2 MR. LEIBERT: Well, I think there needs to be  
3 some clarification that communicating through email is  
4 okay, that there is some protection for email  
5 communication, because right now, we're not sure.

6 MS. HRDY: Okay. Anything more on technology as  
7 impacting debt collection before we move on to another  
8 topic? Chris?

9 MR. WUNDER: No.

10 MS. HRDY: No? Well, I thought -- a number of  
11 you have raised the issue of the attorney's role in debt  
12 collection, and a number of the comments talked about  
13 what was once an exemption for attorneys in the FDCPA,  
14 and either Bob or Rich, if you want to discuss in more  
15 detail what are the needs for that and where are you  
16 drawing the line in terms of where that exemption begins  
17 and where it ends? And, Bob, I think your microphone  
18 is -- you're probably better off using Rich's  
19 microphone.

20 MR. MARKOFF: Rich's, okay.

21 The idea --

22 MS. HRDY: No, that one doesn't work either.

23 MR. MARKOFF: Does this one?

24 MS. HRDY: The microphones are playing  
25 favorites. It's just not fair.

1 MR. MARKOFF: So be it.

2 Attorneys' conduct is governed by usually the  
3 supreme court of each state. We're not asking to be  
4 exempt from the FDCPA. Oh, yes, some of my colleagues  
5 will tell you we should be exempt, and I'd love to be  
6 exempt, too, but that's not realistic, and frankly, we  
7 as attorneys can and do conform our conduct. As Chris  
8 mentioned, it's a higher level of conduct than maybe 30  
9 years ago in terms of our back room operations. That's  
10 just fine. We can't be too good at what we do. We can  
11 always try to do something better.

12 At the same time, the idea that is presented  
13 that perhaps courtroom proceedings should be monitored  
14 or governed by the FTC, the FDCPA was never meant to  
15 monitor the minutia of courtroom practice. We have  
16 judges in every state for whom we must conform our  
17 conduct and rules of evidence, and yes, the rules vary  
18 from state to state, but the bottom line is, to have a  
19 national law that's going to monitor each courtroom is  
20 really overreaching and is not necessary.

21 Attorneys, we hold ourselves to a higher  
22 standard or we try to, and when I say higher, we are no  
23 better than -- I'm a collector, okay? Let's -- I may be  
24 a -- I have a license to practice law, but I collect  
25 money, and I'm proud of that. I'm proud to be an

1 attorney, and I'm no better as an attorney. It's just  
2 I've been licensed differently, and I have, on a daily  
3 basis, a judge watching my activities. And as we talk  
4 about filing suits that violate statutes, for example, I  
5 do my darnedest to reject those claims before they come  
6 into the office, but that's my role as an attorney.

7 MS. HRDY: Well, Bob, if I could just  
8 interject -- I'll come over here -- what do you say to  
9 the comments of the last panel where perhaps, according  
10 to what other folks' experiences are, perhaps not every  
11 attorney out there who is suing debtors or consumers for  
12 their debts are necessarily living up to the standards  
13 that you're setting forth here? What about the fact  
14 that -- what folks were discussing on the earlier forum?

15 MR. MARKOFF: Members of the National  
16 Association of Retail Collection Attorneys do their best  
17 to conform their conduct to the FDCPA and all courtroom  
18 rules. In every -- we have laws. Just because we have  
19 laws doesn't mean they're always followed. We have laws  
20 against murder. Does that stop murder? Now, that's an  
21 extreme example, but saying someone's going to be  
22 injected twice for murdering someone, does that stop the  
23 murder? Tightening the laws or increasing regulations  
24 doesn't stop the practice. It's education, and that's  
25 what we try to --

1 MS. HRDY: So, to the extent folks were asking  
2 questions -- and there was one particular question asked  
3 which I'll get to in a second -- but just if I could  
4 posit that there are attorneys filing lawsuits without,  
5 let's say, proper verification of the debt, and as soon  
6 as there's an objection made, they drop the suit. If  
7 the attorney exemption that you propose went into place,  
8 are you saying, then, that the judicial system, the  
9 ethics system, the bar association, can take care of  
10 those problems to the extent, you know, they're out  
11 there, whatever level they are?

12 MR. MARKOFF: First of all, the premise that you  
13 give, if I may, it's not that we file suits without  
14 proper verification. Every suit we file is properly  
15 verified.

16 MS. HRDY: But, okay, I'm positing that there  
17 might be instances where that's not the case, and,  
18 again, without getting into a debate as to quantifying  
19 it --

20 MR. MARKOFF: Okay.

21 MS. HRDY: -- because no one I think can or has  
22 yet quantified it, but if someone could, that would be  
23 great. If there is some segment that it rises above  
24 every now and again, so we have suits out there that are  
25 being filed by attorneys and they drop it as soon as

1 someone objects, which could lead I think to a pretty  
2 rational conclusion that they weren't justified to begin  
3 with, what do you say to people who are concerned about  
4 allowing attorney exemption?

5 MR. MARKOFF: The courts sanction attorneys who  
6 do such things. The courts don't want to be abused,  
7 and, therefore, it's frequently offensive to judges.  
8 Not every judge is going to rule the same way. Not  
9 everyone is going to take the same offense.

10 In addition, the idea that an attorney or a  
11 client, because it's really -- we present our clients'  
12 claims. The fact that at the moment we file suit we do  
13 not have full documentation in our office should not be  
14 a bar to our ability to present our clients' claims.

15 MS. HRDY: And I think the objection that was  
16 made is that not necessarily -- I think the objections  
17 made that I heard on the previous panel is that when it  
18 came time to prove it, an attorney actually couldn't  
19 prove in admissible form, that's what I heard, but --

20 MR. MARKOFF: That sometimes happens, yes, and  
21 it does happen, but also, clients make a business  
22 decision, and this is the creditor's decision not to  
23 send a witness for trial. We don't prove our cases to  
24 the consumers. We are required to prove our cases to  
25 the judge to make the decision.

1 MS. HRDY: Okay. Great. I just want to see if  
2 anyone else on the panel wants to address this point.  
3 Rich?

4 MR. LEIBERT: Well, it's a little off point, but  
5 one of the frustrations --

6 MS. HRDY: Does that one work? Can people hear  
7 him?

8 MR. WUNDER: This works. Leave it alone.

9 MR. LEIBERT: One of the frustrations is the  
10 interpretation by various district courts of the FDCPA,  
11 and I'll just give you one example. There's a decision  
12 out there that said that it can be confusing or coerce a  
13 consumer if we're too nice to them or if we're too  
14 helpful to them. There's a decision that holds that the  
15 collection attorneys -- and this was not in my  
16 industry -- were too helpful when they offered the  
17 debtors to help file their insurance claim to pay a  
18 hospital creditor.

19 I mean, so that's the concern, the frustrations,  
20 that we have. It's not so much with the law. It's how  
21 the law is being interpreted and some of the class  
22 action suits that are being brought against the  
23 attorneys and the collection agencies.

24 MS. HRDY: Okay, thanks.

25 I think, Chris, did you have something, because



1 I know Stacey would also like to address this point.

2 MR. WUNDER: Well, I'm just -- I'm the only  
3 nonlawyer up here, so that's the good news and bad news,  
4 but to me, it seems that if there -- it has been alleged  
5 that if there is a real live abuse of the court system,  
6 then if the FTC has jurisdiction, then they need to go  
7 in and fix that if people aren't acting -- if attorneys  
8 aren't acting the way they should, or if it's the  
9 court's position, then they should go in and fix that,  
10 and I think we need to get beyond the ideas of -- I  
11 mean, these are things that are just -- that are being  
12 done wrong, so let them -- I mean, I think we need to  
13 look at it in a broader sense and say how do we ensure  
14 that in a changing -- in the changing technology, which  
15 is sort of the genesis and the theme of this whole  
16 forum, is how do we change things going forward in a  
17 manner that allows businesses to utilize, you know, all,  
18 you know, relevant and usable technology, and at the  
19 same time ensure that we protect consumers' rights?

20 And I think if it's in the jurisdiction of FTC,  
21 then -- I mean of the FTC, then go do something about  
22 it, but if it belongs in the courts, then I think that  
23 we should go back to the courts and ask them to do the  
24 same, or maybe this is an area where the FTC works with  
25 state courts to try to deal with this, but it seems to

1 me that all the -- I'm not trying to say that this  
2 isn't -- it certainly is relevant, but, you know, it  
3 is -- I find so many more pressing issues, that instead  
4 of arguing whether this is okay or isn't okay, you know,  
5 it either is or it isn't, and let's go ahead and whoever  
6 has jurisdiction do what you need to do to deal with  
7 that.

8 MS. HRDY: I think I lost the thread of what you  
9 were saying there. What were you saying the FTC should  
10 be doing?

11 MR. WUNDER: I'm saying I don't know if the FTC  
12 has jurisdiction over what you're talking about --

13 MS. HRDY: An exemption to the FDCPA?

14 MR. WUNDER: No, no, that the courts are being -  
15 the court system is being abused by attorneys who are  
16 filing suit, who don't have documentation, who drop  
17 cases anytime, that there's any -- and I'm -- so, if --  
18 if -- I would ask that if, in fact, the jurisdiction for  
19 that -- for fixing that does lie with the FTC, then  
20 let's talk about it and see how we get that fixed. If  
21 it doesn't, let's move on.

22 MS. HRDY: Okay, great. I want Stacey to talk,  
23 but just to clarify, because one of ACA's and others'  
24 proposal is to have exemption from the FDCPA for  
25 attorneys, I was simply asking --

1           MR. MARKOFF: No, it's not for attorneys. It's  
2 the litigation --

3           MS. HRDY: Right, right, I'm sorry, I'm  
4 shorthanding it, I apologize. Thank you for elaborating  
5 it. You all have read it. Right, it's for the  
6 litigation exemption.

7           What I am saying, Chris, is given -- I'm just  
8 asking for a response from the panelists, because other  
9 panelists have and in their comments noted they see, in  
10 their words, an abuse of the court system by attorneys  
11 who are litigating debt collection cases. So, I'm  
12 just -- that was the point I was putting out there.

13           So, that's -- so, to the extent, why would the  
14 FTC be involved, because of the comments that have been  
15 submitted to us about exempting attorneys in litigation  
16 from the FDCPA.

17           MR. WUNDER: And my reaction is, as the  
18 nonlawyer, I don't know where the jurisdiction lies as  
19 far as fixing that. I don't know if it lies with the  
20 FTC.

21           MS. HRDY: Okay.

22           MR. WUNDER: And if it is, I think we should  
23 address it, and I don't care if it's abuse of the court  
24 system, which ultimately -- if it's abuse of the court  
25 system, it ultimately trickles down to abuse of the

1 consumer. If there is any abuse of the consumer, I  
2 think we need to do things, enact things, strengthen  
3 laws to minimize that.

4 MS. HRDY: Okay, thank you.

5 Stacey, you've been waiting patiently.

6 MR. SCHACTER: Typically, receivable buyers  
7 receive a summary from who they're purchasing the  
8 obligations from, which gives basic information about  
9 the obligation. Filing suit is typically a tactic of  
10 last resort once the consumer has failed to normally  
11 communicate with the purchaser or the owner of the  
12 obligation.

13 In those instances when suit is filed, because  
14 we're talking -- the prior panel talked about abuse of  
15 the courts, and I'd like to disassuage that now -- or  
16 assuage that, whatever the proper word is -- because  
17 under the rules of evidence, all we have to put in is a  
18 summary.

19 Now, typically, when people are buying debt,  
20 they have an opportunity to get further documentation,  
21 but as was brought up even in the prior panel, a lot of  
22 times anymore, documentation is no longer in writing.  
23 People can call and make applications over the phone,  
24 they can do it over the internet, and obtaining the  
25 types of records that are required can be very costly.

1 So, it's not a matter of people dismissing to try and  
2 abuse the system.

3 They may be dismissing because, as we mentioned  
4 earlier, economically, it's not wise to go forward. And  
5 I'm not sure why the people who own the debt are being  
6 held to a higher standard than the creditor themselves.  
7 Even as Judge Posner said out of the Seventh Circuit --  
8 and I'll quote -- "A debt buyer stands in the shoes of  
9 the assigner no matter what the shoe size."

10 MS. HRDY: Stacey, your comments, I think,  
11 transition nicely into this question from the audience  
12 titled, "Technology and the Business Model." So,  
13 Stacey, I'll ask you this question.

14 What prevents you from acquiring a complete  
15 account transaction history when you purchase a credit  
16 card account so that you have to create an account  
17 summary rather than produce the underlying contract and  
18 transaction slips in court? Is it a money decision?

19 MR. SCHACTER: Debt buyers will always try and  
20 get as much information as they can, whether it be  
21 warehouses full of boxes, whether it be electronic  
22 information. We want to get as much information as  
23 possible, because information normally results in a  
24 higher collection rate, and when consumers call up and  
25 they have questions, we want to be able to provide those

1 answers. Oftentimes, the people who are selling the  
2 debt, the creditors themselves, don't have an ability to  
3 provide that level of information or are unwilling to  
4 provide that level of information.

5 MS. HRDY: Why are they unwilling?

6 MR. SCHACTER: It may be technology, again, may  
7 be their own systems, it would be too complicated. It  
8 could be that that type of information is not readily  
9 available to be pulled down without a lot of effort on  
10 their part. There's a myriad of reasons why.

11 I do know that the largest creditors typically  
12 will try and provide as much information as they can,  
13 which often includes those transaction details, but not  
14 always.

15 MS. HRDY: Chris, did you want to answer?

16 MR. WUNDER: Yes, just a quick comment. As long  
17 as we're talking validation, I just want to point out --  
18 and maybe some of you might not be aware of it,  
19 though -- the Chairman referenced it this morning and  
20 called it a promising development, but in the revised  
21 Code of Ethics that were passed by the board of  
22 directors this summer, ACA International, specific to  
23 validation, as a requirement of membership, what  
24 agencies have to do.

25 If someone disputes the debt and you are unable

1 to obtain the validation, then you're required to close  
2 that account out, and not only do that, but also  
3 communicate back to the creditor that, in fact, we are  
4 closing this account out because we were unable to  
5 validate the debt. And the reason was, through our  
6 ethics committee, there were many cases where a  
7 consumer -- and we started to empathize with them -- the  
8 consumer asked for validation from one agency, they  
9 didn't get it, and then -- so, it was returned, and it  
10 was sent to another agency or sold later or later  
11 resold.

12 So, the idea of saying -- we personally -- you  
13 know, we, as an organization, don't think that's okay,  
14 to treat the consumer that way. So, we're saying that  
15 not only do you have to close that account out, but you  
16 have to advise the creditor or the owner of the debt  
17 that you were unable to validate to try to stem some of  
18 those issues and try to be more, you know, more  
19 consumer-oriented and consumer friendly.

20 MS. HRDY: Another question -- thanks, Chris.

21 Another question that, again, is -- it's as if  
22 you all are in mind-meld or something, but this  
23 questioner asks this question about validation, which  
24 is, having heard the last panel, this person is sort of  
25 referring to it as a disconnect, they ask, collection

1 industry officials, including some on this panel, often  
2 affirm that the industry does not want to pursue the  
3 wrong debtor and can distinguish between those who can  
4 and cannot pay and will not pursue those who cannot pay,  
5 and then the questioner says -- references the anecdotal  
6 evidence from consumers and their advocates to indicate  
7 that collection abuses cannot be attributed to a few  
8 rogue collectors.

9           So, we had a panel of folks who had their own  
10 experiences and did not -- stated clearly that they  
11 don't have empirical data, and I understand the efforts  
12 of all of you, as you're discussing them and, Chris,  
13 your reference to ACA's latest activities on that point,  
14 but obviously there is a disconnect, and I guess I'd  
15 just like to throw that out for discussion, because we  
16 have one panel saying, you know, case after case -- and,  
17 again, it's just one snapshot from some people, but I  
18 guess everyone sitting here is -- you know, we're  
19 hearing two sides of the coin, and is there any common  
20 ground that anyone might forge here?

21           Chris?

22           MR. WUNDER: As I said in my opening comments,  
23 the work, the empirical evidence, though maybe not  
24 exactly 100 percent on point, the empirical evidence  
25 that I referenced regarding the Better Business Bureau's



1 information and statistics from 2006, the idea that it  
2 can't be minimized or ignored, the fact that as far as  
3 resolving complaints to the satisfaction of consumers,  
4 that 72.5 percent is what all combined industries did --

5 MS. HRDY: Yeah, I --

6 MR. WUNDER: -- and the collection industry did  
7 85 percent.

8 MS. HRDY: I'm just curious, do you happen to  
9 know offhand how many complaints, the raw number?

10 MR. WUNDER: And I stated that.

11 MS. HRDY: Oh, I'm sorry.

12 MR. WUNDER: 280,500 and some odd inquiries, of  
13 which only 14,000 and a few hundred were actual  
14 complaints, and these aren't -- these are people who  
15 were trained to take these calls, who were able to  
16 distinguish between a question about how is a collection  
17 agency dealing with me versus recognizing that, you  
18 know, this is an actual complaint or this could be a  
19 violation of law, and so they will characterize them as  
20 that. So, barely 5 percent of the inquiries were, in  
21 fact, that.

22 So, the disconnect -- and I'll try to be  
23 quick -- the disconnect I think is whatever you're doing  
24 every day, no matter what it is, I don't care what kind  
25 of business you're in, industry, whatever you're doing

1 in any given day, and it seems like a lot, then as far  
2 as you're concerned, man, that's a lot, and if you get  
3 five more tomorrow, holy cow, this is really -- and I  
4 think it's just perspective; however, the best empirical  
5 evidence that exists out there is what I just described.

6 MS. HRDY: Bob? Oh, here, here, here's a remote  
7 mike.

8 MR. MARKOFF: Again, as I practice law, I try to  
9 avoid disputed accounts where I know there's a  
10 legitimate dispute. I try to avoid cases where I know  
11 there is a claim of fraud or identity theft. Most of  
12 these cases never get to my office. Most of my clients  
13 will weed out identity theft and fraud claims, but  
14 sometimes, something will slip through.

15 But when a consumer identifies this situation to  
16 my office prior to filing suit, I will review the  
17 account, or another attorney, and you'll not hear of  
18 this case. Do the cases slip through? Sometimes they  
19 do.

20 MS. HRDY: So, Bob, in answer to the question  
21 that was posed at the end of last panel, the panelist  
22 said why, when someone disputes the debt, aren't they  
23 just marked disputed, that would be an easy way to avoid  
24 consumer litigation, your answer to that is you do --

25 MR. MARKOFF: If an account is disputed, I will

1 review the dispute, and I will make a determination,  
2 representing my client, whether or not I believe the  
3 claim should proceed to court to let the judge -- after  
4 all, we pay the judges --

5 MS. HRDY: Right, right.

6 MR. MARKOFF: -- these salaries to resolve  
7 disputes.

8 MS. HRDY: So, that's in the event that it has  
9 been flagged as disputed, and I guess as I'm thinking  
10 about it, what the panel has said is stating a concern  
11 that when consumers dispute a debt, they are not  
12 properly flagged as disputed, because yours -- that's  
13 the -- that might be the -- so, let me just open it to  
14 the other panelists, perhaps Stacey, as a debt buyer.

15 MR. MARKOFF: I just want to say one other  
16 thing. The cost of bringing the case, a disputed case,  
17 the time and effort by myself as lawyer, my staff and  
18 the clerks and going to court, that wastes valuable  
19 time.

20 MS. HRDY: Okay.

21 Stacey, can you answer the question as to why,  
22 when someone disputes the debt, they aren't marked  
23 disputed? That's a leading question.

24 MR. SCHACTER: Well, again, I wouldn't agree  
25 with that. When we go to acquire receivables, we always

1 ask if something is disputed, and if it is, we won't buy  
2 it. If there is a dispute, it gets marked as a dispute.  
3 Of course, we try to resolve it. If it can't be  
4 resolved, it will not be resold. So, I'm not sure where  
5 that comes from.

6 But when we're coming back to debt buyers and  
7 collectors, the idea comes back to ethics, and both the  
8 DBA, the ACA, NARCA -- and I applaud the ACA's ethics  
9 changes -- simply if somebody's not acting ethically,  
10 then they won't belong to our organization, and we have  
11 thrown out various companies. I'm sure the ACA has as  
12 well. I think it is limited to a few rogue people and  
13 that this is not endemic to the industry.

14 MS. HRDY: Larry?

15 MR. LASKEY: My grandfather had a sign over his  
16 plumbing shop. It said, "This is a not-for-profit  
17 organization. We didn't plan it that way. That's how  
18 it worked out." That's not true in this industry. We  
19 are obviously profit motivated. I mean, someone had  
20 some slides up earlier that proved the point.

21 With the volume of business that most collection  
22 agencies have, it doesn't make sense economically to  
23 spend more time on an account when you have hundreds or  
24 thousands of them when you've got the one or two or 20  
25 or 100 who say, "I dispute this debt." You move on to

1 the next account. It's just logic.

2 Can I prove empirically that every dispute is  
3 documented? That's impossible. I can tell you that's  
4 what we do. I can tell you that is our policy. I can  
5 tell you that is our logic. I can tell you that if  
6 that's not followed, someone's not making sound economic  
7 decisions. It just doesn't make sense.

8 The other thing that was mentioned earlier,  
9 similar to that, is well, you've got the collector who  
10 is continuously engaging in improper conduct, and that  
11 collector was never censured because he was such a good  
12 collector. Well, again, that doesn't stand the test of  
13 simple logic, because if you have someone who's bringing  
14 in a dollar today, that and many more will be taken away  
15 from you tomorrow.

16 And in addition, other collectors are going to  
17 say, "Hey, this one did it, I should do it, too," and  
18 that conduct starts to infect your collection floor. It  
19 doesn't make sense. It's just -- it just doesn't stand  
20 the test of simple logic to say that that would be a  
21 common and standard practice in the industry. I agree  
22 that it's probably a few rogues.

23 MS. HRDY: Okay.

24 MR. LEIBERT: In the foreclosure context --

25 MS. HRDY: Yes.

1           MR. LEIBERT: -- we do get disputed foreclosure  
2 cases where the borrower claims for a variety of reasons  
3 they've either paid the debt or didn't get proper  
4 accounting from the prior servicer or they were  
5 defrauded when they took the loan out or there was a  
6 variety of reasons, and those do get pulled, and those  
7 get investigated and treated much differently than the  
8 files that are not disputed.

9           MS. HRDY: Okay, we have one last question from  
10 the floor, which considering the time, I'll pose it to  
11 Chris and then suggest that the person who has the  
12 question come and talk to Chris afterwards so we can end  
13 on time, but just so everyone knows, someone asked, what  
14 constitutes resolution of a BBB complaint? Does the  
15 debt collector cease contacting the consumer, in other  
16 words, just go away, or does the debt collector stop  
17 calling the consumer at work, or is there some amicable  
18 work-out agreement or some number of different things?

19           MR. WUNDER: Whoever you are, come see me.  
20 We'll talk about it.

21           MS. HRDY: Okay, I'd like to thank the  
22 panelists. Thank you very much.

23           (Applause.)

24           (A brief recess was taken.)

25

1 THE ROLE OF CREDITORS  
2 IN DEBT COLLECTION

3 MR. KANE: Folks, our final panel of the day  
4 will discuss issues surrounding creditors in the debt  
5 collection process, including the proper supervision of  
6 in-house and third-party collectors, the responsible  
7 selection of debt buyers, and transmission of sufficient  
8 documentation to verify disputed debts.

9 Chuck Harwood will moderate the panel. He's  
10 Director of Commission's Northwest Regional Office,  
11 which is in Seattle. Chuck, thanks very much.

12 MR. HARWOOD: Thanks, and I'll move this down  
13 here just in case. It's a pleasure to be here today, in  
14 the other Washington, and I want to thank the folks here  
15 for inviting me to participate in this panel today. We  
16 have an esteemed group of panelists. We are going to  
17 dispense with the two minutes or longer introductions  
18 and instead go pretty much straight to questions. So,  
19 if you want to start asking questions now, you can start  
20 writing them out, and maybe you'll win the question  
21 lottery and we'll ask your question. I was a little  
22 concerned that we had actually run out of cards, so I'm  
23 hoping that there are a lot out there in the audience  
24 still and you'll ask questions.

25 Let me introduce our panelists and give you a

1 brief overview of what we are going to discuss and where  
2 the questions are going to do.

3 Our first panelist immediately to my left is Bev  
4 Evancic. She is the Vice President of Resource  
5 Management Services and is a consultant to the industry  
6 with regard to collection activities.

7 Next, next to her, is Cary Flitter. Cary is  
8 with Lundy Flitter -- and I am going to mispronounce the  
9 third name, Gary, so we will just stop there, a law  
10 firm --

11 MR. FLITTER: As long as you get the second  
12 name, that's good.

13 MR. HARWOOD: I got to Cary, that's as far as we  
14 need to go.

15 Next to Cary is Anthony Looney. Anthony is  
16 Director of Customer Revenue with Atmos Energy  
17 Corporation, and I believe that's in Dallas, Texas,  
18 right? Great, okay.

19 And then next to Anthony is Kathy Pierce. Kathy  
20 is the Managing Counsel, Business Centers, with Ford  
21 Motor Credit Corporation, and, Kathy, you're from  
22 Arizona or --

23 MS. PIERCE: Yes, I am.

24 MR. HARWOOD: Yes, okay, Arizona.

25 And then finally, at the very end is Ira



1 Rheingold. He is the Executive Director of the National  
2 Association of Consumer Advocates.

3 So, the panel today is going to look at three or  
4 four different areas. First we are going to talk  
5 briefly about the supervision of in-house collection  
6 activities by creditors, and then secondly, we are going  
7 to talk about interaction with contingent collectors and  
8 how creditors interact with contingent collectors.

9 Third, we are going to talk about debt buyers  
10 and the sort of information that is provided to debt  
11 buyers, and one of the key issues we're hoping to cover  
12 is specifically what sort of information is available in  
13 connection with collection activities, both by in-house  
14 collectors and by contingent collectors, and what's made  
15 available to debt buyers.

16 But before we do that, I thought we'd begin by  
17 talking about some of the standards that are utilized in  
18 the industry, and in preparation for this panel, we  
19 distributed a series of questions or discussion topics  
20 to the panelists, and we're going to basically work  
21 through those questions during the next hour and 15  
22 minutes or so, and so let me begin with the first  
23 question, discussion area, which is -- I am going to  
24 particularly focus -- start with Bev and then ask the  
25 other folks to jump in, if that's okay.

1           But the first question is basically, what  
2 standards do creditors typically implement for in-house  
3 collectors to follow? What kinds of training do they  
4 require for their in-house collectors to utilize? What  
5 sorts of oversight do they engage in with regard to  
6 in-house collectors?

7           Bev?

8           MS. EVANCIC: I was told this works, is that  
9 correct? Okay.

10           As far as training goes, a lot of the training  
11 of the internal collector is actually in a classroom  
12 environment, and it deals with the FDCPA, and it also  
13 deals with the systems. One thing I would really like  
14 to see a lot more of is actual financial training for  
15 the collector and actually have the collector go through  
16 his or her budget, which would include, for at least a  
17 month's period of time, gathering the receipts for every  
18 single purchase that they make, and at the end of that  
19 month, come back in and then categorize where their  
20 money was actually spent, and that goes into different  
21 categories, mortgage, what I call the landfill, the  
22 stuff that in a year will be in the trash, in the  
23 landfill, and then, you know, on down, transportation  
24 and on down, so that they understand where their money  
25 is spent.

1           And the one reason I'd like to see a little bit  
2 more of that on the in-house side is when they talk to  
3 the customers, it's much easier for them to go over  
4 finances if they understand their own finances and how  
5 hard it is to really understand how their money is being  
6 spent. I know a lot of times I'll go to the ATM and  
7 I'll get a little bit of cash out, and I think it's  
8 going to be enough for the weekend, and by Friday night,  
9 it's gone, and I have no idea where it went. So, it  
10 would be nice for the collectors to kind of understand  
11 their own finances so that when they do actually get the  
12 debtor on the phone that they are actually able to  
13 discuss some of the financial fees and how their money  
14 is being spent.

15           The other thing is, with the FDCPA, I always  
16 tell my clients, the one thing is you cannot make them  
17 pseudo-attorneys. We don't want the collector saying,  
18 you know, "According to the law, blah-blah-blah,"  
19 because they're not attorneys, and I should have started  
20 out this conversation saying I am not an attorney, and  
21 I'm a -- actually, I'm a bar room attorney. The more I  
22 drink the better advice I give. And actually if you  
23 drink, my advice sounds even better.

24           So, you know, they need to understand all of the  
25 laws that go into the credit business, Fair Credit

1 Reporting Act, FDCPA. They need to understand their  
2 customer base and actually what financial, you know,  
3 means are out there, what's driving them, and how we can  
4 help them actually pay their bills.

5 MR. HARWOOD: Okay. Anthony, how about -- I'll  
6 come back to -- but, Anthony, how about you? What sort  
7 of training, what kind of standards do you hold for your  
8 in-house collection operation? What do you expect of  
9 them?

10 MR. LOONEY: Our -- can everybody hear me okay?

11 Our training is similar to what Bev said. Being  
12 from the utility industry, we're heavily regulated. We  
13 do business in 12 states, and so we've got local, we've  
14 got state rules and regs that we've got to adhere to,  
15 but pretty much we have the same sort of training that  
16 Bev mentioned.

17 I will say that our calls, a lot of calls in the  
18 industry, more and more are being recorded, not only for  
19 liability purposes, but also for training purposes. So,  
20 there's lots of training going on through listening to  
21 those calls.

22 There's a lot of classroom training. We  
23 probably have three to four weeks of classroom training,  
24 and then a week of what we call a nest, nesting-type  
25 training, where a new employee sits with an established

1 employee, and then after a week, if they feel like  
2 they're ready to jump out by themselves, they would go  
3 ahead and start collecting on their own.

4 MR. HARWOOD: Okay. And, Kathy, how about you  
5 in terms of both the standards and the training that you  
6 implement with regards to your in-house collection  
7 activities operations?

8 MS. PIERCE: Well, for Ford Credit, Ford Credit  
9 is the finance company for Ford Motor Company, which  
10 manufacturers and sells vehicles. We support the motor  
11 company and its goals. So, we really put a large  
12 emphasis on customer service from cradle to grave,  
13 because we're with these customers for many years. So,  
14 we focus on exactly what Bev and Anthony said.

15 We have the classroom instruction. We do the  
16 side-by-sides that Anthony mentioned. We monitor the  
17 people who are on the phone, and that will be from early  
18 on in the process, when we might just call a customer to  
19 say, "Hey, you know, we didn't see your payment," just  
20 to remind them, or as they get closer to -- they get  
21 more delinquent, we have a secured debt. The vehicle is  
22 a security for our contract.

23 One thing we don't want, we really don't want  
24 that vehicle back. It costs us money. We collect  
25 minimal deficiencies. So, we really want to stay in

1 touch with the customer and work with them, and we  
2 believe strongly in following the requirements of the  
3 Fair Debt Collection Practices Act and the other laws  
4 referenced.

5 Of course, as a creditor, we don't say that we  
6 are a debt collector attempting to collect a debt. For  
7 about a year, California imposed that requirement on  
8 creditors as well, and it was disastrous. Customers  
9 were insulted. They were very upset that we had to say  
10 that. And we also don't send the validation notice, and  
11 I'm sure Anthony doesn't as well, because we have an  
12 ongoing relationship. We send the invoices and, you  
13 know, and, of course, we fall under an exemption, so...

14 MR. HARWOOD: Okay. So, Ira, I know that  
15 question -- but let me just come back. Just so I  
16 understand, the standards that you're utilizing are  
17 standards you developed in-house in each case. It  
18 sounds like you're referring to the FDCPA for some of  
19 your standards, but then in other instances, it's sort  
20 of a development. Are there other industry standards  
21 you're looking at, or if we wanted to get a sense of  
22 what you're using, where would we look?

23 MS. PIERCE: Of course, the Fair Debt Collection  
24 Practices Act, state laws, the Fair Credit Reporting  
25 Act, the Soldiers and Sailors Act, and any of the state

1 laws that also impact collections.

2 MR. HARWOOD: Okay. How about Anthony, just  
3 developed in-house, industry standards? What kind of  
4 standards are you utilizing or working with to sort of  
5 develop your training?

6 MR. LOONEY: We pretty much use, yeah, industry  
7 standards and standards that we've developed ourselves  
8 that we think are actually best practices.

9 MR. HARWOOD: Is there a -- and what I'm looking  
10 for, I'm trying to get a sense of whether there's some  
11 published -- is there -- like ACA, for example, has a  
12 set of ethics. I'm looking for something like that that  
13 you might cite to. Any sense?

14 MR. LOONEY: Not in my industry there's not. I  
15 mean, kind of to go along with what I've heard so far,  
16 an important part of our business is customer service.  
17 I mean, the debt collection is important, but doing it  
18 with customer service is also important, because the  
19 people that we have to go to to get our raises are the  
20 regulatory bodies. Our customers know who the  
21 regulatory bodies are. They know who to make the  
22 complaints to. If a commission gets too many  
23 complaints, it's not going to bode well for a company  
24 going in for a rate increase.

25 So, having said all of that, I mean, it's just

1 good business sense to try to develop the best training  
2 methods possible to avoid those conflicts down the road.

3 MR. HARWOOD: And, Bev, when you advise your  
4 clients, what do you suggest that they look at in terms  
5 of -- when they're developing their in-house practices?  
6 You mentioned the FDCPA, I think. Any other documents  
7 or standards you refer them to?

8 MS. EVANCIC: Well, the other thing is the  
9 credit bureau is very important to the consumer, and  
10 they have some knowledge, for example, on credit score,  
11 they have heard something about credit score, and a lot  
12 of times the collector is actually the one that gets a  
13 lot of those questions, you know, how is this, you know,  
14 impacting my credit bureau?

15 Again, you have to understand, a collector is  
16 not an attorney and is certainly not an expert on the  
17 credit bureau reporting, so in your training, you have  
18 to allow for that and make sure that you have a -- you  
19 know, that they are responding the way you want them to  
20 as far as how the account is being reported to the  
21 credit bureau and the impact.

22 Some creditors actually have a separate unit  
23 that will answer just credit bureau questions so that  
24 the collector is not responsible for that. We also, you  
25 know, we hear a lot about disputes, and collectors on a



1 whole are kind of confused on what is a dispute. Are we  
2 only talking potential identity theft disputes, or are  
3 we talking about a dispute that, you know, "I didn't  
4 make this one particular charge," or, you know, what is  
5 a dispute? So, again, that has to come from your own  
6 business and what you are going to educate the collector  
7 on as far as where the disputes are and how to handle  
8 them.

9 MR. HARWOOD: And can I clarify? Are you  
10 speaking about collectors who are in-house collection  
11 activities or are you speaking about contingent  
12 collectors?

13 MS. EVANCIC: We are talking about in-house  
14 collectors at this point, and they do, they get a realm  
15 of questions. You know, customer service gets a certain  
16 piece of it typically in the business, but the  
17 collector, if they get someone on the phone, the  
18 customer really wants one-stop shopping at that point  
19 and wants a lot of answers. So, the collectors really  
20 have to be prepared and understand a lot about the  
21 actual accounting of it in order for them to resolve the  
22 situation.

23 But, again, we want to make sure that the  
24 collector is not being a pseudo-attorney and offering  
25 legal advice, and as a business, you have to figure out

1     how you're going to make sure those calls are  
2     transferred somewhere else.

3             MR. HARWOOD:  Ira, I think you were going to  
4     comment briefly.

5             MR. RHEINGOLD:  I actually have a question, if  
6     that's okay, and this is mostly out of ignorance, which  
7     is how I often talk, at least a lot of people in this  
8     room probably think that, and this really -- I'm just  
9     asking a question.

10            In terms -- one of the issues that I've been  
11     dealing with lately is sort of dealing with the mortgage  
12     servicing industry and the problem we have had in  
13     actually getting people work-outs, how their collection  
14     practices work.  I'm interested in terms of how your  
15     compensation scheme works.  How do your collectors  
16     internally get paid?  Are they paid more when they  
17     collect those debts?  How is that structured?

18            One of the problems that we've seen in other  
19     industries is the fact that their compensation schemes  
20     really encourage to do whatever they can to collect  
21     those debts.

22            MR. HARWOOD:  Bev, what have you seen based on  
23     the clients you advise?

24            MS. EVANCIC:  Productivity is definitely a  
25     concern for the financial industry.  I mean, obviously,

1 the more money we collect, the more profit we have;  
2 however, there are guidelines within that, and the  
3 collectors internally typically are salary or hourly.  
4 They're not compensated on how much money they actually  
5 bring in to the business. Some are doing some  
6 productivity standards that will show how much money  
7 they are bringing into the business as a productivity  
8 standard, but not as a compensation.

9           However, collectors are always going to be  
10 riding the fence. They understand that if they don't  
11 bring money in, that, you know, their job could be on  
12 the line.

13           What we identify is, you know, if you are going  
14 to make productivity standards, you need to understand  
15 that there are going to be ways around those  
16 productivity standards. So, what you think you put out  
17 in place with good intentions, there may be a collector  
18 out there that may not follow them as well as you want  
19 them to. That's why the monitoring and the supervision  
20 has to be in place. We always encourage that online  
21 supervisors are out on the floor, not in an office, not  
22 in a cube, but actually walking around on the floor, so  
23 that they can hear conversations.

24           The other thing is is when collectors do get  
25 into some troubles, you know, where they're trying to

1 answer questions they are not equipped to handle, the  
2 supervisor is there on the floor. So, we always tell  
3 our clients, you know, you have to have supervisors that  
4 are walking around, not ones that are in meetings all  
5 the time or ones that are in an office where they can  
6 close the door. You have to have them out on the floor.

7 MR. HARWOOD: Kathy, do you have anything you  
8 want to add to that before we move on to the next area?

9 MS. PIERCE: No.

10 MR. RHEINGOLD: Can I ask a follow-up? Sorry,  
11 I'm such trouble.

12 MR. HARWOOD: One more.

13 MR. RHEINGOLD: I think this is interesting, and  
14 again, I'm sort of asking because I don't know. In  
15 terms of the authority that the collector has, how much  
16 authority do they have to sort of work out a repayment  
17 plan or how to sort of work these things out with a  
18 customer as opposed to just say, "You need to pay us now  
19 or we're going to move it on along the way"? So, what  
20 kind of --

21 MR. HARWOOD: Anthony, do you want to try to  
22 take a crack at that? That would be great, thanks.

23 MR. LOONEY: Yeah. Initially, let me say that  
24 all of our in-house collectors are paid with salary.  
25 They are not paid any commission on what they do

1 collect. We set metrics for them to try to hit, and if  
2 they don't hit those metrics, we discuss it with them,  
3 and it could become a part of their performance record.  
4 All in all, again, our in-house collectors we pay by  
5 salary.

6 And I'm sorry, Ira, can you repeat the second  
7 part of your question?

8 MR. RHEINGOLD: Just in terms of what authority  
9 do they have in terms of working things out?

10 MR. LOONEY: Yes, thank you.

11 We give ours tiered levels of authority, if you  
12 will. In other words, an entry-level collector can  
13 negotiate what we call a payment arrangement for up to  
14 \$200. The next tiered level of supervision could  
15 negotiate one up to \$500; the next, up to \$1,000.  
16 Anything above \$1,000 goes to a supervisor.

17 MR. HARWOOD: Okay. And, Kathy, do you want to  
18 add any more to that in terms of --

19 MS. PIERCE: Well, yes. Again, as I mentioned,  
20 because we have security and we prefer not to repossess  
21 the security, the customer service representatives and  
22 team leaders have certain authority levels with respect  
23 to entering into payment plans, giving extensions to  
24 customers so that they could maybe miss a payment and,  
25 you know, make the payment in a month or two, and then

1 at a certain level, it will be -- you know, the approval  
2 level is going to be higher as well.

3 And the same thing goes for deficiency  
4 collections and settlements. The people on the phone  
5 actually will have a certain level, and I don't remember  
6 exactly what it is, but then there are four levels  
7 altogether of approval. There will be the person on the  
8 phone. Then they have a team leader who, as  
9 recommended, is walking the floor. Then there's a  
10 collections operations manager that if there's a  
11 settlement that warrants, you know, a higher settlement  
12 or, you know, paying less, then the team leader or  
13 representative is authorized to pay, then they will also  
14 have that authority. And then the last authority is  
15 with the manager for the recoveries area.

16 MR. HARWOOD: Okay. Let me -- I lost my train  
17 of thought there. Let me ask you, Bev, the two  
18 creditors we're hearing from today represent specific  
19 industries. One is autos and one is utilities. Are the  
20 kinds of things you're hearing in terms of their  
21 practice, would you expect to see those across numerous  
22 industries, or are these -- I mean, let's say we're  
23 talking about unsecured debt, for example. The same  
24 kinds of practices or do we see different practices  
25 there?

1 MS. EVANCIC: We're really seeing a lot of  
2 similar practices as far as, you know, typically,  
3 industry-wide contacts per hour on the internal side of  
4 it between 30 days past due and six months past due, on  
5 an average we're seeing about four contacts an hour, and  
6 when you think of it in the scheme of things, that's not  
7 a lot. So, the creditors understand that each contact  
8 is so important, and they have to figure out in a short  
9 amount of time why the person is not being -- why the  
10 person is not paying, if there's a dispute or if there's  
11 a way that we can work out some kind of payment plan.

12 So, we are starting to see payment plans at an  
13 earlier stage of delinquency. It used to be that we  
14 would only see settlements or payment plans at the end  
15 of the tail, but we are definitely seeing them earlier  
16 now because we know that each contact is very critical,  
17 and we have to work it out immediately.

18 MR. HARWOOD: That's your experience whether  
19 we're talking about a secured kind of debt like what  
20 Kathy is talking about or Visa or Master-type debt?

21 MS. EVANCIC: The only difference is the secured  
22 piece of it, which Kathy identified, and that is they  
23 definitely want to work it out immediately because  
24 they're not bringing the vehicle back. The unsecured,  
25 they have a similar -- it's not that they're going to

1 get merchandise back, but they need to start  
2 establishing payment arrangements immediately. There's  
3 a higher probability that people will continue making  
4 payments if we get them in the early stage of  
5 delinquency, so they know -- it used to be, actually,  
6 the industry would be in like a six-month past due  
7 scenario, and that was the most important, because it  
8 was ready to charge off.

9 Now, people understand that the early stage of  
10 delinquencies, those are where we need to stop them  
11 before they get to the six-month period. So, the early  
12 stage of delinquency now receive more collectors working  
13 with payment arrangements and possible settlements right  
14 from the initial contact.

15 MR. HARWOOD: Okay. Before we move on to my  
16 next question, we have got a number of people who have  
17 asked sort of the same question, and, Ira, this is your  
18 fault. They want to know whether there's any -- I'm  
19 just going to summarize these.

20 They are interested in knowing whether there's  
21 any evidence, empirical or otherwise, that would suggest  
22 that contingent fee arrangements with regard to  
23 collection activities result in either higher or  
24 lower -- presumably higher -- rates of collection.

25 Bev, maybe you can comment on that, and Ira,



1 maybe if you want to touch on that, but, Bev, do you  
2 have any experience on that?

3 MS. EVANCIC: This would only be my opinion.  
4 This is not anything that I have statistics around. We  
5 have had creditors that have played with contingency  
6 versus salary, and they have claimed that they are  
7 able -- for retention, they are able to retain  
8 collectors longer if they offer a salary or an hourly  
9 rate and benefits. Because they are going after a  
10 customer service collection-type individual, they don't  
11 want to drive the behavior to collect all of the  
12 dollars, and sometimes contingency fee, in their mind,  
13 may drive the wrong behavior of only collecting dollars  
14 because they are being compensated on every dollar  
15 coming in.

16 So, typically, on the creditor side of it,  
17 that's why we're going to see more of the salary or  
18 hourly, because we're want to make sure that we're  
19 driving and setting it up for the right behavior.

20 MR. HARWOOD: Okay, so here again, you're  
21 referring primarily to the creditor part of the  
22 operation here.

23 MS. EVANCIC: Right. Now, on the agency side,  
24 after it's charged off, we have a customer that's gone  
25 through a six months' worth of collections, and now we

1 do have a different customer than was sitting there at  
2 month -- you know, month one. We have someone that's  
3 going to need a different type of approach. They  
4 definitely need someone to talk to them on the phone, to  
5 try to resolve the debt. And so from the agency side, a  
6 lot of them go contingency -- and, again, I don't have  
7 any statistics to say salary or contingency is better --  
8 because they're getting contingency not only on dollars,  
9 but on contacts.

10 MR. HARWOOD: All right. I will -- let me give  
11 Cary a chance to jump in here.

12 Cary, in your experience -- and maybe, Ira, you  
13 would like to comment on this, too -- in your  
14 experience, dealing with the -- coming from a slightly  
15 more adversarial position, perhaps, can you tell -- is  
16 there a difference when you're dealing with a creditor  
17 who's trying to collect versus dealing with a contingent  
18 collector? I mean, in your experience, are they -- do  
19 the same sort of issues arise? Do you see different  
20 issues?

21 MR. FLITTER: I'm going to say I -- my  
22 perception, but it's really -- the word has been used --  
23 anecdotal, that the third-party collectors, there's a  
24 little more aggressiveness there. There's a little  
25 less, I'll say, if I can use the word, corporate

1 responsibility. If you go up the line, you might not  
2 necessarily get anyone that you like any better, whereas  
3 in the corporate setting, if you're calling a Ford Motor  
4 Credit -- and I should add, I don't think I've ever had  
5 a complaint about Ford Motor Credit in 20 years. Now,  
6 others of the big three is a little different story.

7 But, you know, if you're dealing with a company  
8 like Ford Motor Credit, you are going to go up the line  
9 to a point and reach someone really in a position of  
10 corporate responsibility that's going to call off a dog  
11 or what have you. So, that's about all I --

12 MR. HARWOOD: I don't know which big three  
13 you're referring to, I'm not sure which are the big  
14 three anymore, but anyway...

15 Ira do you want to add anything to that?

16 MR. RHEINGOLD: No, I mean, I think it's -- I  
17 don't have anything empirical, although, again, just  
18 sort of my view of human nature, and one of the things I  
19 was commenting before the panel began, is we definitely  
20 live in sort of these alternative universes that we're  
21 hearing today, but from the prism of the world I see, I  
22 see the most abuses in most consumer settings when there  
23 are real incentives to make money based on real  
24 aggressive behavior.

25 So, when I -- so, from all the contexts that I'm

1 thinking, when I see something getting paid on a  
2 contingency, I see the worst behavior out of that  
3 individual, so...

4 MR. HARWOOD: Okay, so it appears we have no  
5 empirical evidence that would give us -- we're just --  
6 it's instinct, really, yeah, okay.

7 MR. LOONEY: And, Cary and Ira, I hope you have  
8 not had any complaints on Atmos Energy, but I would like  
9 to say that at least from our perspective, it just seems  
10 to make good business sense to empower your in-house  
11 collectors to do the right thing, to make the best  
12 decision, and the last thing that we want to do is to  
13 disconnect a customer's utility service for nonpayment,  
14 because not only does that cause the customer issues,  
15 but because it's a lot of time and motion on our part.

16 It's just a lot easier to resolve these issues  
17 up front with salaried employees that are not paid a  
18 commission than to go ahead and -- and one of the things  
19 that we were fearful of, as we looked at this at one  
20 time, is that if we gave a collector incentives to  
21 collect, there might be an over-aggressiveness in saying  
22 it's this way or the highway. So, we've tried to avoid  
23 that approach and feel like that the approach that we  
24 have for our in-house collectors is best for our  
25 in-house people.

1 MR. HARWOOD: Okay. Thank you, Anthony.

2 Let me go to my next -- sort of the next topic  
3 area, which is a situation in which you're dealing with  
4 contingent collectors, and, again, I'll start with the  
5 same question I started with before.

6 Bev, I'm curious, what are sort of the practices  
7 that you see when creditors who are dealing with  
8 contingent collectors? How do they supervise them? How  
9 do they monitor them? How do they ensure they're  
10 following presumably the same kinds of practices they're  
11 holding their own people to?

12 MS. EVANCIC: Actually, I don't know of any  
13 creditors at this point that are paying based on  
14 contingency fee.

15 MR. HARWOOD: And how about -- then let's just  
16 try third-party collectors, then, let's use that phrase.

17 MS. EVANCIC: And in the third-party collector  
18 piece, I mean, one thing that I want to throw out is  
19 that the collection agency piece of it, it's an entirely  
20 different type of customer than what you have on the  
21 internal side. When you have a customer that is 30 days  
22 past due, it's easier to negotiate and to go through  
23 their finances than if they've gone six months without a  
24 contact, without a payment coming in, and now it's going  
25 to an agency.

1           So, sometimes what we deem as aggressive  
2 collection tactics, it's the first contact that they've  
3 had in six months, and you know that that may be the  
4 only contact that you're going to get. So, it is  
5 important for them to go through a whole, you know, talk  
6 and figure out why the person is delinquent, why they're  
7 not paying, if there's a dispute, if we have the right  
8 address, if we have the location information.

9           So, it's not a matter of contingency fee always  
10 driving one behavior or the other. We're talking about  
11 two different types of accounts in the setting. So, I  
12 don't think we can compare contingency and salary,  
13 because typically, we're looking at creditor, internal,  
14 early stage delinquency versus later stage delinquency,  
15 collection agency. So, I don't think it's fair for us  
16 to try to analyze that.

17           MR. HARWOOD: Okay, and actually, I probably  
18 misstated the question. What I was attempting to get to  
19 instead was not so much contingent versus salary, but  
20 rather, the situation where you have gone to a  
21 third-party collector, someone who would be a member of  
22 the ACA, for instance, versus -- you know, and who's no  
23 longer, and they are actually debt collectors covered by  
24 the FDCPA.

25           How does a creditor go about choosing those

1 kinds of entities? What do they consider? What are  
2 sort of the factors? How do they oversee their  
3 operations, those sorts of things?

4 MS. EVANCIC: I mean, you have to be on site,  
5 you have to go to the collection agency, and the other  
6 thing is, when we go on -- you know, when we have our  
7 creditors going on site, we tell them, you know, again,  
8 sit on the collection floor. You can hear it. You can  
9 see it. You can feel it. You can see if the  
10 supervisors are walking around. You can see if they're  
11 in the office. You can see if they're always in  
12 meetings.

13 Because the collectors do have questions, and  
14 they need support, and they need a supervisor out there,  
15 and the only way you're going to figure that out is if  
16 you go on site and you look at it. Even before you sign  
17 up to do business with them, an on-site visit is very,  
18 very important, because you can just feel the energy,  
19 listening to talk-offs. Collectors forget that you are  
20 there very quickly, and they go into a normal stream of  
21 business, because a lot of time people say, "Oh, well,  
22 they're going to act differently because you're there."  
23 They don't. That's the good news. They don't act any  
24 differently, and they continue with whatever approach it  
25 is.

1           And I have -- you know, there are some  
2 collectors that are loud all the time, and they  
3 accelerate every call, and then there are collectors  
4 that you -- you know, are under the radar. Okay, we're  
5 not sure which is better, you know? Under the radar,  
6 you may not be able to hear exactly what they're saying,  
7 and they may be offending the customer.

8           MR. HARWOOD: When advising your clients which  
9 kind of collector to select, are there certain things  
10 you tell them to look for in terms of the collectors  
11 that are going to provide them with the best service?

12           MS. EVANCIC: It's hard to say individual -- you  
13 know, which type of individual, but I encourage them to  
14 always get productivity reports on the collectors on the  
15 file, because there are what I call the basement  
16 dwellers or the ones that, you know, aren't necessarily  
17 putting in the effort and getting the payments in, and  
18 there's also ones that are on the high end that you're  
19 saying, "Huh, I wonder why that person can collect more  
20 than the other."

21           So, I like to look at both of them, because the  
22 person collecting the most money may not be necessarily  
23 doing your -- you know, your customer database justice,  
24 versus the one that needs some help and is probably  
25 struggling. A lot of times, the ones that are at the



1 low end of the productivity are actually the ones that  
2 have a lot of questions and are not able to answer the  
3 questions for the customer.

4 So, I look at -- I have them look at  
5 productivity. I have them go on site. I also have them  
6 look at management and find out how long they've been  
7 there, how long they've been on your portfolio, because  
8 we see a lot of turnover, and a supervisor sometimes  
9 equates to energy level or lack of energy level. So, be  
10 on site is just probably the most important piece that  
11 we have.

12 MR. HARWOOD: Okay. Anthony, do you deal with  
13 third-party collectors, and if so, in what manner, and  
14 when -- actually, let me add an additional question,  
15 when would you decide to deal with a third-party  
16 collector, if you do?

17 MR. LOONEY: We have been dealing with  
18 third-party collectors for probably about 30 years, and,  
19 I mean, it's not a very sophisticated or scientific  
20 method of us selecting a third-party collector. We  
21 normally -- I get a lot of cold calls that normally,  
22 when I'm -- and I haven't changed collectors in four or  
23 five years, so, I mean, it's not something that I do  
24 day-in, day-out, but if I decide and as I have changed  
25 collectors, I call my peers in the industry, get their

1 thoughts and ideas, get their suggestions.

2 I'll call a collector, visit with him and see if  
3 I think that his values of customer service and  
4 production align with ours, and I'll get references,  
5 call those references, and then make a selection.

6 MR. HARWOOD: Are there certain things you're  
7 looking for in a collector besides, you know, the --

8 MR. LOONEY: It's pretty much two things,  
9 performance and customer service.

10 MR. HARWOOD: I see.

11 MR. LOONEY: In other words, I don't want to get  
12 a lot of complaints from --

13 MR. HARWOOD: I was going to ask you what you  
14 mean by "performance." You mean a combination of --

15 MR. LOONEY: Of them collecting money for me.

16 MR. HARWOOD: And complaints you said, also?

17 MR. LOONEY: Right.

18 MR. HARWOOD: Okay, all right. And, Kathy, do  
19 you have anything more you want to add with dealing with  
20 third-party collectors, oversight, selection?

21 MS. PIERCE: Yes, like Atmos, Atmos Energy and  
22 what Bev said, we do use outside collectors. Ford  
23 Credit uses them when the -- on deficiency accounts,  
24 after they have been worked in-house, and if the  
25 customers aren't paying, then they will go to either a

1 collection attorney or a collection agency.

2 Our selection process is a little bit different  
3 for agencies and attorneys. Our attorneys were -- we  
4 have attorneys all over the country for -- in the  
5 states, so the first part of the process for the  
6 agencies and the attorneys will be the same. We'll do  
7 some due diligence. We'll do some online searches on  
8 both the principals and the companies themselves. Like  
9 Anthony mentioned, when we've received some  
10 solicitations, we will contact some of those agencies  
11 and attorneys and find out where their programs are.

12 Can you hear?

13 MR. RHEINGOLD: Is it not working again?

14 MR. HARWOOD: Did you lose your mike again?

15 MS. PIERCE: Hello?

16 MR. HARWOOD: That's great, thanks.

17 MS. PIERCE: We will contact the agencies and  
18 attorneys and have them explain their programs, and like  
19 Anthony mentioned, we're looking for effective  
20 collection along with robust compliance. We'll run the  
21 searches, the public record searches, and like Bev  
22 recommended, we will go on site and we will sit there  
23 and listen and talk to their HR department.

24 MR. HARWOOD: Okay. So, I want to get to some  
25 questions about that information that Ira and Cary can

1 comment on.

2 Let me ask you, when you assess complaints, what  
3 sorts of things are you looking for in determining  
4 whether there have been a lot of complaints? How would  
5 you determine if there has been -- how do you determine  
6 when there's been a lot of complaints about a particular  
7 collection agency?

8 Kathy, do you have any thoughts on that or just  
9 sort of a --

10 MS. PIERCE: I didn't mention complaints, but --

11 MR. HARWOOD: Oh, I'm sorry, I didn't mean to --

12 MS. PIERCE: -- but what we do is we go the  
13 Better -- we run Better Business searches. We check the  
14 public records for any kind of searches. We do ask them  
15 about their complaint records and resolutions.

16 MR. HARWOOD: You don't call Ira or Cary,  
17 though, and ask them, I take it. Any advice? No?

18 MR. RHEINGOLD: I haven't had that call yet, but  
19 I'm always open to it.

20 MR. HARWOOD: Okay. How about you, Anthony?  
21 You said you -- I think you mentioned complaints and I  
22 think maybe Bev mentioned it.

23 MR. LOONEY: It was me.

24 MR. HARWOOD: Yeah. How do you determine if  
25 there are a lot of complaints and what constitutes a

1 complaint to start with?

2 MR. LOONEY: Well, first of all, I mean, we have  
3 a clear understanding with all of our collectors that we  
4 want them to abide by the law, we want them to act  
5 ethically, and to treat our customers -- and I call them  
6 customers, a lot of them are former customers -- with  
7 dignity and respect. So, you know, it's hard to say --  
8 I mean, I can kind of put it in perspective, and I'm  
9 really proud of the record we have with our collectors,  
10 but last year, I submitted about 156,000 unpaid bills to  
11 collectors.

12 In the past 12 months, to me, complaints that  
13 have gotten to me from customers who feel like that they  
14 have not been treated fairly or they've been abused by  
15 the collector, I've had about 12 in the last 12 months.  
16 So, you know, it's hard to say and it would be hard for  
17 me to say, okay, if I get 15 from a customer a year, is  
18 that too many?

19 MR. HARWOOD: Yeah, right.

20 MR. LOONEY: I mean, it's just a judgment  
21 feeling that I follow.

22 MR. HARWOOD: Okay. Let me -- one final  
23 question before we move on. Obviously as a creditor,  
24 you usually create the debt that may ultimately be  
25 what's collected later. Obviously you hope you don't

1 have to hire, a collector or use your own collectors,  
2 but are there steps creditors can take to make the  
3 collection process easier -- and I'll let you define  
4 what easier means -- but, you know, what -- as you --  
5 when a debt is created, an instrument is created, what  
6 do you do to simplify the collection process, to make it  
7 easier?

8 Is that too open-ended for you? Does anyone  
9 want to answer that? Kathy, do you want to take a shot  
10 at that?

11 MS. PIERCE: Sure. First of all, you mentioned  
12 when the dealt is created, what do we do. Somebody  
13 mentioned earlier today that about 5 percent of the debt  
14 in the country is deficiency or bad debt. A very small  
15 percentage of our contracts turn into bad debt, but what  
16 we do do is we keep good records of the account, the  
17 account history. We image our documents. Ford Credit  
18 images the documents, the contracts, any extensions, and  
19 any post-repo notices, anything necessary to prove the  
20 legal case, and if we do have outside collection  
21 attorneys and agencies on a matter, then we have contact  
22 people and email addresses so that we are in constant  
23 contact with our collection agencies and attorneys.

24 MR. HARWOOD: Okay, so you're saving a lot of  
25 information.

1           How about you, Anthony? Let's find out if  
2 that's true throughout the industry. Do you all -- do  
3 you keep track -- do you have an extensive document file  
4 of everything you've done to try to collect and do you  
5 prepare --

6           MR. LOONEY: Yes, we do. In fact, every time we  
7 have correspondence with a customer, as I mentioned  
8 before, that call is recorded, and then notes are made  
9 within that customer's account, no matter what the  
10 reason or why that customer called us.

11           MR. HARWOOD: I see, okay. So, what we heard  
12 earlier today was that there's some dissatisfaction with  
13 the amount of information that's made available to  
14 either third-party collectors or debt buyers, and  
15 they're saying that they simply don't have that  
16 information available.

17           Bev, I wonder if you could talk about what you  
18 advise your clients in terms of information that they  
19 save and provide to, let's say, third-party collectors  
20 or even debt buyers possibly.

21           MS. EVANCIC: From the collection agency  
22 standpoint, we definitely want them obviously to give  
23 accurate information. We also like to see them send  
24 over the last at least three months worth of collection  
25 activity so that they understand if the debtor has been

1 contacted or not contacted. We want all of the -- we  
2 want the last payment amount. We want, obviously,  
3 location information and whether they have had return  
4 mail on that.

5 The one thing that we are struggling with is the  
6 Social Security number going over to collection  
7 agencies, and it's not so much as it going over to  
8 collection agencies as it is when the collection agency  
9 gets it, what happens to the Social Security number and,  
10 you know, who has access to that. So, from the  
11 creditor's standpoint, it is their responsibility, in my  
12 opinion, to make sure that the debtor information is  
13 held in a safe and secure environment.

14 So, as you are actually sending over  
15 information, we always tell our clients, you know, ask  
16 why they need it and what they're going to do with it  
17 and who's going to have access to it. So, sometimes  
18 it's not as easy as, "Oh, you know, this is the wish  
19 list that we want." It's, "What are you going to do  
20 with the wish list, and who's going to have access to  
21 that?"

22 The other thing is, the collection agency has to  
23 have an open communication with someone back at the  
24 creditor if they do have questions, and a lot of times  
25 we're finding where someone's not available all the time



1 for the collection agency, and then, you know, they're  
2 scheduling the account for a later date, and it comes  
3 back up, and then they're in the same boat where they  
4 don't have the answer from the creditor. So, both ends  
5 have to work together in order to make it work.

6 And then the other thing is, you know, from the  
7 collection agency side of it, the creditor sends what  
8 information they have, and a lot of times it doesn't  
9 have valid location information, and some creditors are  
10 able to provide updated information and some aren't.  
11 So, you know, we tell them go through the wish list on  
12 both sides and figure out what it is that each agency  
13 wants and if they really need it and what they're going  
14 to do with it once they have it.

15 MR. HARWOOD: But let me follow up briefly on  
16 this Social Security number. What is the issue there?  
17 I'm not sure I understand that.

18 MS. EVANCIC: Well, from the collection agency  
19 side, it's easier to have Social Security numbers so  
20 they can make sure they have the right information as  
21 far as the credit bureau, if they are going to look at a  
22 credit bureau, but that Social Security number doesn't  
23 necessarily -- the collector doesn't necessarily need to  
24 see that. So, we like to see it masked immediately so  
25 that everyone doesn't have access to that.

1           MR. HARWOOD: So, it can be included, but it's  
2 masked --

3           MS. EVANCIC: Right. So, we want to know why do  
4 you need it and what are you going to do with it to  
5 ensure that there is privacy.

6           MR. HARWOOD: It reflects the idea of --

7           MS. EVANCIC: And a lot of systems definitely  
8 have the ability to do it, but if you don't ask, you  
9 know, they are not -- the collection agency is not going  
10 to know to do it.

11          MR. HARWOOD: So, I want to ask, Ira and Cary,  
12 if you've seen this kind of information in your  
13 experience when you're dealing with the other side, but  
14 would both of you, before the -- let me just ask, Kathy  
15 and Anthony, would you -- is that the sort of  
16 information you would be conveying as well?

17          MS. PIERCE: Yes, but one thing I'd really like  
18 to make clear is that Ford has very strict privacy  
19 standards for the personally identifiable information,  
20 and any collection agency or attorney has to comply with  
21 those standards, which also, of course, comply with the  
22 law, but keeping our customers' information secure is  
23 critical.

24          MR. HARWOOD: All right. So, I'll come back to  
25 you, but go ahead. How about you, Anthony? What kind

1 of information would you convey, similar to what Bev  
2 outlined?

3 MR. LOONEY: Yes, and, I mean, we transmit what  
4 we think is all of the data that a third-party collector  
5 needs to collect with, but -- for instance, we do  
6 provide the collectors the Social Security number. Our  
7 intent with providing them with that number is they use  
8 that for credit reporting purposes.

9 MR. HARWOOD: How about, Cary and Ira, starting  
10 with third-party collectors, are you seeing this kind of  
11 information or are consumers getting this kind of  
12 information when they have a conversation with a  
13 collector that contacts them? Are they being told it's  
14 not available?

15 Cary? If we could talk about -- if you want  
16 to -- I'm particularly focused on third-party collectors  
17 but if you want to talk about debt buyers as well,  
18 that's fine. I'm curious, are you -- is it your sense  
19 that the information that Bev has described sending  
20 over, is that reaching the collectors? Do they have  
21 that available? What's happening at that end?

22 MR. FLITTER: It's directly related to the  
23 nature of the relationship between the collector and the  
24 creditor. I mean, at the one end, you have the in-house  
25 collector, a Ford Motor Credit employee or the utility

1 employee, they have all the information. It's on their  
2 screen; it's in their system. So, unless there was some  
3 issue about maybe in Anthony's case they say, "Well, my  
4 service -- I didn't have my gas service from the 1st to  
5 the 12th," and they might go, "Okay, I need to go to  
6 that department to find that out." That's really an  
7 unusual case.

8 MR. HARWOOD: How about with third-party --  
9 yeah.

10 MR. FLITTER: The other -- well, the third  
11 party, obviously they get less. When a collector  
12 commissions a third party -- excuse me, when a creditor  
13 commissions a third-party collector in the traditional  
14 collection sense, to collect on a debt, they get so much  
15 as they need, but there's still an ongoing relationship,  
16 because the collector doesn't own the debt, and they  
17 have to go back and forth for information.

18 It's not as good, but it's not nearly like the  
19 third-party debt buyer situation, which is at the other  
20 end of the spectrum, because obviously the whole key  
21 there is expediency. It's not about -- and that's part  
22 of the reason to go back to why are debt buyers covered  
23 as debt collectors when they own the debt? And when you  
24 go back to the court cases from 20 years ago, the reason  
25 that debt buyers are covered under the FDCPA, when

1 creditors are not covered, and yet they both are, in  
2 theory, owed the money if it's owed, is because the  
3 creditors have an ongoing business relationship with the  
4 consumer, where the debt buyer doesn't. So, the courts  
5 have said, "Well, a consumer may need more protection  
6 from a debt buyer than they will from a -- from an  
7 in-house collector where there's still some ongoing  
8 business relationship."

9 So, the debt buyers get very little information,  
10 I think that's really not debated, and they don't --  
11 there's these lock-out agreements that, you know,  
12 sometimes they have in the contract where they buy the  
13 debt, that they won't go back to the creditor to get  
14 information, and I even -- go ahead.

15 MR. HARWOOD: Ira, is that your sense as well?

16 MR. RHEINGOLD: Oh, not -- well, I want to  
17 double back a little bit.

18 MR. HARWOOD: Yeah, go ahead.

19 MR. RHEINGOLD: One other really important point  
20 that sort of gets lost here, and it really has to do  
21 with -- it's not the debt collection industry, per se,  
22 it's actually the creditor industry, and one of the  
23 people that are not on the panel today is the credit  
24 card industry, and one of the -- sort of the -- sort of  
25 the elephant in the room is the incredible amount of

1 debt that has grown in this country right now.

2 I mean the reason that business is booming for  
3 debt collectors is we have just an unprecedented amount  
4 of debt, and part of our concern and part of the proof  
5 that we're talking about in terms of documentation is  
6 the fact that we think that a lot of that debt that's  
7 being sold really is inappropriate.

8 When we're talking about late fees and charges,  
9 I think we've seen case after case of credit card debt  
10 where the amount that was actually borrowed is a small  
11 percentage of the amount that's being collected. So, in  
12 terms of the information that's being provided to the  
13 debt buyer at the back end of it -- and we have some  
14 significant problems. One, we don't think that -- I  
15 mean, like Cary said, I don't think that information  
16 gets transferred or it doesn't get transferred nearly  
17 enough, but secondly, if that information was  
18 transferred, I think a lot of that debt that's being  
19 collected really isn't rightfully owed or is a product  
20 of a credit card industry that is just pumping debt upon  
21 debt upon people that really isn't appropriate, which is  
22 not our topic for today, but nonetheless, an important  
23 part of this discussion.

24 MR. HARWOOD: It sounds like you're  
25 distinguishing between the credit card industry and,

1 let's say, the two creditors sitting next to you.

2 MR. RHEINGOLD: Yes.

3 MR. HARWOOD: Okay. You are saying they have  
4 different practices you think in terms of the amount of  
5 information that's being communicated based on your  
6 experience or --

7 MR. RHEINGOLD: From my experience with the  
8 credit card industry, absolutely.

9 MR. HARWOOD: All right. So, let me ask you,  
10 Bev, have you dealt with anybody that's been selling  
11 debt to debt buyers, and if so, have you -- what would  
12 you -- do you advise them on how to go about  
13 transmitting information and what they should transmit?

14 MS. EVANCIC: We do. I mean, and there is a  
15 difference between unsecured and secured debt simply  
16 because one of sheer volume and secondly because of what  
17 makes up a debt. It's much easier to have one purchase  
18 on a secured loan and say, "Well, it was for the car you  
19 purchased," versus, you know, the monthly statements  
20 that, you know, incorporate into the balance of a credit  
21 card debt. So, again, we're talking about two different  
22 animals and it's kind of hard to mix them.

23 From what I have seen, though, I haven't seen a  
24 huge problem -- now, again, you know, eight hours of my  
25 day is with past due customers, so it's hard for me to

1 understand that there's anyone that's not past due.  
2 Eight hours of their day is spent with consumers that  
3 have issues, you know, so it's hard for them to  
4 understand that there are anyone in past due account  
5 status that don't have a complaint.

6 But from what we have seen, we have not seen --  
7 and you specifically identified credit cards -- we have  
8 not seen that the credit card companies have not been  
9 able to provide enough information to accurately collect  
10 on the debt. Are there some that provide better  
11 information than others or more information? Yes. Do  
12 we encourage them to provide the kitchen sink? Yes.

13 We have one creditor that actually has decided  
14 to bite the bullet, had technology come in, and they  
15 provide it all at the time of sale. Everything that  
16 they have is provided at the time of sale. Was that  
17 difficult? Yes. Was it costly? Yes. Can other  
18 creditors do that? Maybe not, because the technology is  
19 very hard to come by.

20 But still, all in all, we have seen enough  
21 information passed on to the debt buyer to be able to  
22 accurately and appropriately collect on the debt.

23 MR. HARWOOD: Okay. Now let me -- I have a  
24 number of follow-up topics here, but let me just ask,  
25 Anthony, in terms of what information you're conveying



1 to debt buyers. Have you dealt with any -- I guess you  
2 don't deal with debt buyers very often, but --

3 MR. LOONEY: No. We've made a strategic  
4 decision not to sell debt, and, I mean, in our business,  
5 oftentimes, if we have an uncollected debt, that  
6 customer will come back to us later, and to sell that  
7 for 3 to 5 cents on the dollar just doesn't make sense  
8 to us.

9 MR. HARWOOD: Yeah. And how about -- how about  
10 you, Kathy, you're not selling much debt either or are  
11 you selling some debt?

12 MS. PIERCE: No, we sell some debt and provide  
13 them the imaged documents that I referenced earlier.

14 MR. HARWOOD: So, I wonder if we could go back  
15 one more time, and I may have a list from one of the  
16 earlier panels of some of the kinds of documents that I  
17 think some of the previous panels would recommend. I  
18 just want to get a sense of whether these kinds of  
19 things are being conveyed in the situation.

20 So, for example, the proof of the debt, that's  
21 one thing that's being imaged and made available?

22 MS. PIERCE: The contract, yes.

23 MR. HARWOOD: Yeah, okay. You know, dates when  
24 the debt was incurred, dates when it was delinquent, all  
25 those kinds of things are being communicated in your

1 instance?

2 MS. PIERCE: Yes.

3 MR. HARWOOD: Okay. Identity of the original  
4 creditor, that would be Ford obviously.

5 MS. PIERCE: Yes.

6 MR. HARWOOD: Principal, any additional charges  
7 incurred subsequent to that?

8 MS. PIERCE: Yes.

9 MR. HARWOOD: Chain of title of the debt, if  
10 it's been through several hands or through several -- is  
11 that being communicated?

12 MS. PIERCE: Yes.

13 MR. HARWOOD: It wouldn't be in your case  
14 necessarily.

15 MS. PIERCE: Right.

16 MR. HARWOOD: Okay. How about if there -- and I  
17 want to come back to this later, but how about if there  
18 are -- if there are disputes about the debt, is that  
19 being communicated as part of the information you're  
20 conveying or you're providing?

21 MS. PIERCE: It's not our practice to sell debt  
22 that -- where there's been a dispute. That should have  
23 been closed. If there are -- if there is a dispute,  
24 whether -- you know, it should have been resolved, but  
25 that should be in the notes that the debt buyer

1 received.

2 MR. HARWOOD: And in Ford's experience, you can  
3 just put all that into scanned documents that you are  
4 then able to --

5 MS. PIERCE: Yes.

6 MR. HARWOOD: And one final question, when your  
7 debt is sold, is it -- is the backbone of the deal, is  
8 that part of what -- is there a disclosure that says,  
9 "If you buy this debt, you get all this information,  
10 too"? Or explain -- I mean, does the debt buyer know  
11 they're getting all that when they buy your debt?

12 MS. PIERCE: Of course, because the debt buyer  
13 comes in and does due diligence on the paper as well,  
14 and if, by chance, one of the accounts doesn't have all  
15 the documentation necessary, the debt buyer can request  
16 it from us directly.

17 MR. HARWOOD: I see, okay. So, go ahead, Ira.

18 MR. RHEINGOLD: I actually have another  
19 question, because, again, sort of the conversation --  
20 and this could be way off, but I'm just sort of  
21 interested because we're talking -- well, why not?

22 We're talking about creditors and it's their  
23 debt and they're collecting it, and I'm a little  
24 confused, because the way industry works in a lot of  
25 places, it really isn't their debt because that debt is

1 being sold in the secondary market and securitized. So,  
2 in fact, are we talking about creditors collecting their  
3 own debt or are they creditors, in fact, simply acting  
4 as agents of the actual owner of the debt to collect it,  
5 and what ramifications come from that?

6 So, when we're talking about that, what are we  
7 actually talking about when they are collecting their  
8 own debt?

9 MR. HARWOOD: Are you posing that as a question  
10 to me or to --

11 MR. RHEINGOLD: To anybody on the panel, because  
12 I'm sort of interested.

13 MR. HARWOOD: Give an example of.

14 MR. RHEINGOLD: For instance, the mortgage  
15 market, right? In the mortgage market -- and I know the  
16 credit card market is like this as well -- when the  
17 lenders make a loan, they are the originators of the  
18 loan. They then turn around and sell it to the  
19 secondary market as part of a loan pool, just as credit  
20 cards do the same thing as well.

21 Now, the fact is is they then get the servicing  
22 rights, so they, in essence, are collecting the money  
23 from the borrower and then distributing it on to all the  
24 different people who actually own the loan. Well  
25 doesn't that work the same way in the credit card

1 industry to a certain extent? I would assume Ford Motor  
2 also sells some of your -- I mean, you are not  
3 portfolioing your debt, in fact, your loans, are you?  
4 You are, in fact, turning around and selling it in the  
5 secondary market, so that you're not actually collecting  
6 your own debt but collecting it from another party out  
7 there who really owns it.

8 I don't know what that means in terms of  
9 ramifications here for debt collection issues, but, in  
10 fact, we're not talking the right language if we're  
11 talking about collecting the debt that's actually owed  
12 to them, so...

13 MR. HARWOOD: Kathy, do you want to comment?  
14 When you're collecting the debt and to the extent you  
15 followed Ira, are you collecting your debt or are you  
16 collecting debt -- am I understanding you correctly,  
17 Ira?

18 MR. RHEINGOLD: Yeah. I mean, isn't it, in  
19 fact, debt that's been sold to the secondary market and  
20 then you have got a servicer arrangement and you are  
21 actually acting as agent to the secondary market.

22 MR. HARWOOD: Okay, yeah, got it.

23 MS. PIERCE: I am not a securitization expert,  
24 but we do securitize some of our debt, and there are  
25 different arrangements. I think -- well, it's an

1 affiliate that we securitize it with and then we are the  
2 agents, Ford Credit is the agent, and we're the only  
3 creditor that the customers ever know, the only contact  
4 that they ever have.

5 MR. RHEINGOLD: Okay.

6 MR. HARWOOD: Bev, do you see that often where  
7 basically they're collecting the debt but they've  
8 already securitized it in some fashion and they just  
9 maintain the servicing on it? Is that -- are you  
10 aware --

11 MS. EVANCIC: Actually, I just say thank God I'm  
12 not an attorney and I have no answer.

13 MR. HARWOOD: You have no answer, okay, all  
14 right.

15 Cary, how about you? What's your experience in  
16 terms of the kind of information that when you're  
17 dealing with either third party or a debt buyer,  
18 information that they have, that they have access to?

19 MR. FLITTER: I was just thinking, sitting here,  
20 as I was listening, that if the consumer disputes a debt  
21 with the collector, say it's a debt buyer, the quantum  
22 of information, of detail, that is demanded of the  
23 consumer is ten times that which the debt buyer has  
24 received already. You know, if you say, "Well, it's not  
25 my debt." "Well, what I want a driver's license, photo

1 ID, I want an identity theft affidavit, I want a police  
2 report, I want to know where you were on the 31st of  
3 May, 2005," and all that is demanded of the consumer,  
4 and really, the debt buyer is sitting there with nothing  
5 but sort of a glorified email showing name, address,  
6 date of last payment, balance due, maybe date of  
7 original agreement or something like that, and it's one  
8 of the -- it's an odd situation, these third-party debt  
9 buyer cases, and --

10 MR. HARWOOD: So, let me ask you, are you -- you  
11 talked about the glorified email. Are you saying they  
12 should have additional information beyond that that  
13 we've outlined or -- and what kind of additional  
14 information would you have them have? And then we'll  
15 let these folks talk.

16 MR. FLITTER: I have a rather pragmatic  
17 suggestion, if I may. As I was sitting here all day  
18 listening to the two sides, and I know that the  
19 Commission looks to hear both sides and something be  
20 fashioned. The -- I'm sympathetic. I used to represent  
21 lenders and mortgage companies in a past life. I'm  
22 sympathetic to collection agencies saying or a debt  
23 buyer even, we don't want to buy all this media. We  
24 don't want to have it; we don't want to store it. It's  
25 very expensive. It's expensive to image; it's expensive

1 to store. It's really about expediency. We don't want  
2 to have it, and the seller doesn't want to pay to image  
3 all that media and send it on.

4 By the same token, if a consumer has a dispute  
5 about it, they're entitled to know, and the disputes --  
6 there's 50 different kinds of disputes, right? It's not  
7 my debt. I'm an identity theft victim. The product was  
8 defective. I made payments. There's fees that  
9 aren't -- I'm not entitled to, statute, on and on and  
10 on, and it ties into if I can just get a word in about  
11 the validation request, if I may.

12 There is this -- when you send an initial  
13 letter, when a debt collector sends an initial letter,  
14 it has to have a validation notice, 6092-G, you know,  
15 you have got 30 days, and if you dispute the debt, we  
16 will get a copy, if it's not the original -- we have all  
17 seen it a hundred times, thousands of times, and yet the  
18 way the courts have interpreted that, two courts of  
19 appeal have said if a consumer comes ahead and disputes  
20 and says I want the debt verified, there's a very  
21 nominal obligation on the part of the debt collector.

22 They only have to verify basically the name and  
23 the amount. They only have to go back to the --  
24 verification involves nothing more than the debt  
25 collector confirming in writing that the amount being



1 demanded is what the creditor is claiming is owed.

2 So --

3 MR. HARWOOD: You're citing to a court case  
4 that, I assume, that's interpreting the verification  
5 part of the FDCPA.

6 MR. FLITTER: Exactly. So, I would suggest that  
7 we give some consideration, probably a legislative  
8 fix -- I don't think with the deference issues it's a  
9 matter for commentary -- but if the consumer comes  
10 forward with a dispute, recognizing that there's been,  
11 according to FTC statistics, what, 28 million cases of  
12 identity theft? So, there is how many gazillion cases  
13 of phony accounts out there? That if the consumer comes  
14 forward and says, "I don't owe this debt because it's  
15 not me, I paid it, it's statute, it was defective  
16 product, it was my son or my father," or whatever it may  
17 be, that the verification requirement require that the  
18 collector meet the demand, meet the dispute, not just  
19 come back and say, "You're Cary Flitter, you owe a  
20 thousand dollars, yes, I confirmed it." That's  
21 literally all it requires right now.

22 And I think that would really -- it would answer  
23 the consumer's dispute in those rather small percentage  
24 of the cases where the consumer voices a specific  
25 concern that it's not his debt and why, and it would --

1 I think it would ameliorate the problem of the sellers  
2 as well as the debt buyers saying we don't want the  
3 expense and the space and so on of having all this  
4 unnecessary media.

5 MR. HARWOOD: Help me understand. What would  
6 the creditor's role be in your vision of how this  
7 verification process should go?

8 MR. FLITTER: The creditor's role would be to --  
9 that they would be required to furnish documentation on  
10 request that validly meets the dispute, that meets the  
11 particulars of the dispute, and you'd be stunned --  
12 maybe you wouldn't -- how hard it is to get that. You  
13 know, if you complain about that I didn't pay because  
14 the product was defective, do you think you're ever  
15 going to see some memo back from, you know, whatever it  
16 was, the china department that says yes, the vase  
17 cracked back in 1999? So, I think that really would be  
18 very important and would be a very worthwhile amendment.

19 MR. HARWOOD: So, my understanding of what  
20 you're saying is that even with the kinds of documents  
21 that we've talked about that Ford Motor Company is  
22 conveying or that Bev talked about her client conveying,  
23 that's not going to deal with the dispute situation  
24 where you've got a collector who's dealing with a  
25 dispute from a consumer? That's not enough?

1           MR. FLITTER: It might, depending on the nature  
2 of the dispute. I mean, it depends. If the consumer  
3 simply says I don't remember ever signing an agreement  
4 or I made a payment on such and such a date, and there's  
5 a pay history, then it would need it, but, you know,  
6 around my way, I'm from Philadelphia, there's a little  
7 sign in a local bank, I love it, Benjamin Franklin is  
8 still big in Philadelphia, and it says, "Creditors have  
9 better memories than debtors."

10           So, the media may answer that if it's just a  
11 simple question of date of payment, but with the variety  
12 of disputes that come along, especially in the age of  
13 the identity theft, typically that's what -- what the  
14 third-party debt buyer has is not nearly going to be  
15 sufficient to meet it.

16           MR. HARWOOD: And, Ira, do you have anything on  
17 that? Okay.

18           Bev, you talked about one of your clients who  
19 has basically decided they're going to convey  
20 everything. Is that -- that sounds like that's a cost  
21 issue. Do you have any sense of whether that's, you  
22 know, a huge cost, a medium cost, small cost, or what  
23 are we talking about there in terms of -- approximately.

24           MS. EVANCIC: Well, it's huge cost and the fact  
25 that they have a system that they can pull it from is

1 also probably different than, you know, a lot of other  
2 creditors have, and, you know, when we go and we look at  
3 all of this and we say, okay, what is actually, you  
4 know, cost-prohibitive or what actually is  
5 cost-effective, you know, it may not -- I don't know,  
6 because there is actually a small percentage that do  
7 dispute the debt once it gets to that point, because you  
8 have to remember, again, we've already gone through six  
9 months in the in-house, probably another six months at  
10 the collection agency, so I don't know if it is  
11 cost-effective to do that. All we know is one creditor  
12 has done that, and I don't know if we have seen an  
13 increase in price, if we've seen a reduction in the  
14 actual disputes. That I don't know.

15 MR. HARWOOD: And by cost-effective, you mean  
16 the cost they have gone to to create the additional  
17 documentation versus what they're getting paid for the  
18 debt when they sell it or --

19 MS. EVANCIC: Right, because the other thing  
20 from the creditor's side, they're providing that  
21 information, but they still now have potential privacy  
22 issues that they have to make sure are taken care of  
23 when they give that information to the debt buyer. So,  
24 it's not just an easy thing of here's a disk and here's  
25 all the information you need. You still have to make

1     sure that your information is going to be safe from the  
2     debt buyers, you know, when they actually get the  
3     accounts. So, it's just there's a lot more to it than  
4     just being able to get it. You have to make sure all  
5     the systems are in place to protect everyone's  
6     information.

7             MR. HARWOOD: Okay. So, I'm still trying to  
8     figure out, maybe somebody could help me with this, what  
9     we've heard -- my sense has been that -- and I'm now  
10    particularly talking about debt buyers, that there is  
11    frustration somewhere that there is not -- the  
12    information is not there. At the end of the day, it's  
13    not there.

14            What I'm trying to figure out is, is that -- is  
15    it because the industry -- the creditors are not  
16    providing the information or making it available for  
17    some reason, or is it because debt buyers aren't paying  
18    for it, or is it because the range of disputes is so  
19    wide and varied that it's simply impossible to come up  
20    with all the -- provide the information to make  
21    everybody happy?

22            MR. RHEINGOLD: Well, I think one thing that  
23    we're missing also is a lot of the debt buyers are  
24    buying really old debt, and there is information that  
25    the creditor simply doesn't have anymore.

1           MR. FLITTER: And they are buying it a second, a  
2 third, and fourth time.

3           MR. RHEINGOLD: Right.

4           MR. HARWOOD: So, what you are saying is at some  
5 point in the process, the information or the  
6 documentation that would verify it is being lost or they  
7 never had it?

8           MR. FLITTER: Correct, and there needs to be a  
9 motivation, too. Why would they want to get it?  
10 Someone -- I don't take credit, but it's not unlike if  
11 you sell a used car, and then the car is sold again, and  
12 then there's a problem with the car, this is a second --  
13 in other words, I sold it to B and B sold it to C, C has  
14 a problem with the car, and he wants to file a legal  
15 claim over it, and he comes back to me and starts asking  
16 about warranty problems I had with the car.

17           Well, you know what? I sold that car a year  
18 ago, five years ago, whatever, I didn't keep receipts, I  
19 didn't want to be bothered with it, it's not my car  
20 anymore. And I feel that it's similar when a creditor  
21 sells a bulk portfolio, and then it's sold again and  
22 it's sold again, how much legwork do they want to do  
23 digging up -- you know, making image of documents and  
24 media trying to support the debt? But I don't think  
25 that cost, that expediency, ought to be borne by the

1 consumer that can't get a verification of his request to  
2 validate the debt.

3 MR. HARWOOD: I mean, to close out this, I have  
4 two different questions. First, I guess this is for  
5 you, Cary, you talked about the wide range of different  
6 kinds of disputes that consumers can raise, and  
7 obviously there are a whole range of them. If you were  
8 to convey -- and I'm still trying to get a sense of what  
9 information -- you know, the kind of -- whether you  
10 could possibly create a package that would satisfy most  
11 of the dispute problems we're seeing with debt buyers.

12 Is there some kind of basic amount of  
13 information that you would like to see conveyed from the  
14 creditor to a third party or debt buyer that would  
15 anticipate, let's say, 75 percent of the disputes or  
16 something like that?

17 MR. FLITTER: The contract would be nice, but I  
18 guess that's asking for too much.

19 MR. HARWOOD: No, actually, I think we have  
20 heard contract mentioned at least before.

21 MR. FLITTER: No, this is the case of a closed  
22 end automobile sale. This is not the case -- the  
23 typical case is the credit card, which is an open end  
24 credit, which has bill stuffer amendments two, three,  
25 four, five times, so who knows what the contract is by

1 the time it gets to court, you know, but I mean the  
2 contract would be nice.

3 But I think -- this is personal I don't speak  
4 for anyone else -- since there's so many junk charges --  
5 and I'm really speaking to credit card debt, which is  
6 the bulk of it -- since there's so much junk fees in  
7 there, over-limit fees, late fees, and the like, and  
8 that's such a large portion of it, it would be nice if  
9 there's a way to ferret that out so that you know what  
10 you're talking about, so if the consumer bought a lawn  
11 mower for \$500 from Sears and didn't pay that, now by  
12 the time they hear from the -- literally the third debt  
13 buyer, and that \$500 bill is up to \$1,947, that someone  
14 could say -- and I understand the debt buyer may buy the  
15 whole package of debt, including the over-limit fees and  
16 the interest and everything -- but it would be nice if  
17 you could say, well, okay, 500 of that was principal,  
18 and so much is interest and finance charges and  
19 over-limit fees and late charges and whether there's  
20 attorneys' fees and so on and so on. I don't know if  
21 that's feasible, but in my world, that would be very  
22 useful, especially if you're trying to settle a debt.

23 MR. HARWOOD: So, Bev, let me ask you, in your  
24 experience, do you think that the same kinds of  
25 information that Ford Motor Credit is conveying for its



1 closed-end debts could also be assembled and conveyed  
2 for open-end credit? Any thoughts on that?

3 MS. EVANCIC: Well, I mean, I think it's very  
4 difficult because, you know, if you look at the cycle,  
5 you know, again, we have the six-month in-house, so we  
6 have six months worth of statements there, then we have  
7 six months outside, and then we've sold. So, if we say,  
8 okay, give me the last 12 months' worth of history,  
9 that's really not going to probably tell you everything  
10 that you need. You need more than 12 months worth of  
11 history, which is difficult at more than one level.

12 One, shipping all that information to the debt  
13 buyer is going to be difficult. The -- you know, and,  
14 again, when we -- I'm always a cost-effective person.  
15 How many of these are we going to need? I don't know.  
16 So, I don't know if it's feasible or not.

17 I know in the credit card situation, it's going  
18 to be much more difficult to be able to tell you exactly  
19 what you purchased to make up that balance and then -- I  
20 mean, it's fairly easy to find your principal versus  
21 your interest, but it's not easy to say of your  
22 principal of \$500, \$200 was the lawn mower, and then we  
23 had the -- you know, so the specifics of it are going to  
24 be much more difficult from the credit card company.

25 MR. HARWOOD: So, revolving credit or an

1 open-credit situation where you have a long-term  
2 relationship, you're saying that it creates greater  
3 challenges in getting all the information that you might  
4 want.

5 MS. EVANCIC: Right, because typically the  
6 transactions occurred prior to going into the  
7 delinquency state, so that could be well over 12 months  
8 ago that any of the transactions occurred.

9 MR. HARWOOD: I see, okay. Let me ask you this:  
10 When a debt is disputed, somebody disputes a debt, the  
11 debt -- we heard the ACA talking about their new -- the  
12 new ethics guidelines that they have that says that the  
13 collectors just should send it back I think is what they  
14 were saying. I'm summarizing, and hopefully I've gotten  
15 it basically right. What happens to the debt at that  
16 point?

17 Let me just start with you. If you're advising  
18 a creditor and they get a disputed debt back, what are  
19 you advising them to do at that point?

20 MS. EVANCIC: Well, I mean, I guess I step back  
21 and I say, you know, what is the dispute? From the  
22 collection agency side, it's really hard for them. Some  
23 say is a dispute is a dispute no matter what and you  
24 treat it all the same, but there are all different kinds  
25 of disputes, and trying to figure out if it's a valid

1 dispute or not, you know, sometimes proves a little more  
2 difficult.

3           However, once it is determined as a valid  
4 dispute, the agency and the creditor have to work out a  
5 way that they are going to actually return it with an  
6 actual result code that tells the creditor that it is a  
7 dispute, and then that way, when they go to do a second  
8 placement of accounts, they do a sort, and they  
9 immediately pull those out. Sometimes, that piece  
10 doesn't work as well as it should, and that's what the  
11 creditor and the collection agency, they are responsible  
12 for making sure that they have something in place so  
13 that it doesn't go out again.

14           But I think from the agency side, the harder  
15 question is what constitutes a dispute, and I don't have  
16 the answer to that.

17           MR. HARWOOD: I think Cary's pulling out the  
18 FDCPA, and he's going to read a section.

19           MR. FLITTER: Well, what happens frequently is  
20 when a debt is disputed, the debt collector closes up  
21 the file and sends it back. It's just more  
22 cost-effective or that's their deal or whatever's their  
23 motivation and, of course, the way the law has developed  
24 through the courts is that the subsequent debt  
25 collector, whether it's a debt buyer or just a

1 collector, is not charged with knowledge of the fact  
2 that the debt was disputed to the prior debt collector.

3 So, I think it would be a very useful addition  
4 to the Act, to the extent that, you know, if it's going  
5 to be revisited, and it's not really a burden on  
6 anybody, to just say it's an unfair debt collection  
7 practice to fail to mark a file as disputed when it is  
8 noted by the consumer to be disputed. So, if there's a  
9 dispute and you don't want to deal with it, that's fine.  
10 Note a dispute and send it back, but then when the  
11 second debt buyer or the third or the fourth gets it, it  
12 will have in it -- it will be noted as a disputed  
13 account, because it gets washed by -- as you know, by  
14 the resale of it back to the creditor or to another debt  
15 collector, it gets -- it gets washed of the -- of the  
16 dispute codes.

17 MR. HARWOOD: So, I want to give the -- so, is  
18 it possible that the problem is they don't actually know  
19 that it's the kind of dispute they need to report? I  
20 mean, Bev was talking about the fact that they are  
21 unsure about disputes sometimes, what constitutes a  
22 dispute.

23 MR. FLITTER: There is two collection law firms  
24 in my neck of the woods, one's in this county, one's in  
25 that county. If it's disputed to the first one, he just

1 packs it up and sends it to his buddy in the other  
2 county.

3 MR. HARWOOD: And they know what constitutes a  
4 dispute that they should report when they send it back.  
5 They aren't just -- you are pretty confident they know  
6 that.

7 MR. FLITTER: They're pretty smart.

8 MR. HARWOOD: Ira, do you want to add anything?

9 MR. RHEINGOLD: No, I think Cary's hit it.

10 MR. HARWOOD: Okay. And both of you have seen  
11 this happen periodically, where the debt's coming back,  
12 it's been disputed, and you are seeing it a second or a  
13 third --

14 MR. RHEINGOLD: I have seen it repeatedly. This  
15 is not something we're making out of whole cloth. It  
16 happens all the time.

17 MR. HARWOOD: Kathy, how about Ford, do you get  
18 some back disputed -- what happens to that?

19 MS. PIERCE: Actually, I don't have the FDCPA in  
20 front of me, but I think the FDCPA requires a collection  
21 agency or the collector to put the account on hold and  
22 resolve the dispute, and that's what our contract  
23 requires of our agencies or attorneys. They are  
24 required to put it on hold, not collect on it while  
25 there is a dispute, and to investigate the dispute.

1           If they can't resolve the dispute by just  
2 looking at the documents that we've provided them, they  
3 are required to contact us. If they are not satisfied  
4 with the person maybe they're talking to, they're  
5 supposed to escalate it. Their dispute should be  
6 resolved.

7           If there are problems with an account and either  
8 the collection agency or the attorney is recommending  
9 that we not continue to pursue that, that's what Cary  
10 mentioned, the coding. That's where the coding comes  
11 in, but we do not -- we do not just say, "Oh, if they  
12 dispute it, just close it." We want to know what that  
13 dispute is, and we want it resolved, and we expect them  
14 to resolve it and to code it properly.

15           MR. HARWOOD: Okay. Cary, do you want to add  
16 anymore to that?

17           MR. FLITTER: Well, as far as what the FDCPA  
18 requires, the FDCPA doesn't require what Kathy was  
19 saying. That's a good business practice. What the  
20 FDCPA requires is if there's a request for verification  
21 in the 30-day period after the initial notice, that  
22 there be no further collection activity until the debt  
23 is verified, but all "verified" means is that you go  
24 back to the seller and say, is this Sam Jones? Yeah.  
25 And is it a thousand bucks he owes? Yes. Thank you.

1 That's all. That's all the verification requires.

2 Then you can resume your full collection efforts  
3 without respect to -- without regard to whether there  
4 was a dispute or the nature of the dispute or anything  
5 else. So, I think that's why the validation requirement  
6 really needs to be stiffened so that there's some  
7 balance.

8 MR. HARWOOD: Okay, so we're down to about three  
9 minutes here. I've got a couple of small questions here  
10 that came from the audience I want to follow up on, and,  
11 Cary, this is a question directed to you, and did you  
12 use the word "lock-out agreement" at some point?

13 MR. FLITTER: Yes.

14 MR. HARWOOD: Do you want to briefly describe  
15 what you meant by that?

16 MR. FLITTER: Sometimes the bulk sale agreements  
17 between the owner of the debt and the buyer of the debt  
18 will have a clause that the debt buyer will not come  
19 back to the debt seller for verification, documents,  
20 media, et cetera. That, in term of art, is a lock-out  
21 agreement.

22 MR. HARWOOD: So, essentially as part of the  
23 purchase of the agreement, a purchase of the portfolio,  
24 their agreement, they won't attempt to go back -- they  
25 won't go back to the original seller or the creditor.

1           MR. FLITTER: Yes. They don't want to be  
2 involved in it.

3           MR. HARWOOD: Right, okay. Do you have any  
4 sense of how often -- have you seen that very often?

5           MR. FLITTER: I couldn't -- I've seen it. I've  
6 seen it in the -- if we get it, you know, in the course  
7 of a litigation, but I couldn't say how frequent.  
8 Others in the room may know.

9           MR. HARWOOD: All right. I guess this is  
10 actually to our -- this is to Kathy or to Anthony. Do  
11 you ever pull a debt back and assign it to a second  
12 collection agency? Is that -- I mean, Ford, when  
13 they're collecting, or do you wait until -- how do  
14 you -- does that ever happen?

15           MR. LOONEY: I do that routinely.

16           MR. HARWOOD: Why would you do that, then,  
17 obviously?

18           MR. LOONEY: Well, it's a strategic move. In  
19 other words, my primary collector, I only tell -- I tell  
20 that collector he's got those accounts for 100 days. He  
21 does not credit report. And then after -- and the  
22 incentive is for that collector to try to collect that  
23 money within the first 100 days or he knows he's going  
24 to lose those accounts. So, after that, I do report it  
25 to secondary collectors, and they credit report those



1 accounts.

2 MR. HARWOOD: I see. So, you have a 100-day  
3 period during which you give a collector an opportunity  
4 to try to collect, and then you bring it back and send  
5 it somewhere else.

6 MR. LOONEY: Right.

7 MR. HARWOOD: How about you, Kathy? What's your  
8 practice?

9 MS. PIERCE: Yes, our attorneys and agencies do  
10 not credit report at all. Ford Credit maintains all  
11 credit reporting, but if the -- if the collection --  
12 either the collection attorney or the agency isn't  
13 successful in collecting over a period of time -- and I  
14 don't know exactly what that is -- then yes, it would  
15 be -- it will go to another collection agency.

16 MR. HARWOOD: Okay, all right.

17 I think we are out of time, so I thank the panel  
18 very much.

19 (Applause.)

20 MR. KANE: Thank you, Chuck, and thanks to all  
21 of our panelists today. We've heard from a lot of  
22 people. We at the FTC have learned a whole lot.

23 We will start again tomorrow morning at 9:00  
24 sharp and hope to see all of you here then, and I also  
25 hope to see many of in a little while at a happy hour at

1 America Restaurant in Union Station. We'll be up there  
2 shortly. I hope a lot of you make it, too, very  
3 informal. See you then.

4 (Whereupon, at 5:17 p.m., the hearing was  
5 adjourned.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 DOCKET/FILE NUMBER: P074805

3 CASE TITLE: COLLECTING CONSUMER DEBTS

4 DATE: OCTOBER 10, 2007

5

6 I HEREBY CERTIFY that the transcript contained  
7 herein is a full and accurate transcript of the notes  
8 taken by me at the hearing on the above cause before the  
9 FEDERAL TRADE COMMISSION to the best of my knowledge and  
10 belief.

11

12

DATED: 10/24/2007

13

14

15

16

SUSANNE BERGLING, RMR-CLR

17

## 18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

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

23

24

25

SARA J. VANCE