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FEDERAL TRADE COMMISSION

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**IDENTITY THEFT VICTIM ASSISTANCE
WORKSHOP**

**BREAK-OUT SESSION
ROOM 532**

**MODERATORS:
JOANNA CRANE
HUGH STEVENSON**

TUESDAY, OCTOBER 24, 2000

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A T T E N D E E S

- Joanna Crane
- Hugh Stevenson

- Mari Frank
- Judith Welch
- Werner Raes
- Linda Foley
- Stephen Monson
- Mallory Duncan
- Ken Golliher

1 Joanna Crane, I did not commit the crime, and I swear to
2 this under penalty of perjury. But then don't you still
3 leave the victim with this burden of having to produce to
4 each of the financial institutions where there's a fraud
5 account, all of the supporting documentation? So, you're
6 putting back on the victim the burden you're trying to
7 take off of them, which was compiling the documentation,
8 copying it, sending it out and having to do it ten
9 different ways instead of one way for ten institutions.

10 So, what do we gain by reducing this to just a
11 one-page declaration?

12 MS. FRANK: We didn't say necessarily just a
13 one-page declaration. At least this is how I perceive
14 it, is that you'd have a one-page declaration similar to
15 what Werner was saying, okay? Then you'd have a police
16 report that you would have list the fraud accounts that
17 were on the credit reports that you would have to copy
18 for all of them. That would be one piece.

19 MS. CRANE: So, you would have to have a police
20 report? Here it's an option.

21 MS. FRANK: You would have to have a police
22 report or at least something from the DMV or some other
23 agency, maybe the Federal Trade Commission, and then a
24 cover letter. And what I know from going through this,
25 Joanna, is I'm going to write a different letter to Chase

1 Manhattan Bank about my particular account problem then I
2 am to let's say Sprint who I have another account with,
3 then I am with the IRS for someone working under my name.

4 And I think that's what my big concern was with
5 this, was -- and I don't have a problem with a couple
6 pages of a similar thing, like this is my name, this
7 is -- you know, I have to give my Social Security number,
8 whatever. The problem was is you were providing to all
9 of the creditors all of the documentation --

10 MS. CRANE: Well, that depends on how you read
11 it.

12 MS. FRANK: Well, no -- and more information
13 about all the other fraud. If they just see a police
14 report, that's all they need. This is a lot more copying
15 than --

16 MS. CRANE: Yeah, okay. So --

17 MS. FRANK: A lot more copying. The other
18 issue is is that when they're writing to the creditors,
19 they will not have those billing statements unless it was
20 a skimming incident.

21 MS. CRANE: That's exactly what this says.
22 This says if available. It doesn't say you must provide.

23 MS. FRANK: Right. But I need to tell you, my
24 fear is if this comes out as under the auspices of the
25 Federal Trade Commission and it says optional, credit

1 card fraud agencies are going to say, this is what the
2 FTC says and we're not going to help you clear your
3 credit until you do it, and that's sort of like --

4 MS. CRANE: You lost me there.

5 MS. FRANK: Okay. What I'm referring --

6 MS. CRANE: This is -- this is not -- this is a
7 declaration that was developed by the Federal Trade
8 Commission.

9 MS. FRANK: Right.

10 MS. CRANE: But our ownership of it stops
11 there. The transaction is between the victim and the
12 bank.

13 MS. FRANK: I understand, I understand that.
14 But, Joanna, what I'm saying in reality, when what really
15 is going to happen is that it comes out as a -- you know,
16 a sample or a usable form, every creditor who doesn't
17 want to make up his own form or every creditor who gets
18 encouraged to use it is going to say, if you don't fill
19 out everything here, if you don't do everything here,
20 we're not going to clear you from the credit reporting
21 agencies. And that's my concern.

22 MS. CRANE: Okay. But again, let's look at
23 what it says. After how the fraud occurred and --

24 MS. FRANK: I don't have any problem with the
25 first page.

1 MS. WELCH: Now, see, I would have problems
2 with the first page. Where are you?

3 MS. FRANK: Some of this --

4 MS. WELCH: I would have problems if I was the
5 victim.

6 MS. CRANE: Can I just back up? I'm sorry, I
7 didn't allow Hugh Stevenson to introduce himself or to
8 sign in on our schematic. Would you like a copy of this
9 to work from as well?

10 MR. STEVENSON: No, that's okay, I've got all
11 this stuff. Go ahead, go ahead.

12 MS. CRANE: Okay, great. I'm sorry, go ahead.

13 MS. WELCH: It talks about, I have been
14 previously known as and you want every name I've ever
15 been married under? Can we time limit this, maybe within
16 the last year or two?

17 MS. CRANE: Okay. So, would it be appropriate
18 to say, names used at the time of the occurrence?

19 MS. WELCH: Right.

20 MS. CRANE: And the same with addresses,
21 instead of getting --

22 MS. WELCH: Right.

23 MS. FRANK: For the last five years or the last
24 ten years. I'll tell you why they want -- why the credit
25 reporting agencies want to know that is because on the

1 credit report it will list that.

2 MR. RAES: Joanna, I'd like to just comment.
3 Before we get into breaking this down line by line --

4 MS. CRANE: Um-hum.

5 MR. RAES: -- you know, I want to revisit, I
6 really don't know if there's a need for this declaration.
7 From a long portion of perspective, I see the need for
8 the affidavit because that is the legal vehicle -- I know
9 I'm repeating from what you heard yesterday. But that's
10 the -- the affidavit is the legal vehicle that is the
11 signal to the financial institution something is amiss
12 here, I'm signing under penalty of perjury it's amiss,
13 take or credit this information back to my account. To
14 me, in law enforcement, really that's all that's needed.

15 I see problems with this affidavit just
16 philosophically in a couple of areas. Number one is,
17 there's too much information here. And what hands it's
18 going to get into -- and that could be a whole two-hour
19 discussion. But the other thing is, who's going to take
20 this and do anything with it, because I personally don't
21 want the victims to provide all that information. Why?

22 I mean, that's the financial institution's
23 responsibility in most cases to work with the victim.

24 MS. CRANE: Okay. Can I just respond to your
25 two questions?

1 MR. RAES: Sure.

2 MS. CRANE: The need for it. The need for it
3 was because victims have told us that this is what
4 they're having to provide to the creditors where they're
5 disputing accounts.

6 MR. RAES: Why do --

7 MS. CRANE: They don't just have to provide an
8 affidavit of who they are and attest to their
9 truthfulness. They have to provide supporting
10 documentation that they have what they have to be able to
11 show the creditor that, in fact, they're not the
12 perpetrator.

13 MR. RAES: Okay. But that's basically illegal.

14 MS. CRANE: And I know you're saying why, why
15 would the creditors want that? Well, we have to ask the
16 banks.

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1 MS. WELCH: No, they're not this lengthy and I
2 don't think the FTC is trying to say it has to be this
3 lengthy. I think they've done a really good job of
4 putting everything that everyone has asked for at any
5 time on an affidavit in a document, and then from there
6 will bring it down to something usable. I mean, this is
7 -- this would be scary to me if I was a victim.

8 MR. RAES: Oh, yeah.

9 MS. CRANE: All right. Now, to answer your
10 second question then, we'll go to Steve. Your second
11 question, who does it go to? It does not go to anyone
12 other than who the victim wants to send it to, who will
13 accept it, who's a creditor. In other words, this is not
14 going to be broadly distributed to some general group of
15 people outside the control of the victim. The victim
16 will say, I need to send this --

17 MS. FOLEY: That's incorrect.

18 MS. CRANE: Excuse me, let's not interrupt each
19 other. If I say, I have an account at Chase Manhattan,
20 Bank of America and Ameritech and I'm working with fraud
21 counselors at those three institutions, those are the
22 three that get it. I am not also going to be sending it
23 to a panoply of other creditors with whom I have no
24 relationship. So, I don't understand the fear of it
25 getting into the wrong hands.

1 MR. RAES: Okay. Well, the wrong hands could
2 be -- I'll use some stereotypical examples, the college
3 kids who get this on the receiving end in customer
4 service not necessarily the fraud investigator, how it's
5 filed in the financial institution is one example.

6 MS. CRANE: Would that be a concern?

7 MR. RAES: You know --

8 MS. WELCH: It certainly happens. I mean,
9 there's nothing in the --

10 MR. RAES: It can.

11 MS. WELCH: I mean, to stop it from going to a
12 call center, but that's --

13 MR. STEVENSON: Well, can I ask a question?

14 MS. WELCH: But that's regardless. The
15 information is already out there on the system anyway.
16 So, if they want to get at it, they can get at it without
17 the affidavits.

18 MR. RAES: That's correct, and I'll agree to
19 that.

20 MR. STEVENSON: So, that is an issue that
21 exists regardless of whether we do a standard form or 100
22 different forms.

23 MS. WELCH: Absolutely.

24 MR. STEVENSON: The information that you're
25 filing could get into the wrong hands.

1 MS. WELCH: Absolutely. They don't even need
2 an affidavit for it to get into the wrong hands.

3 MS. FRANK: Or not shredded or -- if it's
4 overly broad, you won't need that much --

5 MS. CRANE: Steve is next.

6 MR. MONSON: It comes back to the question that
7 I posed yesterday, and that has little to do with the
8 substance of the form as it does -- because my
9 understanding is this is more about victims yesterday and
10 today.

11 Somewhere along the line, I think, and it was
12 already mentioned here is where does this information go.
13 I think as a law enforcement official I would like -- if
14 this is to be collected, I would like to assure the
15 victim that, number one, there's a level of
16 confidentiality somehow. I don't know how that's
17 accomplished right now. And that it goes not just
18 shotgunned out, even though it may be to everybody that
19 we believe is the economic victim of the fraud, not the
20 personal victim, that it -- I think it needs to go
21 through, as I used the term yesterday, an honest broker.

22 Who, I don't know, would be the honest broker.
23 But the honest broker then is in a position to sit with
24 the victim, take this information, and it may be somebody
25 that the victim will essentially trust. It could be our

1 local victim-witness coordinators either in the police
2 department or the prosecutor's offices and so forth,
3 because that's part of what their job is, to work with
4 victims. And that dissemination of the information will
5 flow through that honest broker on a need-to-know basis
6 and then we have an ability to know exactly to whom the
7 information goes.

8 So that when Ms. Welch's bank wants the
9 information, we know that it doesn't go to customer
10 service. We know, in fact, that it went to the fraud
11 bureau and then we're in a position to assure the victim
12 that it just didn't go out there into the ether, it went
13 to an appropriate place where something real is going to
14 happen with it.

15 And I think before we even get into this,
16 that's -- that really needs to be addressed.

17 MS. WELCH: But those are internal policies to
18 each bank. Now, Chase does have internal policies on an
19 ID theft. If a call comes into the service line, they
20 automatically know it transfers to the fraud department.
21 They don't talk to the customer, only the fraud
22 department talks to the customer whether it be check
23 fraud, credit fraud, it doesn't matter. That's Chase,
24 but that's Chase's internal policy.

25 Everybody has to adopt that internal policy for

1 what you're saying to happen because it's nothing that
2 anyone can mandate. No one can say it has to go here
3 without policy in place at the institution.

4 MS. CRANE: It's only coming from a fraud
5 department. It doesn't materialize out of the earth. In
6 other words, this would be a document that's used for a
7 relationship where there is an individual on each side.
8 So, to try and add a broker in that relationship, to me,
9 the victim then loses control because they're no longer

1 honest. It's a small percentage, but it does happen.

2 She had my name, my address, my driver's
3 license number, my Social Security number. She already
4 had that information anyway. She was my employer. But
5 she didn't have passwords on the account. When it went
6 to court, okay, I was able to point to who had done it to
7 me.

8 MS. CRANE: Tell me how it's different using a
9 standard form where it's simplified for the victims, say
10 they only have to fill out one form, and having discovery
11 done in the same case where they're going to discover 11
12 different documents that are still discoverable that have
13 this information in 11 different ways. I just don't see
14 where the harm is accelerated.

15 MS. FOLEY: Well, because what I was requested
16 to provide to the creditors was nowhere extensive as
17 this, and what was then subpoenaed as records --

18 MS. CRANE: Well, then, let's pare this down.

19 MS. FOLEY: Some of this information --

20 MS. CRANE: But let's not raise issues that
21 can't be dealt with.

22 MS. FOLEY: Right. Well, what I'm saying is
23 that some of the information on here, in trying to make
24 something that fits all situations, this entire document
25 then becomes part of the legal record, which is then

1 passed on to a defense attorney. By saying -- some of
2 this information is appropriate for a CRA, for instance,
3 or for something which would never be subpoenaed into the
4 court case at that point, because there were subpoena
5 records -- they wanted the affidavit from First USA
6 because the credit card company was one of the ones
7 involved.

8 Some of this information they would not have
9 needed or would not have been part of the record for the
10 court to -- I'm trying to control the amount of

1 that people see of what information here creates that
2 problem, and you all have identified several of them.
3 But I think the other examples would be helpful.

4 MR. RAES: Joanna, if I could --

5 MS. FRANK: Let me just ask you --

6 MR. RAES: Oh, go ahead, ladies first.

7 MS. FRANK: I was just going to say on number
8 four on the last page, 1, of 1, I had a concern, Joanna,
9 that it says here, you know, you may also provide a form
10 to the identity theft clearinghouse, which is great. If
11 I were a victim I would feel safe with them.

12 But then it says, this information -- about the
13 middle of the paragraph -- may be shared where doing so
14 may assist in resolving identify theft related problems
15 with consumer agencies -- I mean, government agencies,
16 consumer agencies and other private entities. I really

1 than filing a separate complaint with the Federal Trade
2 Commission, we would backload this into our complaint
3 database and that is what's referred to here. So, this
4 would be available on consumer sentinel to law
5 enforcement.

6 We also plan to make referrals to -- well,
7 we're asked to refer cases to consumer reporting
8 agencies, which we have not yet gotten the mechanism to
9 do, but that is part of our mandate.

10 So, that's what that goes to. We would
11 backfill information from here that does relate to our
12 complaint forms so that the consumer would get an FTC
13 complaint simultaneously with filing this. And that's
14 what we're --

15 MS. FRANK: I just think whether you're going
16 to do it on the website or here, I think, again, it gets
17 to the issue of the privacy principles, of giving notice
18 and giving specific notice as to who it's going to be
19 shared with.

20 MS. CRANE: Well --

21 MS. FRANK: And because of --

22 MS. CRANE: Maybe --

23 MS. FRANK: Just a minute. If there is
24 something and they have access to be able to see it in
25 case it's incorrect and then have access to correct it,

1 that's fine.

2 MS. CRANE: Okay. This is -- I am saying that
3 the problems you have with this, you must also be having
4 with our data clearinghouse.

5 MS. FRANK: Then I will be, yes.

6 MS. CRANE: So, we need to sort of talk about
7 that --

8 MS. FRANK: But I didn't know you were doing
9 all that because I didn't think it was then clear on your
10 website how many other private entities might be getting
11 it. So, it is the same issue.

12 MS. CRANE: When you say get it, it is -- as I
13 said, we share it with the nationwide law enforcement.
14 We have been asked to find a way to refer complaints to
15 consumer reporting agencies and other appropriate
16 entities who can assist the victim. So, if we knew that
17 Chase wanted to really assist victims, we were trying to
18 find a way to let them know what victims had complained
19 about Chase. So, that's what we have in mind.

20 MS. FRANK: And I'm not sure if you and I are
21 on the same wavelength, though. I don't have a problem
22 with doing that. If a victim knows it, I don't have a
23 problem with it. I mean, if I were a victim and you said
24 -- I mean, you've already helped some of my victims, so I
25 want you to know that I honor that. But I never will

1 refer, for example, a victim to you without the
2 permission, may I refer this to these people, and that's
3 my concern--

4 MS. CRANE: Okay.

5 MS. FRANK: -- is that once I fill out some
6 kind of document and it's this nebulous, it scares me
7 because in case it's incorrect or someone has somehow
8 filed as an identity theft victim under my name and
9 they're not, then how do I correct that? I think, you
10 know, those of us who are victims have been a little bit
11 more sensitive to this, but we want to know where it's

1 Now, I work close with Chase and all the banks
2 and they're not my enemy, believe me. We have a
3 partnership. But step one for law enforcement is getting
4 Chase to accept the affidavit in my example, become the
5 victim, get their investigator working hand-in-hand with
6 me, and the vehicle for doing that is the affidavit.
7 There's no legal requirement to do this as a nicety.
8 Remember yesterday I talked a lot about a wish list,
9 things we want to do, things we'd like to do. There's no
10 law that says they have to do this, no law that says that
11 says they have to notarize it.

12 MS. CRANE: Understood. I mean, there's
13 definitely no law. But to get the job done, it seems
14 like they need the information.

15 MS. WELCH: But there is something, for
16 instance, here, as everyone knows, I'm on the non-credit
17 side. Everything we do is governed by the UCC. The UCC
18 says what you have to do to submit a fraud claim, what
19 information you must give the bank. The UCC modify it,
20 which we do in our terms and conditions. And in there we
21 say, you must have a notarized affidavit. So --

22 MR. RAES: Well, but there's cases --

23 MS. WELCH: -- I don't really --

24 MR. RAES: Well, there's case law, though. I
25 know in California and other states there's case law that

1 says that that is not enforceable because of the
2 financial burden placed upon the victim.

3 MS. WELCH: But if it's not a financial burden.
4 If there's a Chase there that they can walk into --

5 MR. RAES: Sure, sure.

6 MS. WELCH: -- which everyone could get it for
7 free, then that's a hard -- I mean, I don't want to --
8 the only reason I'm raising this is I don't want people
9 to say, oh, no, you don't have to because -- then it
10 puts --

11 MS. FRANK: If the bank pays for it, it's fine.

12 MR. RAES: All I want is to get it to the level
13 of the bank and then I can work real good with the --
14 there's no problem with the investigators.

15 MS. CRANE: Okay, Steve, you had your hand up.

16 MR. MONSON: The question for you, Joanna, has
17 there been any determination that your clearinghouse
18 database is or is not covered by the Freedom of
19 Information Act? Has anybody -- and if you're saying
20 it's not, has anybody challenged that?

21 MS. CRANE: Let me just try to --

22 MR. MONSON: Because I think that becomes an
23 issue here in the statement.

24 MS. CRANE: Well, it's -- I mean, we're covered
25 both by the -- what's it called, the --

1 MR. STEVENSON: Yeah. The answer would be yes,
2 it is covered by the Freedom of Information Act, which
3 has various exceptions and so probably Exemption 7
4 regarding investigations would provide some protection,
5 Exemption 6 regarding privacy would provide some
6 protections, and there may be some others that might have
7 some application in particular instances. But that is
8 one of the -- obviously, we have to --

9 MR. MONSON: Would it be within the realm of
10 possibility to state that the -- at least -- well, of
11 course, this is going to be a standard statement, but if
12 you file with FTC somewhere along the line, that FTC
13 considers your filing to be exempt from FOIA under these
14 provisions, understanding that there's going to be
15 another attorney out there who will challenge it. I
16 mean, we all know that, that's what we get paid for.

17 MS. CRANE: We'll have to take that up with the
18 General Counsel again and see whether there's something
19 that they would want to --

20 MR. MONSON: I mean, that would be a concern
21 that I think is legitimate. It again goes to that
22 protection that victims want an assurance about, that
23 they are not going to be revictimized in this process.

24 MR. STEVENSON: I think that your question
25 itself identifies that there is that trade-off. But you

1 example of this is the father who tells his son, you
2 know, take my credit card, go out and buy yourself a new
3 pair of jeans for school. The son goes down to Dillard's
4 or to Macy's or wherever else, he buys Levi's, he buys
5 Tommy Hilfiger, Polo, everything else. A month later,
6 the father gets the bill back, looks at it and says, \$800
7 for back-to-school clothes. I think you were going to
8 spend 50 bucks.

9 He calls the retailer and says, someone used my
10 card without my permission, it's not my act. And it's
11 registered as an identity theft concern.

12 What -- the retailer is in a difficult
13 situation. They have to balance what appears to be a
14 claim of identity theft against what's probably an
15 authorized unauthorized use. And they typically have
16 developed forms, and each retailer has its own standards
17 much simpler than this form as a way of trying to
18 distinguish between those two kinds of cases.

19 And I think you would get a fair amount of
20 pushback from retailers, not on true identity theft
21 cases, but on the ability to separate out the false
22 identity theft claims from the regular ones if they were
23 required to use a form that's quite this comprehensive.

24 MS. CRANE: What would you take out? Where do
25 you see that we could start eliminating?

1 MR. DUNCAN: Well, there are -- typically what
2 they want to find, and again, I don't know how much of
3 this is public record, so I'm going to be circumspect
4 with what I state here.

5 MS. CRANE: This is on the public record.

6 MR. DUNCAN: Okay. I'll be very circumspect.
7 They're trying to determine very specific facts that
8 relate to that transaction and relate to that person's
9 commitment to the claim that there was identity theft
10 going on in this case.

11 So, for example, they may have a one-page form,
12 first of all, much easier to fill out, and secondly, they
13 may ask for very specific details, and thirdly, they
14 might say, not all do, but they might say, I agree that I
15 am willing to prosecute the person who perpetrated this
16 fraud if they are found.

17 Obviously, in a case where it's a father and
18 son and the father thinks about it and he says, you know,
19 I'm not really willing to do that, I did authorize my
20 son, perhaps I should discipline him in some way, but I'm
21 not going to sign a document that says that. That tends
22 to help ferret out those kinds of gray area cases. I
23 don't think this form, if it goes to 100 different
24 companies, does that.

25 MS. CRANE: It only goes to companies where the

1 victim believes that there's been identity theft, and in
2 that case, the company may be in that same position,
3 they're trying to ascertain whether the victim is a true
4 victim or a fraudulent fraudster. So, it sounds like --

1 called an interview. Now, are the retailers not planning
2 on doing that process or can you not answer something so
3 generally for all?

4 MR. DUNCAN: Again, it depends on the retailer.
5 Many retailers do a telephone interview with the person
6 as well, and basically, in some cases, they're looking
7 for bona fides, is this a true problem, a problem that
8 we're seeing in a number of different locations, or is
9 this someone who's playing a game. And unfortunately,
10 about -- at least I'm told -- 50 percent of the claims of
11 unauthorized use occur when there's a family member
12 involved. How much of that is true identity fraud and
13 how much of that is in this gray area, it's very
14 difficult to determine without some sort of back and
15 forth communication with them.

16 MS. CRANE: Let's start going through here, but
17 go ahead.

18 MS. FOLEY: You do a lot of telephone interview
19 information, a lot of this there. May Mari or if there's
20 another attorney on the panel can sort of answer a
21 question. If something's in writing, that's
22 discoverable, it can be passed on.

23 MS. CRANE: Right.

24 MS. FOLEY: If something -- if you have done a
25 telephone interview, okay, and I've given you some of

1 this personal information that you've wanted and my
2 detective contacts you and it's going to court and we
3 need documentation to show that a crime occurred, do they
4 get those telephone records as well or only the paper
5 information you get?

6 MS. FRANK: It becomes paper when you write
7 down notes, so that's just --

8 MS. WELCH: We have a system that it's inputted
9 in, but truthfully what they usually want is they want
the affidavit, they want copies of checks -- in my case

1 MS. WELCH: We may ask just to kind of touch
2 the water on it if you think you've really been affected.
3 But we would never get account numbers. Usually --
4 actually what happens with any victim of fraud is they
5 will tell you their entire life story. So, you don't
6 have to ask them a lot.

7 MS. CRANE: So, as an initial matter -- okay.

8 MR. GOLLIHER: Thank you.

9 MS. CRANE: I think the resolution of the group
10 is that rather than have everything to all, have only
11 that institution's account information and attached
12 documentation, if you have a billing statement or a check
13 or whatever going back to them. All right. So, question
14 1 would be --

15 MS. FRANK: We're just hearing from the
16 retailers --

17 MS. CRANE: See, that's not the part I've got
18 the problem with.

19 MS. FRANK: Just a minute. Let's go back to
20 this --

21 MS. CRANE: The problem that I get here --

22 MS. FRANK: Let me just go back -- and I think,
23 Joanna, I want to kind of talk about what you said, which
24 is I was hoping you would say, which is that the retailer
25 needs their specific information, as you were saying, and

1 that's what they want in either a cover letter or some
document. They don't have the time to read all the

1 pattern has been in terms of fraud. I guess that's a
2 generic concern with a document like this, is that the
3 retailer is going to want to tailor it anyway.

4 MS. CRANE: Well, the idea is to try and
5 provide something that will simplify the burden for the
6 victim. So, if your feeling is that that's a non-starter
7 because every retailer is going to want to tailor it,
8 then I guess we can only go so far.

9 We can lead a horse to water, we can put a
10 model out there, we certainly cannot make it mandatory or
11 anything. We're hoping there will be buy-in, we're
12 hoping that what we come up with will be attractive, that
13 people will want to do it as victim assistance. If it
14 doesn't come to fruition we can't, certainly, mandate it.
15 So, I hear what you're saying, but I still think it's
16 worth trying to come up with a standard form.

17 MS. FOLEY: Even if it's down to 50 percent of
18 the work the victim has to do, that's 50 percent of the
19 time we've spent.

20 MS. FRANK: Well, my question gets back to
21 this. If this is a model form and the victim gets it,
22 let's say, from your website and fills it out and then
23 wants to send it to everyone, and then they get from all
24 the retailers that belong to this association or another,
25 that has not cut down on my time, that has not cut down

1 on anything. It's given me an additional burden.

2 MS. CRANE: I would suggest the way they do it
3 with the college common application that in some central
4 location, possibly our website, there are a list of
5 creditors and retailers who will accept --

6 MS. FRANK: That would be perfect.

7 MS. CRANE: That way, you'll only know --
8 you'll only know -- you'll only bother to do it if two or
9 more institutions on your list would accept it.

10 MS. FOLEY: That's a great idea.

11 MR. MONSON: Joanna --

12 MS. WELCH: It's been our experience that
13 retailers, very many of them, don't have affidavits.
14 They come -- the customers come to us and say, do you
15 have an affidavit we can use for a retailer because they
16 don't have one. So, we have a generic affidavit that
17 says nothing about Chase Bank on it to give to people.
18 So, I think they would love this. I think a lot of the
19 ones I deal with.

20 MR. MONSON: I somehow hear that the retailers,
21 and in the case of a bank with a credit card, I think, or
22 demand deposit, has a specific interest in their
23 particular problem with that customer or with the victim.
24 At the same time, if I understood it correctly, the three
25 credit reporting agencies have a more omnibus interest

1 and I kind of sense that maybe -- I apologize right up
2 front for both of you -- there's a need for two.
3 One short form for a retailer and a bank, say a
4 credit card company, and one slightly more comprehensive
5 form that would go omnibus to the three reporting
6 agencies --

7 MS. CRANE: Steven, I'm sorry to interrupt.
8 This is not contemplated as a vehicle for CRAs. This is
9 only --

10 MS. FRANK: Right. They asked for their own --
11 you have to write specific letters that outline specific
12 disputes that you have. So, that's not for a CRA at all.

13 MR. MONSON: Oh, okay, fine. Then I
14 withdraw --

15 MS. FRANK: You still have to have that burden.

1 MS. FOLEY: There's still Social Security, IRS,
2 criminal identification -- there's still a whole list of
3 other areas that they are going to deal with separately
4 as well.

5 MS. CRANE: So, just moving very quickly, I'm
6 on page two of 1. I think probably the full legal name
7 is a --

8 MS. FOLEY: That's mandatory.

9 MS. CRANE: That's mandatory. Previous names
10 used at the time of the event and not greater than, I
11 guess five years did you want to say?

12 MS. FOLEY: Well, we just said that. Previous
13 names at the time of the event. Whereas if I were to
14 read this I'd go, you know, how -- do I have to go back?
15 None of this was pertinent to the event that happened
16 here. So, what you said, keep it pertinent to that
17 specific event.

18 MS. FRANK: Just say for five years just to
19 give it a year.

20 MR. GOLLIHER: May I suggest a brief preface
21 that was brought up earlier by another commenter?

22 MS. CRANE: Um-hum.

23 MR. GOLLIHER: In essence, a notice to the
24 creditor, this keeps you on notice as required under
25 paragraph so and so of the Fair Credit Reporting Act and

1 what the creditor is required to do from that point. In
2 other words, if I send it to Chase, they don't need to
3 know this. If I send it to ABC National Bank in
4 Muskogee, Oklahoma, I would like them to -- again, two
5 people today testified that the banks need to follow the
6 rules.

7 MS. CRANE: I guess what we were thinking is
8 that most of the people wouldn't get this from our
9 website, they would be sent it by Muskogee Bank.

10 MR. GOLLIHER: Right, right.

11 MS. CRANE: So, I agree with you that if the
12 legal effect is to put the bank on notice, perhaps we
13 need to include it in the document. But by no means do
14 we suggest that a victim mail this off to a bank where
15 they're trying to resolve a dispute without personally
16 contacting them and letting the fraud department know
17 that they're going to send it so that there is that
18 relationship, so the victim knows who it's going to, who
19 it should be addressed to, that there's a fraudulent
20 account.

21 I mean, all that groundwork has to be laid
22 first. You have to have already closed that account.

23 MS. FOLEY: And there's usually an
24 investigation number that would go on here somewhere as
25 well.

1 MS. CRANE: Right. So, this is coming after
2 the fact, not as the first notification to an
3 institution.

4 MS. FRANK: Joanna, that's a really good point
5 you just made. I think maybe you need to add some little
6 preface to say this is -- it's contemplated that you will
7 send this after you have, number one, called and closed
8 the account, put a fraud alert on the account, gotten the
9 name of the contact person in the fraud department and
10 that you have already said you will be sending them this
11 documentation.

12 MS. CRANE: Right.

13 MS. FRANK: So, even though it's assumed by
14 you, I think it may not be assumed. And even if you do
15 have it on your website, which you probably will, then it
16 will be clearer.

17 MS. CRANE: Okay.

18 MS. FRANK: The only other thing as a preface
19 that I think would be really helpful is to have a notice
20 of -- kind of like what I was assuming you were saying
21 and that I think would meet some of the privacy concerns
22 of victims is this, is that you say, you know, in filling
23 this out, I want you -- I as the victim have already been
24 victimized and I ask that you keep this confidential and
25 when you are about to discard it that you shred it or

1 discard it in the proper manner and safeguard my
2 information.

3 I think that the issue we want to bring up is
4 to have a little thing from the victim clarifying how
5 they want it safeguarded.

6 MS. CRANE: Okay. We tried to get at that a
7 little bit, but I see that we could add more.

8 MS. FOLEY: Maybe even a notification that it's
9 being released through the court system and the
10 notification.

11 MS. CRANE: Right.

12 MS. FRANK: Like, if you're subpoenaed, please
13 contact me first.

14 MS. FOLEY: So, at least -- because if the
15 judge in my case, once she found out that my imposter had
16 this information, ordered that it be disposed and that
17 she would not be allowed to have it. So, at least I had
18 some recourse. If I had like noticed something, I could
19 have done it ahead of time.

20 MS. CRANE: Good. So, that's a good idea,
21 notification is released so you have that --

22 MS. FOLEY: I could go to my DA then and say
23 please.

24 MS. WELCH: But does that put -- does that put
25 a burden on the DA's office or the prosecutor then?

1 MS. FOLEY: They have a burden anyway to --

2 MR. MONSON: Yes, it does. But at the same
3 time, prosecutors have to keep in mind there is -- as we
4 talked yesterday, there are two victims. There are the
5 economic victims and there are the personal victims. The
6 economic victims will, we hope, be eventually recompensed
7 in some way, possibly through restitution or what have
8 you. The personal victims probably never will get back
9 their entire life. I think that's understood.

10 We, as prosecutors, should not contribute to
11 their misery. So, to the extent that the discovery rules
12 allow, I know that in my state discovery rules do allow
13 that the prosecutor can say, look, the defense asked for
14 X, Y and Z. We believe that this should either be,
15 number one, held by the court, not disclosed or if given,
16 given subject to rules.

17 MS. FOLEY: They do that for domestic violence.

18 MR. MONSON: It's probably much the same.
19 Those -- there's already a framework in that context, and
20 it could be easily applied here because it's almost the
21 same.

22 MS. CRANE: I had understood it would be the
23 bank that was disclosing it to the prosecutor or to the
24 State's Attorney, but simultaneously notify the victim,
25 by the way, I just had to turn this over to this

1 prosecution, so the burden is then on the bank or the
2 creditor not on the court system.

3 MS. FRANK: Actually, if you had to give
4 notice, the burden would be on the victim to get an
5 attorney to get a protective order. That's what it would
6 be.

7 MR. MONSON: Um-hum.

8 MS. FRANK: You just have -- the only burden
9 you would have as Chase is just to notify the victim that
10 you've been subpoenaed and then you have 30 days to
11 respond to it.

12 MS. WELCH: That's a huge burden, though. I
13 mean, we'll have to talk about that more. That's a huge
14 burden.

15 MS. FOLEY: There's got to be something, as we
16 said, like domestic violence, and I'm sure they must have
17 policies where they're not disclosing certain pieces of
18 information to a possible perpetrator of domestic
19 violence to protect the victim.

20 MS. FRANK: They have to give it to the court.
21 They don't have a choice.

22 MS. FOLEY: To the court, but they don't have
23 to give it to the perpetrator.

24 MS. CRANE: So, you're saying that their
25 record-keeping and the whole accuracy of the trigger

1 mechanism would be very, very difficult for banks.

2 MS. FOLEY: Right, right. Every time we're
3 subpoenaed to produce documentation to then have to stop
4 and to call the victim or to notify the victim, yeah.

5 MR. MONSON: I accept that there is the
6 possibility that in almost every case -- and correct me
7 if I'm wrong -- that if the bank receives a subpoena
8 duces tecum from whatever jurisdiction, it's not
9 returnable immediately, there is a time frame. Perhaps
10 jurisdictions have to be made aware, as in the domestic
11 violence context, that if a subpoena is issued by -- not
12 by the state, because the state will have obligations
13 already, but by anyone else and in this case the
14 defendant, that the defendant has the affirmative
15 obligation to give notice to this identity victim, who
16 will then have an independent right to move to quash the
17 subpoena or seek a protective order.

18 MS. CRANE: So, that would be --

19 MR. MONSON: It takes the bank off what you're
20 concerned of, but at the same time the bank can be
21 alerted because you can look at the subpoena and say,
22 whoa, there was not notice here to all the parties, and
23 the bank would be on a firm footing to come into court,
24 it might be there to produce the records, but say, wait a
25 minute there's been non-compliance with the court rules

1 MS. FRANK: The defendant is not going to
2 subpoena records because he hasn't been charged yet.

3 MR. MONSON: No. But there are instances, and

1 minutes left. The issues you were just talking about are
2 present under the current system right now. So, why
3 don't we put those aside as really not necessarily linked
t

1 MR. GOLLIHER: He virtually insisted on it.

2 MS. FOLEY: Okay, that's right because
3 Travelocity.

4 MR. GOLLIHER: Yes, that's the portal.

5 MS. CRANE: He was saying that's how we do our
6 fraud investigation. An alternate number. Obviously,
7 this is optional anyway.

8 Date of birth. Do the banks like that to
9 identify people or is this --

10 MS. WELCH: Well, it depends. If it's our
11 customer who's saying that something has happened, then
12 we already have that information. If it's not, we might
13 like that.

14 MS. CRANE: And we find for check fraud, I
15 think it's -- at least 50 percent of the check fraud is
16 not your customer. It's someone who's out of the blue, a
17 new account was established in their name.

18 MS. FOLEY: Can we put the word optional there,
19 and if someone wants that information, they can always
20 contact them.

21 MS. FRANK: To me, I don't have a problem with
22 it because if your imposter is 20 years younger than you,
23 it's going to show up right away, you want to see that
24 date of birth, I would think, as the creditor.

25 MS. CRANE: What about Social Security number?

1 MS. FOLEY: I think it's going to be necessary
2 because there's too many records linked to it.

3 MS. WELCH: Right. I think everyone would --
4 how could you know if the Social Security number on your
5 file was good or bad or whatever if you don't know what
6 the real Social Security number is.

7 MS. FOLEY: The imposter already has it anyway.

8 MS. CRANE: Okay.

9 MR. MONSON: Well, you know, the victim is
10 filling this out and also we're talking about that it's
11 in the affidavit or notarized or not. Most states also
12 have a -- essentially we do what's called a
13 certification. As long as you're saying I sign this
14 under penalty of -- you know, that this is truthful and
15 if anything's false here I can be prosecuted and so
16 forth, and there's a boilerplate in every state.

17 MS. CRANE: Right.

18 MR. MONSON: I think that the victim is doing
19 this in part in good faith to help clean up the mess
20 that's been created. I don't think we're going to
21 presume the victims are lying because they, by signing
22 it, will subject themselves to further pain and suffering
23 if they're lying. So, to the extent that you may need to
24 get certain information, as long as it's accurate and
25 that we've included some of the confidentiality issues,

1 maybe that can -- that's fine. That mother's maiden
2 name, though, has to come out.

3 MS. CRANE: Yeah, I've scratched that out.
4 That's gone. This section here, was it too complicated?
5 What we were trying to do was to get them to state their
6 position relative to the fraud, that they didn't
7 authorize it, that they didn't benefit from it. And then
8 it's sort of a Chinese menu. People that I do know did
9 this without my authorization, or people that I don't
10 know did it without my authorization. Is that too
11 complicated?

12 MS. WELCH: Couldn't 12 and 13 just be merged
13 together? I know on our affidavit, in one sentence we
14 say exactly that, I didn't authorize it and I didn't
15 receive the benefit.

16 MS. CRANE: That's a good idea.

17 MS. FRANK: And 15 should be, I don't know much
18 about this at all.

19 MS. CRANE: So you want it in plain English.

20 MS. FRANK: Yeah.

21 MR. MONSON: The more you can do in plain
22 English, the better.

23 MS. FRANK: Lots of times people don't even
24 know how it happened, how they got the information.

25 MS. CRANE: I think that -- yeah, that's what

1 we're trying to say.

2 MS. FOLEY: Have you put this through a
3 readability test at all?

4 MS. CRANE: No, we haven't. Usually we run it
5 through OCBE, our consumer and business ed people. But
6 we didn't have time.

7 MS. FOLEY: Okay.

8 MS. CRANE: So, we will definitely do that.

9 MS. FOLEY: Because you have a really high
10 readability level on this and I'd bring it down to a
11 sixth grade readability level.

12 MS. CRANE: Okay.

13 MS. WELCH: Did we decide to keep 14 and 15?

14 MS. CRANE: I think that we'll make the
15 readable but it's basically people that I know did this
16 or I don't know who did this or how it happened.

17 MS. WELCH: Could we put something -- I mean,
18 just to make it so much simpler. If I know who did this,
19 their name and information is below.

20 MS. FRANK: Well, that's what we were talking
21 about yesterday, if on page 12 you would kind of combine
22 that.

23 MS. CRANE: Right.

24 MS. FRANK: If you know, you can give
25 information and put it right there instead of going to

1 another page. Right there.

2 MS. FOLEY: Fourteen and 19 go together and 15
3 and 20 go together.

4 MS. CRANE: Fifteen and 20 go together. What
5 was 20? I forgot.

6 MS. FRANK: No, 15 and 18.

7 MS. CRANE: Fifteen and 18, yeah.

8 MS. FOLEY: No, it doesn't.

9 MS. CRANE: Sort of it does, sort of it does
10 because 18 says that people I don't know presumably got
11 this information by doing something now is what it is.
12 Our hotline shows that most of the time people don't
13 know. They shouldn't even be bothering to ask it since
14 most people don't know --

15 MS. FRANK: Well, sometimes they do, because I
16 did find out, for example, that mine got my credit
17 report. I found out later. So, if they do, it's
18 helpful.

19 MS. FOLEY: The one thing I -- the word checks,
20 bank checks or something like that, because --

21 MS. CRANE: Right.

22 MS. FOLEY: There's a lot of victims who have
23 thrown away a check stupidly in the trash and --

24 MS. CRANE: I got those all three yesterday,
25 indicate with a check, and we would combine those.

1 Werner and Barry both thought it would be
2 advisable to add a question, are you going to prosecute,
3 yes, no.

4 MR. GOLLIHER: Assist in prosecution.

5 MR. DUNCAN: That's what some retailers put on
6 their -- they get a formal statement. I am willing to
7 prosecute.

8 MS. FRANK: First of all, the state prosecutes.
9 It's not --

10 MR. MONSON: Thank you.

11 MS. FRANK: I am going to assist in the
12 prosecution. But can I add one thing that I think was
13 important that got brought up yesterday, if somehow could
14 we say something, if someone I know has done it, they are
15 willing to take over this account.

16 MS. FOLEY: Yes.

17 MS. FRANK: Because that's what we talked
18 about. Sometimes when a family finds out that it --
19 let's say a child did -- you weren't here to view this
20 yesterday, were you? A stepchild finds out -- I mean, a
21 father finds out that his stepchild did it. The
22 stepchild is willing to take over the account. So, the
23 creditor should know that.

24 MS. CRANE: Again, it wouldn't commit the
25 creditor to a particular response, but would be

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1 MR. GOLLIHER: Well, what I'm getting to is
2 I'll go after the son. You have --

3 MS. FOLEY: If you'll go after the son, then
4 I'd like to see it in there.

5 MR. GOLLIHER: Okay.

6 MS. FOLEY: Because that takes the burden off
7 the family member.

8 MS. CRANE: All right. I think what we're --
9 we're not going to be able to discuss all of these today.
10 So, what we had to do is put it on our website and maybe
11 get feedback.

12 But let's see, should we -- okay, we're going
13 to combine 15 and 19. Twenty, does this help? Does this
14 add something that the victims should be able to give and
15 that the creditors would want to know, how the victim
16 first discovered it, or is this just verbiage that's not
17 needed?

18 MS. FOLEY: I think it's needed.

19 MS. FRANK: You know what, it's too much, it's
20 going to go in their cover letter. I think it's too much
21 to do it each time, to send it to them, I really think
22 it's too much.

23 MS. CRANE: Judy, do you generally collect
24 this?

25 MS. WELCH: We talk about this in the interview

1 with the customer because we want to know if they knew
2 about it in January and kind of just didn't do anything.

3 MS. FRANK: But I think for example -- this
4 gets back to -- is it Mal?

1 one --

2 MS. FRANK: No, because you're not -- when you
3 get a police report, it just lists that, you know,
4 Citibank was a victim, da, da, da, da, da. The only
5 thing I know, when I was victim -- and I don't know if
6 this happened to you -- but I know most of my victims, I
7 tell them -- and it's in my book -- when you send your
8 cover letter, send a copy of your police report because
9 it will clean up faster. Otherwise, my experience with

1 MS. FRANK: You might say an addendum --
2 attached is an addendum for the specific financial
3 institution.

4 MS. FOLEY: Would it help each financial -- do
5 you guys talk between each other if -- because I know
6 when I was given -- when I went to the different banks, I
7 was given either a reference number or an investigation
8 number.

9 MS. WELCH: Like you get a case number.

10 MS. FOLEY: Is that so the -- because I've been
11 to the CFCIA meetings, California Financial, they talk to
12 each other. Do you guys -- if you knew the investigator
13 who was working on it for each bank, would you talk to
14 them?

15 MR. DUNCAN: It depends on how the fraud
16 occurs. Sometimes, for example, you'll find someone
17 who's going around using fraudulent information in a
18 mall, going from store to store to store, in which case
19 basically the loss prevention people will pick up on that
20 and they'll use -- they'll communicate.

21 MS. FOLEY: So, it's something they'll contact
22 the --

23 MS. FRANK: You could put attached is my police
24 report and put optional.

25 MS. CRANE: Yeah, that's here.

1 MS. FRANK: Or at least say police report
2 number.

3 MS. CRANE: Actually, if you look here --

4 MS. FRANK: Yeah, I know it's in the back.

5 MS. CRANE: It's in the back. Okay.

6 Unfortunately, my boss is giving closing remarks in two
7 minutes. I can't miss it because he's my boss.

8 MS. FOLEY: Thanks for your patience.

9 MS. CRANE: Thank you all very much. We'll put
10 this on the website with modifications and then we'll
11 hope to get further feedback from all interested parties.

12 MS. FRANK: So, let us know when it's going to
13 be up and we can give you feedback.

14 MS. CRANE: Certainly.

15 **(Whereupon, at 12:45 a.m., the session was**
16 **concluded.)**

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