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<u>EXHIBITS</u>	<u>REFERENCED</u>	<u>DESCRIPTION</u>
Exhibit A	220	Basic Staff Services/Overhead (Kansas City 1998)
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FEDERAL TRADE COMMISSION

In the Matter of:)
Funeral Rule Review Workshop) P984407
-----)

Thursday, November 18, 1999

Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The above-entitled matter came on for
rulemaking workshop, pursuant to notice, at 8:50 a.m.
before Chairperson Eileen Harrington.

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Harvey Lapin	Cremation Association of North America (CANA)
Glenn McMillen	Service Corporation International (SCI)
Harry Neel	Jefferson Memorial Cemetery and Funeral Home
Robert Ninker	Funeral Ethics Association (FEA)
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P R O C E E D I N G S

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INTRODUCTIONS AND OVERVIEW

MS. HARRINGTON: Good morning. Since you're all here early, we'll start early. This is better than an on-time group. My name is Eileen Harrington. I'm the associate director for marketing practices at the FTC, and my role today is to facilitate the discussion here at the table and at the end of the day with any of you who would like to make statements. There is a sign-up sheet for people who are not participating here at the table, and where is that?

VONI: In the foyer right outside the door.

MS. HARRINGTON: Did everyone hear that? If you want to sign up to participate during the public participation portion of today's workshop, there's a sign-up sheet out in the foyer, and you may sign up there, and you must sign up, because we won't call on you if you haven't signed up.

As I said, I'm Eileen Harrington. I have with me today my colleagues from the division of marketing practices, Myra Howard and Allen Hile, who may take stints facilitating during the day.

We have a very full agenda, and we will adhere to it strictly. The time limits are important. We have

a lot of ground to cover, and I will certainly exercise my prerogative to hurry you up and move us along. We want to hear what you have to say, but if you are speaking and aren't making a new point or responding to a question that's out or in other ways moving the conversation forward, I will interrupt and move us along.

In a moment we're going to go around and have introductions, but let me go over some ground rules first, if I may. First of all, this is part of the process of making a record for us to review in connection with our review of the Federal Trade Commission's trade regulation rule that governs the marketing and sale of funeral goods and services.

Because we are making a public record, we have a court reporter with us, Susan, who's down here in the burgundy jacket, and there are some things that we need to do to make it possible for her to do her job. First of all, she has a seating chart for those of us here at the table. It's very important that we all stay in our places today. That is, you can't move around or that will really, you know, goof things up, and we'll have a record that has, you know, Lisa Carlson representing the NFDA or something like that, which we really -- I think we would recognize the error in that record. So, please

stay in your places where your placards are.

Also, as we get started this morning, the first couple of times that you speak, would you please identify yourself to make it easier for Susan so she can get into a groove here recognizing voices. For those of you who are not participating at the table who participate later in the day, you're going to have to identify yourself so that Susan can get down in the record who you are. So, that's the first important rule. We have to help our reporter make a good record.

The second rule that you need to know -- I think, Jennifer, we have a place for you up here, don't we?

MR. HILE: Yes, we do.

MS. HARRINGTON: Great.

The second important rule is whenever you speak, you need to speak into a microphone. We don't have enough microphones at the table to have one per participant, so you'll have to help one another out, move them around, but speak into the microphone. We have an overflow room downstairs, and it's being video-transmitted, so that there are people downstairs who want to hear and watch this proceeding, and if we don't speak into the microphone, they will think that we are lipsinking or something, and it won't come through.

So, speak into the microphone.

The third rule is that for those of you who are participating here at the table, when you want me to recognize you, I need you to put your name tent upright, and I will be calling on people in whatever order I decide I'm going to call on them. I'll be taking note of who wants to be recognized, but the purpose of this workshop is not for people to just restate the positions that have already been laid out very well in the comments. That is not why we are here. We are here to talk to one another about those positions and about issues that we've identified from our very careful read of the comments that we would appreciate hearing more discussion about here.

You each have a perspective, an experience. Sometimes as we read the comments, we see that folks with one perspective say something that is diametrically opposed to those who have a different perspective, and we would like to hear you talk to each other. You people may be able to really explore those differences in a way that is more helpful to us than we can, and that's why we're here.

So, I hope that you find this to be a positive experience. We have done a lot of this sort of work very publicly in workshop format to help us in our other

rulemaking activity, and I think that at the end of the day, even though you may not find that the group has all stood up to acclaim your position on any particular issue, I hope you will feel that there's been a very good discussion and an open discussion and a fair discussion, and we want to tell you at the outset how appreciative we are that all of you are here.

So, the other -- I guess the other point is that I think that the restrooms and other facilities in the building are very well marked outside, and if there's anything that any of us from the FTC can do to help you make your day here a little bit more efficient or pleasant for you, please don't hesitate to let us know.

Last, we have a wonderful entrepreneur who runs our food service on the seventh floor at the top of the trade, Mr. Ming, and he would be very upset with me if I didn't tell you that you can go right upstairs to the seventh floor and grab a little something to eat during our lunch break. There are also restaurants and other food facilities around.

Is today the day that we're having Thanksgiving up in Mingdom?

MR. HILE: Yes.

MS. HARRINGTON: Today Mr. Ming is serving a Thanksgiving dinner upstairs, turkey and the whole deal

for not a whole lot of money.

So, with that I think we'll begin by introducing ourselves, and what I'd like each of the participants to do is say who you are, who you represent and tell me very concisely one thing that you are interested in seeing happen today, okay? And I'm going to start -- oh, I'm going to start with Jeff.

MR. KRAMER: I'm Jeff Kramer with AARP. I'm a legislative representative in federal affairs, and I guess what we would like to do is just to make certain that people understand that the funeral rule is to help consumers.

MS. HARRINGTON: Thanks Jeff.

Maynard?

MR. CHERIS: Maynard Cheris, National Casket Retailers Association. We would like to make the Federal Trade Commission aware that the sham package discount is anticompetitive and is a barrier to consumer savings.

MS. HARRINGTON: I want to give high marks to our first two participants for following all directions. You were listening attentively.

I need to ask everybody to tip their name tags a little bit so I can see who you are, because I don't know all of you. So, the people who I do know are going

to have the misfortune of getting called on first.

Harvey?

MR. LAPIN: I won't tell them how we know each other.

MS. HARRINGTON: Oh, my God.

MR. LAPIN: Harvey Lapin, I'm general counsel for the Information Association of North America, and our primary purpose here is to bring to the attention of the Commission and others that the warnings on the forms and some of the disclosures should be adjusted so that they are more beneficial to consumers.

MS. HARRINGTON: Thank you.

George? I don't know you, I don't think, but let's hear what you have to say.

MR. CLARKE: Good morning, my name is George Clarke. I'm the executive director of the national selected morticians. We are an association of independently owned funeral homes, and some of our members own cemeteries, as well. What we would like to accomplish today is to meaningfully engage in the dialogue to help each other understand the positions and hopefully to help the FTC to understand some of the different issues that have arisen as a result of the changes in the industry over the last few years.

MS. HARRINGTON: Thank you.

Billie?

MS. WATSON-HUGHES: Good morning. I'm Billie Watson-Hughes representing the Independent Funeral Directors Association of the District of Columbia. Today we would like to work with the FTC to urge the strengthening of the funeral rules so that there is more protection for the consumer.

MS. HARRINGTON: Okay, thank you.

Glenn?

MR. MCMILLEN: My name is Glenn McMillen with Service Corporation International, and I think if we would look at one objective, we would hope that as we consider the various suggestions to change to the present rule, that we would look at it in a form that would simplify the transaction for the consumer.

MS. HARRINGTON: Thank you.

Jennifer? You need a microphone.

MS. RAWLS: Thank you. I'm Jennifer Rawls. I'm here representing the national association of consumer agency administrators, and we are interested both in protecting the consumer but also in working with agencies like the FTC in enforcing the rule where appropriate.

MS. HARRINGTON: Thank you.

Rob?

MR. KARLIN: I'm Rob Karlin, representing the California Casket Retailers Association, a group of independent entrepreneurs not associated with funeral homes or cemeteries, and our major goal here is to close the loophole that we see where bundling is happening and the funeral service costs more to those consumers who elect to purchase a casket somewhere other than the funeral home. Thank you.

MS. HARRINGTON: Thank you.

Paul?

MR. ELVIG: My name is Paul Elvig. I am from the International Cemetery and Funeral Association and from Seattle. Our goal today is to participate in this hearing to be certain that the voices of the cemeteries, both large and small, are heard where issues affect us. There's approximately 100,000 cemeteries in this country, and we want to be certain that the FTC's approach with cemeteries remains even-handed and fair.

MS. HARRINGTON: Thank you.

John?

MR. PETERSON: My name is John Peterson. I'm outside general counsel for Monument Builders of North America. Our purpose today is to advance the interests of consumers in the death care industry and to hope that the Commission will listen to the voices of the

consumers that have expressed a need for a broader approach under the current rule.

MS. HARRINGTON: Okay.

Lisa?

MS. CARLSON: Lisa Carlson, Funeral Consumers Alliance and FAMSA. We are here today to try to increase consumer choice. Many consumers can't choose -- shop between funeral homes effectively or between cemeteries, and so it's important for us to seek additional opportunities of choice within any cemetery or funeral home transaction.

MS. HARRINGTON: Thank you.

Mercedes?

MS. BERN-KLUG: Mercedes Bern-Klug with the Funeral Memorial Society of Greater Kansas City. We are here to make sure that there is fruitful discussion on the funeral rule regarding how the funeral rule can be enhanced to ensure that the purchase decisions made by families result from their informed preferences and not those of the funeral provider.

MS. HARRINGTON: Thank you.

Edith?

MS. CHURCHMAN: Good morning. I'm Edith church man. I am here representing the National Funeral Directors and Morticians Association. I'm also a fourth

generation funeral director from New Jersey. I'm here today to participate in an open dialogue that hopefully ends in protection for the consumer, care for the consumer, and high levels of enforcement of the FTC rule.

MS. HARRINGTON: Thank you very much.

John?

MR. WALLENSTEIN: Good morning, I'm John Wallenstein, I'm general counsel to the New York State Monument Builders Association. Our primary purpose here is to ensure that if the rule is expanded to include cemeteries and monument retailers, that it's done in a fashion that would be appropriate to the industry as well as to the consumer.

MS. HARRINGTON: Thank you.

Carolyn?

MS. JACOBI: Yes, I'm Carolyn Jacobi, Eternal Justice, self-proclaimed consumer advocate. It's an honor to have this opportunity to speak at this table today, and the intent that I have is to help to stimulate a dialogue that will encourage the expansion of the present rule so that it will become inclusive and it will give the consumer much more protection, and with that happening, that enforcement does take place.

MS. HARRINGTON: Thank you.

Randall?

MR. EARL: Good morning, I'm Randall L. Earl, representing the International Order of the Golden Rule. I'm a funeral director from Decatur, Illinois, which has been in the news in the last several weeks extensively.

We at Golden Rule would like to see the rule strengthened, because of the industry changes since 1984 and the inception of the FTC.

MS. HARRINGTON: Thank you.

Who do we have down here? Robert Ninker, and do you go by Robert or --

MR. NINKER: Whatever you feel comfortable with.

MS. HARRINGTON: Robert's fine, you know.

MR. NINKER: My name is Robert Ninker --

MS. HARRINGTON: You know, Harv and I know each other differently, as he would say, but I don't know what you're comfortable with.

MR. NINKER: Make it Nink, then. My name is Robert Ninker, represent the Funeral Ethics Association, and what we'd like to see as an outcome today is that we work together in the common field, taking as our lead the fact that ethical practice is the key to us being able to best serve consumers.

MS. HARRINGTON: Thank you.

Pat?

MR. GRAHAM: My name is Pat Graham. I'm a funeral home owner from Junction, Texas and also a part owner of a casket store, also in Texas. I'm interested in seeing the industry move back towards the general price list and less towards the bundling practices, which have been occurring with packaged pricing.

MS. HARRINGTON: Thank you.

John?

MR. CARMON: I'm John Carmon. I represent the National Funeral Directors Association. I'm also a small funeral director from Windsor, Connecticut. We are here to hopefully see that the rule can be strengthened to include all providers, but also to show that certainly funeral service and the interests of the consumer can be very much the same.

MS. HARRINGTON: Okay, thank you.

Harry?

MR. NEEL: Good morning. I'm Harry Neel from Jefferson Memorial Park a cemetery and funeral home in Pittsburgh, Pennsylvania. I'm a third-generation cemeterian. I've been listening to you and trying to figure out what my thrust was. I think I possibly I may be among a handful of us that are hands-on daily

managers, and I hope that's a resource to you.

MS. HARRINGTON: And it will be, thank you.

Mr. Ayers, how do we address you, G.V. or --

MR. AYERS: G. V.

MS. HARRINGTON: Okay, G. V.

MR. AYERS: I'm G.V. Ayers. I'm the chief of the cemetery and funeral program for the California Department of Consumer Affairs. I'm here, if I'm not mistaken, as the only state regulator at this table, so I may be a target somewhat. No, actually, I'm here to help to participate in the conversation today, to seek to find ways that we can better protect consumers on the state and federal level as well.

MS. HARRINGTON: Thank you.

David?

MR. SWIM: David Swim, president of Casket Gallery Showrooms in San Diego, California, a California state licensed cemetery broker. I'd like to see the participants and the FTC today be encouraged to remove the barriers that allow families and consumers to get third-party merchandise, and then also to seek the FTC's involvement in greater disclosure that the consumer has the right to third-party products and services and funeral cremation and cemetery products.

MS. HARRINGTON: Thank you.

Bill?

MR. SEALE: I'm Bill Seale from Abilene, Texas, Directors Investment Group, which our subsidiary is Funeral Directors Life Insurance Company. I've been a funeral director for 50 years, and I don't look it, of course, but we -- 18 years ago, a group of us funeral directors in the western part of Texas organized an insurance company, a legal reserve life insurance company, for the purpose of doing pre-need funerals and seeing that they're safely done and that the consumer is fully informed as to their rights and what they have to do.

And we're very interested in helping the group today in their discussions determine that the consumer is foremost in everybody's mind and at the same time that the -- we make it simple enough that the -- it's easy to understand and easy for them to shop if they want to and do whatever else they need to, but particularly we're interested in the pre-need arrangements and the pre-need insurance departments on it. And we look forward to conversing with each of you about our views and listening to yours.

Thank you.

MS. HARRINGTON: Thank you.

Jim?

MR. PINKERTON: I'm Jim Pinkerton from the Orion C. Pinkerton Funeral Home in Pittsburgh, a funeral home that I own with my dad. I'm also a member of the State Board of Funeral Directors in Pennsylvania. I guess my primary purpose is if we provide the same goods or services to the same people we ought to be covered by the same rule.

MS. HARRINGTON: Thank you, Jim.

By my notes I've called on 23 of you and we are supposed to have 24 participants, so have I missed anyone here or did I just not do a good job of note taking? I do a good job of note taking. We have gotten everyone.

All right, we're 30 seconds ahead of schedule. You guys are very good. You're likely to get the full benefit of the lunch break. Absolute we run a tight ship here.

SESSION I**DEFINITION OF THE TERM "FUNERAL RULE"**

MS. HARRINGTON: All right, the first item that we're going to talk about may be among those of greatest interest and one that may provide the greatest points for -- points of contrast in our discussion, and that is how it is that this rule defines "provider," because, of course, it is providers that are subject to the requirements of the rule.

What we would really like to talk about here are benefits, what benefits do you see consumers taking away from this rule besides comparison shopping. I think that shopping -- that an ability to compare price is an obvious benefit. What we're interested in is more fully developing the record on other benefits that may or may not accrue. And then the other point that we really would like your good thought on is if this definition were to be expanded, who else ought to be included, and should the requirements be the same if there were additional entities included, or if additional entities are included in the definition of "provider," would it make sense to have different requirements? This is -- it's a tall order. We're going to talk about this now from 9:15 until 10:30, and the floor is open for participants. If you want to take a minute to think,

we're very comfortable with silence here.

MR. CARMON: Could you repeat the second half of that question, ma'am?

MS. HARRINGTON: Sure. The second half of the question is, if the definition of provider is expanded, who else should it include, and if other entities are included, should the requirements differ among entities? That is, are different entities that might be included in the definition of provider sufficiently different than providers presently covered, so that it would make sense to have different requirements? And for that matter, are the providers who are presently covered sufficiently different that there ought to be different requirements for them?

So, we're really talking about three things, what are the benefits, should the definition be expanded, should the requirements be the same for all or different.

Now, I need that pitcher right there pushed in, because I can't see Edith's name tag. Thank you. Edith, we'll here from you first.

MS. CHURCHMAN: Thank you. I think that one -- several of the benefits for the consumer beside comparison, having the ability to comparison shop, is to have an understanding of the funeral rule, a full

understanding of the rule, and to lessen the pressure on the consumer so the consumer can make informed choices.

I think that whoever sells funeral goods and services, funeral goods and merchandise, should be included in the rule, and that the requirements should be the same, because we want the consumer to be able to focus on comparison again.

Thank you.

MS. HARRINGTON: Thank you.

Pat?

MR. GRAHAM: I feel like it's very important to -- I mean, "level the playing field" is the catch phrase everybody's using here, and I think it's vital that if we're going to do that that we have to have a standardized way of providing the consumer with pricing. Like I said, I'm in the funeral business and in a casket store business. A consumer's going to need to be able to compare apples to apples. So, I think the funeral rule should be expanded to cover -- to include all third-party suppliers, cemeteries, monument sellers, casket retailers, along with the funeral homes. And that's -- you know, I think that's the only way you can have the consumer make an informed choice.

MS. HARRINGTON: Should the requirements differ?

MR. GRAHAM: They should only in that a casket retail center doesn't offer embalming, and they should only have to provide disclosures on items or services that they -- that they provide.

MS. HARRINGTON: Okay, thank you.

Jeff?

MR. KRAMER: Jeff Kramer, AARP. I'll answer the first part of the question first about whether consumers are benefitting from the rule currently, and hopefully as the discussion goes on we can talk more about expansion, which we support, and talk about some of the details of that. But as far as the benefits go, we think consumers, again, benefit from the ability certainly to shop, and we think we're finding that consumers are starting to shop more than they have in the past. But moreover, it's real important that consumers feel comfortable about making choices, and I think providing price disclosure and the rule as it currently stands, at least with funeral directors, gives consumers the ability to make informed choices, and again, we feel that's the key, and that's why we really feel strongly that the rule needs to be expanded to include all funeral and burial service providers who provide goods and/or services.

MS. HARRINGTON: Thank you, Jeff.

Nink?

MR. NINKER: I should take my card down, because we agree with the gentleman who said that you don't need to change the price list or have it identical to the extent that it's not appropriate, and to the extent that it is appropriate to add additional items, say for a cemetery that offers different services and goods, then that is appropriate.

MS. HARRINGTON: Okay, Maynard?

MR. CHERIS: Maynard Cheris. The --

MS. HARRINGTON: Would you speak into the microphone, please?

MR. CHERIS: The casket retailers have never really objected to being included as third-party providers, and we feel that there are more vital issues on the table than this.

MS. HARRINGTON: Okay, let me check that, just let me do a check around the table.

Any of you who are here representing casket retailers, does any -- do any of you object to the proposition that Maynard just stated? Any objection?

David, what's -- what's your objection?

MR. SWIM: I have a partial objection, because my concern is right now that some facets of the funeral rule are not enforced, and some items tend to be broadly

covered, and so by further expanding everything, even though I do believe cemetery items need to be particularly covered, but what would be of great concern is all the definitions and the procedures that each operation would be required to have and that there's such a variety of services and different, broad range. So, right now, the general price list and the funeral provider, the rule itself is -- is not enforced.

MS. HARRINGTON: What's your basis for saying that?

MR. SWIM: Well, the families that we speak to, we can every week have a family that doesn't have a price list in their possession.

MS. HARRINGTON: Um-hum.

MR. SWIM: We can ourselves go in, I've done some shopping myself in Los Angeles, have been refused a price list.

MS. HARRINGTON: Um-hum.

MR. SWIM: If you have a phone call that's made and request certain things, you won't ever get it through the mail. So, I mean, I think that there are a large amount of things that could be strengthened just with what we have. So, let's -- I just wish to mention that.

MS. HARRINGTON: I'm sorry, but -- it's Robert,

okay, thank you.

MR. KARLIN: Rob Karlin. We are not opposed to being included under the funeral rule. We have absolutely no problem with proper disclosures. We do that now in terms of showing prices and product descriptions and disclosures regarding the preservative abilities of caskets. What we'd like to see -- and we agree with the NFDA on this -- is the funeral rule to be expanded regarding disclosures to the consumer where they're told they have a right to purchase goods or possibly services from other sources and that the funeral rule be expanded and some guidelines be instituted regarding the treatment of families when they elect to do so and they aren't.

Many families are very concerned about the treatment that they might receive if they don't buy the casket from the funeral home. They're concerned to the extent of perhaps the funeral home might not do as good a job at embalming or cosmetics or -- I mean, this is how far it really goes with families. They have -- they have -- they are intimidated by the process, and feel if they elect this choice there's going to be some repercussions, and if they're disclosed in writing on the general price list or in some other way where they have a right to select a good or service from another

provider, without any penalty -- any penalty -- in regards to how they're treated or in regards to the economics of the transaction, that their funeral service will cost the same regardless of where they purchase the casket.

So, we have no problem with complying with the funeral rule. We think it's pro consumer, it's beneficial, but I think there's a lot of uncertainty as to how third-party caskets should be treated by funeral homes. That was clear in the NFDA comments. Families should not have to be present when we deliver the casket unless they have to be present when they deliver their casket.

MS. HARRINGTON: Okay, Jim?

MR. PINKERTON: As you talk about expanding the rule and you talk about having various providers of goods or services, I think it's important that when it's all said and done the consumer is able to look to figure out exactly what they pay for and what the total is, especially since they may be purchased at different times and certainly from the different providers. I don't think that there should be so many escape routes that people can provide the same goods or services and not fall under the rule. And we educate many of the families that come in at the arrangement conference

about the rule, all of this within the professions in the industry sort of know all about it, but many of the consumers don't. Many of the consumers are still pre-1984.

So, we're educating them, and I agree, I mean, if we're going to compete on a fair level, that's fine. If he's going to provide a casket, the consumer should know exactly what they paid for with that casket. As we've experienced in Pittsburgh, not be under the impression that somehow there is a relationship between the funeral home and the casket provider that doesn't exist. So, I think that those disclosures and everything needs to be open and up front.

MS. HARRINGTON: Okay. John Wallenstein?

MR. WALLENSTEIN: I wanted to address the other part of your question, and that is assuming -- I'm getting a consensus from the table that everybody agrees that the rule should be expanded, just about everybody agrees that the rule should be expanded, and I assume that that covers cemeteries, monument builders and everyone who's involved in providing anything to do with a funeral.

The question then becomes -- and there's a jurisdictional question here, too -- can you exercise and should you exercise jurisdiction over religious and

municipal cemeteries if they are covered by the rule? And I don't know the answer to that, but I think that everybody should be covered. And I think that that should include those religious, municipal and nonprofits that are, in fact, dealing with the consumer in terms of selling monuments or selling monument services, monument-related services.

Our concern in New York, we've recently pushed for and gotten legislation that requires a separate contract for a monument, separate and apart from the funeral contract. I think that is pro consumer. I think that that is something that the Commission might consider as part of an expansion of the funeral rule, to require that type of a separate document which would provide full disclosure to the consumer, what's the monument going to cost you, what's it going to cost for installation, what's it going to cost for lettering, when can it be installed, what is it going to look like, rather than simply having a consumer find out three months after the funeral that they purchased the footstone that they didn't even want or that wasn't even permitted by the cemetery.

Likewise, if the rule is going to be expanded to cover cemeteries, consumers should be made aware up front, perhaps at the time of the lot purchase, which I

think would be appropriate, what the rules are with respect to monuments. Some people don't care what the memorial looks like. Others want an obelisk. Some will settle for a footstone. Others want a headstone. And obviously cemeteries have different requirements in different sections of the same cemetery.

The consumer needs to know when you're purchasing a plot that, yes, I can put a headstone up for my father, or, no, I can't, I can only put a footstone here, or I can only put a bronze marker here. The consumer needs to know that up front and needs to be able to have some form of comparison, perhaps between cemeteries and certainly between monument retailers later on.

And one other point on that, the consumer needs to know that the cemetery can't require them to purchase a monument from the cemetery or from someone connected with the cemetery. In New York, we don't have that problem, because nonprofits are not permitted by law to sell monuments in New York. But that does not apply to religious cemeteries, and I think that that ought to be considered as part of any expansion of the rule, because I think it is anti consumer if they are permitted to do so.

MS. HARRINGTON: Well, John, you very correctly

note that there certainly is jurisdictional issue when we get into that area.

MR. WALLENSTEIN: Something we can't solve today.

MS. HARRINGTON: Right. But I think I would just note for the record that there certainly is a jurisdictional issue there, and that would be a matter for Congress.

MR. WALLENSTEIN: Well, I'm not sure that the Commission can't do it. I don't know the answer. You may have jurisdiction to do it if you -- if you take the position that a cemetery which sells a monument is engaging in a for-profit activity with respect to that only, then I think that you do possibly have jurisdiction, but I guess that depends where you are. In the eighth circuit in may get away with it, in the second you may not, so --

MS. HARRINGTON: Right, right.

MR. WALLENSTEIN: -- I think that's where the problem is.

MS. HARRINGTON: Well, that's right, and as a national consumer protection agency, it's very difficult to deal with the proposition that consumers in one circuit have different rights than consumers in another.

MR. WALLENSTEIN: Only one case to say you can do it, everybody will fall in line, and if they don't, there's some guys down the street who will tell you about it.

MS. HARRINGTON: Interesting discussion.

John?

MR. PETERSON: I think there is some language in the California Dental Association Supreme Court opinion in a footnote that provides some, shall we say, wiggle room for the FTC with respect to its jurisdiction, and I would encourage you and your staff to look at that area as far as a grounds for expanding.

Also, I think it's important that we not just talk about leveling the playing field here. That certainly, I think, is one basis, if other entities are selling the same goods and services, but I think we also need to look at the same types of abuses are occurring that led to the funeral rule originally in the cemetery industry.

Monument dealers and retailers currently practice under a code of good practice and a recommended installation guideline, and they are fully capable of performing under the restrictions of the funeral rule if it should be expanded. We think that consumers will be better served. They don't know the difference often

times nowadays between a funeral director and someone else selling the same goods at a cemetery. We think that everybody should be under the same disclosure requirements and the same prohibitions on misrepresentation.

MS. HARRINGTON: Thank you.

Carolyn?

MS. JACOBI: Yes, basically I feel there have been many advantages as far as the consumer's concerned with the present rule, even though there's a great need for its expansion and revision. One of the things that has not been mentioned is that the consumers that I've had the opportunity to meet with have said that the rule presently has educated them to the fact that there is accessibility to information for them at the most vulnerable time of their lives, and it gives them that intercept period to be able to make sometimes a very rational decision.

The next issue I'd like to point out is that the goal of the FTC is to represent and protect all consumers. And I pray that John is correct that there is a little wiggle room that we can pull in all aspects of the industry, whether it be nonprofit, religious, municipal or whatever, because the violations are there.

I would like to see disclosure in a language that is suitable for all consumers to understand, and that's very important. I have seen in many instances where the language within certain facilities was so jargoned that even the Ph.D. would have to sit and read it two or three times before they actually comprehended it, because it became very ambiguous.

I would also like to point out the strong fact that, yes, all providers must be covered by the same rule and regulation, but when you come to the different categories and the different services that are offered, you have to have different categories with subcategories that would then include all individuals.

MS. HARRINGTON: Thank you.

Mercedes -- could you pronounce your first name?

MS. BERN-KLUG: Mercedes. You can call me Merc.

MS. HARRINGTON: Merc? Okay, thank you very much.

MS. BERN-KLUG: Kansas City. I just wanted to encourage us to think about it a little bit differently, and rather than thinking in terms of who should be covered by the funeral rule in terms of the provider status that we think about which items, which services

and which merchandise ought be covered, and then anybody who provides that, religious or not, would -- should be compelled to follow the funeral rule.

This would facilitate comparison shopping by the families, and that's at the heart of what we want to do. So, from a family's point of view, it really doesn't matter who's providing it. It matters what's being provided. And I would like us to take that to heart.

MS. HARRINGTON: Okay, thank you.

Lisa?

MS. CARLSON: Lisa Carlson, FAMSA. I can't imagine that there's anyone in this room that doesn't agree that the funeral industry has radically changed since the original funeral rule. Given that, I really appreciate the fact that we're looking at it again.

If the four basic tenets of the rule are price disclosure, rights disclosure, antitying, and honesty, I cannot imagine anyone arguing with expanding the rule.

MS. HARRINGTON: John?

MR. CARMON: Yes, the National Funeral Directors Association has simply thought that if the word and the definition of provider, of providing goods and services, was changed to "or," that that would certainly make an expansion and to cover everyone where the consumer would

go for goods or services.

The other point that I would like to make is that part of the rule and the importance of it is to educate the consumer, and certainly wherever they can get that education is very important, because I think they perceive and see all these places the same.

MS. HARRINGTON: George?

MR. CLARKE: Thank you. George Clarke, National Selected Morticians. Let's go back to the first part of your question regarding the benefits that consumers have realized from the rule beyond cost comparison. We think it's important to remember that for many consumers, when they approach the need to make funeral arrangements, they often don't have any idea just exactly what it is that they want or what they need and that there is no, quote, "standard" type of funeral arrangement, be it with a ceremony or not, that meets everyone's needs. So, the funeral rule has helped consumers to educate themselves about the various options that they have.

After they identify their options and as the -- we've witnessed the changes over the last several years in the industry, particularly with regard to the number of providers that have entered the industry, the consumers now are faced with identifying their options, recognizing that there are different providers that can

help them with those options, but yet there's inconsistency in the follow-up information that allows them to compare the services and products they may receive from a funeral home versus a cemetery.

To our way of thinking, if the cemetery is providing the casket and providing an opportunity for a graveside service or a chapel service, they're doing nothing different than a funeral home, and as a result, they should be bound by the same regulations that meet what we perceive to be the primary objective of the funeral rule, and that is to guarantee access uniformly to consumers that need to make funeral arrangements.

Within that context, I'm not sure that we could say right now that there is one general price list that will accommodate all segments of the industry, and we would certainly be happy to continue discussions designed at arriving at the most efficient way, the most comprehensive way, for the consumers to obtain the information that they need, regardless of their choices.

MS. HARRINGTON: Okay. Paul, what do you think about that?

MR. ELVIG: Paul Elvig, International Cemetery and Funeral Association. My background is unique in that I used to be the president of the National Cemetery

Regulators Association, having been a regulator myself in the State of Washington for 12 years and having handled consumer complaints.

Our review of FTC procedures and records has gone as far as to ask under the disclosure, Freedom of Information Act, for copies of any and all complaints filed against cemeteries. We know the FTC gets approximately 60,000 complaints a year, and we were told in our request for this information that zero complaints have been filed against cemeteries. I would emphasize that, zero complaints.

So, we're suggesting -- as a matter of fact, we are advocating in a very aggressive way -- that if the rule is to be expanded to cover cemeteries, that the FTC follow its own procedures as it pursues an expansion of the rule. And those procedures would be to determine that, in fact, that there is a fact that the public is being dealt with unfairly at the cemetery level.

The information we're hearing around this table are opinions, but we're not getting at surveys that are detailed, that are accurate and that are qualified in the area of survey. Let me say this, that when I was a regulator in the State of Washington, the complaints I received about cemeteries were issues concerning dissent of title, misspelling on markers, the length the grass

may have grown, all of these issues well outside of FTC rule capacity.

And so, to suggest to expand the rule to cemeteries, that that is going to remedy a problem, that problem has not been identified. The problem has not been addressed, the problem has not been surveyed, and the FTC itself can't produce a single complaint. It would seem that with 5000 deaths a day in this country, someplace, somebody would have a complaint if there is a real problem.

So, we're here to suggest that there's not a problem in cemeteries with disclosure of prices, there's not a problem in cemeteries with bundling, there's not a problem in cemeteries with offering undeclinable fees, there's not a problem in cemeteries with serving the public. Quite the contrary.

MS. HARRINGTON: Well, now things are revving up.

I would just note for the record that it may be that -- and I don't have a basis for this other than my experience working here for 15 years and dealing with consumer complaints, but it may be that consumers don't think to complain to the Federal Trade Commission about cemeteries because the rule, as it's presently written, pretty clearly -- or in many instances, not in all, but

in many instances wouldn't apply on its face. And we have had experience over the years with different consumer issues, and I'm not saying that there is or isn't a problem. I'm just observing that we've had a lot of experience over the years with consumer complaints coming to us. They tend to come to us about matters that consumers would know are subject to the FTC's general area of jurisdiction, and so sometimes when we get new areas of problem, we don't hear about them through complaints, and, of course, there are many bases for establishing the existence of a problem.

And I just offer that to correct any misimpression, Paul, that your comment might create that the only way that we ascertain the existence of a problem is through consumer complaints.

Okay, let's see, I had Paul next. Which one of the Pauls?

MR. ELVIG: I'm Paul.

MS. HARRINGTON: Oh, you are Paul. I'm sorry, Paul, duh.

MR. ELVIG: Last time I looked I was.

MS. HARRINGTON: Okay, yes. Harry?

MR. NEEL: It would seem from some of the comments here that there is not an honest business in this country unless it has government regulation. I

always object to the innuendos, Jim, escape routes. I know of no escape routes on the contracts that I see around cemeteries, that a consumer isn't -- can't tell the difference between the salesperson who sells him a casket and the funeral director he deals with. I've never come in contact with anyone that can't tell the difference or doesn't know.

Remember the days -- and you still have them -- when people pre-arranged their funeral but did not fund it. It was a wish list. That consumer certainly knew their funeral wasn't paid for, but in their mind it was completely arranged.

The man that represents that we should have separate contracts for items we sell so that the consumer is more clearly informed does not seem to understand the additional work and burden he places upon all businesses. If we have one contract that covers many items, it can be just as clear as individual contracts for each item.

To say that a family needs disclosure more about the cemetery part, that when they drive into a cemetery and they see upright tomb stones, obelisks and other monuments, they can probably surmise that they could buy a similar thing for their family. If they drive into a cemetery that only allows markers, set even in a line,

they could probably surmise that that's the type of product they're allowed to place.

As to the level playing field, the playing field has been and is level. Cemeteries, which started aggressive marketing in the early thirties and probably more often than not started pre-need, had to disclose prices to the consumer to sell their product. Price disclosure has always been a bedrock of cemetery sales. How can I sell someone something if I don't tell them what it costs? I don't have to hand them a printed price list to say, Madam, my graves go from \$350 to \$1,100 each, my vaults go from this to this, my markers from this to this. I don't need a printed price list to have complete and full disclosure.

To say that -- I believe someone down there gave four points, and I sort of addressed in the beginning, price disclosure, rights disclosure and honesty, and there was a fourth one, I think that we do that well and have done it well without government regulation. It's not government's place, never has been, the Founding Fathers didn't want it to be, to have government make regulation simply to make regulation. They made regulation to rectify a problem, left the rest of that industry or other industries alone as long as they weren't causing problems.

I think the cemetery industry has generally well-regulated itself and has certainly given price disclosure well over the years; therefore, there was no need to expand the rule. I certainly object to your point of view that everyone around the table is in agreement with expanding the rule. I certainly am not.

MR. WALLENSTEIN: I said general consensus.

MR. NEEL: Well, take me out of the consensus.

Thank you.

MS. HARRINGTON: Edith? Oh, you put your plaque down.

MS. CHURCHMAN: Well, since you called on me.

MS. HARRINGTON: Okay.

MS. CHURCHMAN: I would just like to address the issue of cemetery complaints, and I think that as you said, many consumers do not complain to the FTC about the cemetery, but they certainly do complain to the funeral home about the cemetery.

MS. HARRINGTON: Well, I would also note that of the complaints that we receive every year, an infinitesimally small number and percentage concern any of this. I would just note that, which, you know, you can draw a million different inferences from that. There is no problem, there is a problem that people don't complain to us about, you know, it got lost in the

mail, but this is not an area -- and there are a number of areas that we work in in the consumer protection field that are not necessarily reflected in our complaints.

Pat?

MR. GRAHAM: I, too, wanted to address Paul on what he said. Am I wrong -- correct me if I'm wrong, but didn't the FTC initiate the funeral rule as much on the premise of a potential for abuse as it did documented cases of abuse? I believe that was the NFDA's -- in their comment, as well.

MS. HARRINGTON: No, there was a record established in the rulemaking of actual abusive, deceptive and unfair practices.

MR. GRAHAM: Well, correct, there is documentation, but however, wasn't also the rule enacted under that premise, that there is a potential for much abuse? I mean, that's what I've seen over and over again through the FTC's records and also through some of these comments.

MS. HARRINGTON: No, it would have been that there was an actual record of deceptive and unfair trade practices and that the remedies imposed by the rule are likely to correct those.

MR. GRAHAM: Okay.

MS. HARRINGTON: George?

MR. CLARKE: Thank you.

I just wanted to point out with regard to statements made about the absence of complaints in cemeteries, in studies performed by both AARP and the State of Virginia, the Commonwealth of Virginia, AARP found in 1996 that there were almost -- nearly half of the cemeteries failed to provide price information to consumers, and in 1999, the study conducted by the Commonwealth of Virginia found that 40 percent of the cemeteries that responded to the survey admitted that they did not provide price information to the consumers.

Just one other point. It's our understanding, as well, that again, one of the primary objectives of the funeral rule is to guarantee uniform access to consumers regarding the services and products that they need, regardless of the entity, and it doesn't necessarily hinge upon significant abuses having been identified but the potential for the consumer to obtain the information that he or she needs.

Thank you.

MS. HARRINGTON: Thank you.

Jennifer?

MS. RAWLS: Thank you.

I would also point out that in the actions taken by several states, there have also been violations found of the funeral rule where funeral homes did not give price lists or made comments beyond the price lists that were unfair and deceptive. I know several states that have taken action in conjunction with the FTC or on their own regarding the price lists, and I just wanted to follow up your comment with that.

I also wanted to comment that with working with consumers day-in and day-out, I can tell that this is, as Eileen said, one of those areas that they are just not going to complain about for a lot of reasons, and one of them is they don't know that there's something that can be done. The states probably don't get complaints. I know my state doesn't.

So, that doesn't surprise me, and I don't think that it should be seen as a basis for saying that we don't need regulation when clearly, based on the state action and federal action, we do. There are abuses that are taking place.

Just a couple of other comments about the benefits. Mr. Karlin made the comment that often families are intimidated by the process, and I think that's entirely true, and I think that the price lists and the remedies of the funeral rule are really the

basic stuff that folks ought to be given all the time and really aren't, but I think that to look at that and say it's the be-all and end-all is just wrong.

I mean, this is just the basic things that people need to get, because they are intimidated by the rule -- I mean by the process. They're making a decision many times for the first time and a decision that they won't have to make again for a long time, and things do change, and they are going to the folks that they believe are the experts in the field, and they need to be treated as such and in many cases are not.

The only thing that I have to say about -- well, at this point, the only thing I have to say about the expansion of the rule is that it should be kept simple. In order for consumers to really have the benefit of having the price lists, they have got to understand them. In order for the consumers to have the benefit of disclosure, they have got to be able to read them and know what they mean. And so when we're talking about expanding it for coverage, which NACAA agrees with, I would also encourage us to look at not how technical we can make it but how simple we can make it.

MS. HARRINGTON: Thank you.

John, did you have something -- is your card --

MR. WALLENSTEIN: No, it's back up.

MS. HARRINGTON: Okay.

MR. WALLENSTEIN: I did have something.

MS. HARRINGTON: Okay.

MR. WALLENSTEIN: I wanted to address two points. I originally wanted to address one, but now Harry raised something that I feel I need to address, as well.

But as far as what Paul said, I think that the problem with covering cemeteries with the rule goes back to what Mercedes said before. It's not a question of who is covered so much as what are they doing that is required to be covered.

If a cemetery is selling a monument and a monument dealer is selling a monument and a funeral director is selling a monument, if the funeral director and the monument dealer are covered by the rule, then the cemetery engaged in the same activity should be covered by the rule at least for that activity, which does affect the consumer.

That's not necessarily the same as the cemetery acting as a burial ground. When they are selling a monument, they are acting as a retailer vis-a-vis the consumer and should be required to be covered by any rule that protects the consumer, particularly when other persons engaged in that same activity or selling those

same goods are covered by the rule.

With respect to what Harry said, I think that -- I'm sure that if you sell a monument -- and I don't know if you do -- but I'm sure that if you do and you sell it in the same contract as your funeral arrangements that you are personally disclosing to the consumer what it is they're buying, what it's costing them and so forth.

I would venture to say that everyone at this table and those behind us here represent those people who are active, interested and ethical. We're not the ones that need to be covered. We're not the ones that need to be told how to act vis-a-vis the consumer. And I think we all know that there are those in every industry, monument dealers, cemeterians, funeral directors, who do need to be covered by the rule. That's why the rule was enacted in the first place.

The New York State Legislature determined that there was a need for a separate contract because of abuses, and we documented them, where funeral directors in particular -- because cemeteries are not permitted to sell in New York -- where funeral directors literally buried -- no pun intended -- the monument in the funeral contract. The consumer was totally unaware that they purchased the monument, and they found out when they went to the monument retailer, who asked for the permit

from the cemetery and discovered that there was already a stone on the grave.

So, there are abuses that need to be addressed, that the consumer needs to be protected from, and Harry, you're not the guy they need to be protected from, but those people need to be addressed.

MS. HARRINGTON: Okay, Jeff?

MR. KRAMER: Yeah, a few things to respond to Paul.

First of all, again, it's what they're selling as much as who they are when they're selling it. One of our -- one of the survey results we did, and we have actually done surveys on this and studies, we submitted those for the record, we found that 23 -- in a mystery shop we did that 23 percent of cemeteries were selling caskets. So, they are selling items that are part of the GPL and therefore should be under the rule.

We also found in another survey we did on consumer behavior that less than 5 percent of all consumers ever file a complaint with the Federal Government about anything, not just funerals. So, the fact that you haven't gotten anything on funerals or burials is not surprising. They just don't normally file with the Federal Government. They go to the Better Business Bureau, they go to some state agencies,

anything, but they rarely go to the Federal Government. So, that's one thing.

Also as part of our survey research we found some other things that we found very interesting. We found that the people who went to cemeteries, only 36 percent of people got written price lists from cemeteries about their goods and services; only 22 percent were given a written price list afterwards on -- for the goods and services.

And we also found that the protective feature, that there was a lot of misleading information going on, that 29 percent of cemeterians were providing misleading information about vault liners and things like that. So, the research is out there, and we found that there are a lot of problems, and we really think that the cemeteries need to be included under this rule.

MS. HARRINGTON: Okay, thanks.

Nink?

MR. NINKER: Paul, you must be living in a cave. The State of Illinois --

MR. ELVIG: No, Seattle.

MR. NINKER: -- there's a hotline to receive the number of complaints against cemeteries. They have revoked licenses. They have been found guilty of stealing from trusts in huge amounts, exceeding the

millions, and I believe that what we probably need for your edification is a depository named by Madam Chairman where all of these complaints can be clearly documented and I'm not talking about strung out over 20 years. There are a hundred of them in Illinois in the last six weeks, and they aren't just having to do with tipped markers or problems with maintenance. They have to do with misrepresentation and actual theft. And if we can decide where you would like to have that depository, I think we could enrich it so that that not become a problem in the future.

MS. HARRINGTON: Harv?

MR. LAPIN: Well, CANA, as you know, is neutral on the question of extending the rule, but I do have some points that I think should be considered in that regard.

First of all, if you are going to extend the rule, you could only extend it to companies that actually deal with the public. You can't have a broad brush. There are a lot of crematories in this country that do not deal with the public in any way, shape or form, so requiring them to have disclosures which would never be used would be ridiculous.

I'm hearing a lot of talk about leveling the playing field, and personally I think that's a misused

term. The only way you can level the playing field in this industry would be to require every consumer to meet with every segment of the industry at the same time. Unfortunately, that doesn't happen, because what happens in practice is that the person either is approached by a pre-need seller or, on that need, they are going to go to the funeral director. So, leveling the playing field? Extending it isn't going to do it. That's not where it is.

How to standardize a form in this area, I think you're going to make it very good for the attorneys in this country, because -- and I'm all in favor of that, by the way -- because I think that standardizing a form for a cemetery or some of these other suppliers and crematories is very difficult, because they operate differently. They offer things differently.

And in that regard, I must say that, you know, many cemeteries don't have anybody operating. They're run by volunteers, and that's been my experience with them.

I feel -- and I think that CANA feels, too, at this point -- that if you're going to have a proceeding on these other segments, it probably should be separated, because the funeral rule, the way it's written right now, in my opinion doesn't even apply to

the funeral directors. The language is too technical, consumers don't understand it, lawyers don't understand it.

I've had extended discussions with lawyers about how to do those forms and back and forth, and I've submitted some of them to the Commission and had various results from different parties at the Commission on some items. So, it's not easy. It should be easy, but it isn't easy.

Another point, somebody brought up here about state laws and monument builders in New York. Well, I think you have to look at state laws for what they are. State practices differ, and the monument builders in New York are dealing with not-for-profit organizations.

In Illinois, you can have a not-for-profit cemetery, you can have a profit cemetery, a religious cemetery, all different types, so that you have to look at the marketplace to see how to separate contracts, because it depends on the type of entity you're dealing with.

And finally, my good friend Nink, which I have never heard that term used, I am from Illinois, and I want to clarify the record. He made some misstatements about what occurred.

Our controller decided to have public hearings

around the state to deal with problems in the cemetery and funeral industry. As you all know and was stated here, the funeral industry has its own source for complaints, which apparently people don't do, so they got a lot of cemetery complaints, but the two major issues in these proceedings were, number one, the problem with public access to family-owned cemeteries that used to be on farms and now have been taken over by big property owners, and the property owners will not let the family go and maintain the spaces. And I kid you not, that was a big issue at five of the six hearings.

The other big issue at this point was the volunteers coming in and saying we're maintaining this cemetery, and we're running out of people to maintain it. There are no funds available to take care of probably 70 percent of the cemeteries that were set up in this country in the 1700s and 1800s, and it's amazing, I think there are more revolutionary soldiers buried in the State of Illinois that were involved in the war, but there seems to be one everywhere.

But in any event, of the complaints that the controller's office has gotten, they have not been about misrepresentations. There's been very few. We did ask them with a Freedom of Information request, and they

came back and said that there were not a lot of complaints other than these two big areas.

MS. HARRINGTON: Okay, we're going to hear from Lisa and then from G. V.

MS. CARLSON: I found it interesting that Mr. Neel forgot the fourth item, which was anti-tying, being forced to buy your vault or marker at the cemetery. Paul, I wonder if you did your homework. We did document a lot of abuse, AARP did, and I guess I'd like to ask you why would you object to cemeteries being under the rule if the requirements basically are disclosure of prices and fair dealing?

MS. HARRINGTON: Okay, we are going to have Paul answer that question, and then we're going to go to G. V.

MR. ELVIG: Well, in answering that question, I have to expand upon it. The reason we would object to expanding the cemetery rule, aside from the fact that expansion would violate the FTC's own procedures for expanding rules or for covering the cemetery industry, the reason we would object is there are a hundred thousand cemeteries out there, such as referred to down here, many of them volunteer.

The liability to these cemeteries of potentially being inspected, being hit with fines for not passing

out a list of the price of graves in the cemetery or the price of the liner or the price of the vaults in the cemetery, that liability is not acceptable on the grand scheme of things when you look at complaints.

We have looked at the complaints that Lisa's organization has supplied. We have looked at the complaints that AARP has supplied. And in many, many cases these are anecdotal type of complaints, these are not specific. You take the survey that AARP conducted, they say that 23 percent or 23 cemeteries were selling caskets.

Well, they went to 20 combination funeral homes/cemeteries, which would explain to us right there where the 23 were, with only 3 or 3 percent selling -- actually selling caskets according to their survey.

The types of complaints we have seen about cemeteries are not to do with disclosures, with prices. When people went to these cemeteries, AARP's own work that they submitted will show that they came back with worksheets, much of it written in hand, some of it typed, but in every case they received quotes on prices, a variety of prices.

The ability of AARP to collect information from cemeteries demonstrates how available that information really is in the area of having prices disclosed. So,

we would submit that the survey work done by Lisa's organization, by AARP, in both cases do not demonstrate that the consumer's kept in the blind, that the consumer does not have disclosure or that the consumer somehow is forced to deal with a cemetery that they don't want to deal with. And so we don't think the record is there.

Now, I was a regulator, as I said, and I have gotten complaints about cemeteries. I don't mean to imply there were none. But those complaints were areas that were outside of the cemetery rule. He mentioned a imprisonment or, shall we say, felony charges for theft of funds. I don't see where funeral rule would cover that. I don't see where funeral rule would cover double-selling of graves, criminally doing so.

There are lots of statutes that empower the states to bring criminal charges. I myself have put two people in prison, but in both cases they were involving embezzlement. Where does the rule take care of that?

And so we don't think the evidence is there to expand the rule, and if we are to look at expansion, we are asking for a procedure that would allow for an organized and orderly collection of information. And we submit still that complaints covered by the funeral rule are not on record with this Commission concerning cemeteries.

Thank you.

MS. HARRINGTON: G. V.?

MR. AYERS: Yes.

In the State of California, we do receive complaints on cemeteries. In the last three and a half years, we've received over 900 complaints. Most of these do not deal with price disclosures, because that is -- we would consider that nonjurisdictional, and our complaint statistics would not refer to that specifically. It would -- that would either be probably mediated or closed as nonjurisdictional. Those do not -- would not deal with that.

Although what we have seen is we've seen since the rule was first instituted, we've seen a change in the way that funeral services -- well, actually funeral goods primarily are provided to consumers, the selling by cemeteries, some by crematories, by casket stores and others, as well. And it seems reasonable to us that if the way the goods are provided, if that changes, then arguably the area of consumer protection should follow the flow of goods, and there could be a good argument made to where protections need to follow in that area, as well.

Also, we found in California that it's not unusual for what seems to be a cemetery complaint to end

up being a funeral home complaint, or sometimes what seems to be a funeral home complaint ends up being a cemetery complaint, and so we have -- we have a change in industry, I believe, as well.

MS. HARRINGTON: Thank you.

I want to note a couple of things. One is that I think Paul, actually, made the point that the FTC's focus here is on presale disclosure. Our statute gives us the authority to act to prohibit deceptive and unfair trade practices, and the focus of the rule is to prohibit the unfair practice of bundling and tying and to prohibit the deceptive practices of failing to disclose material information. And so you properly note that there are many other things happening in relation to these transactions that fall outside of the FTC's statutory mandate, and I think we all agree on that.

The other thing that I would note for your consideration is that the rule presently clearly applies to, depending on whose numbers you use, somewhere between 18,000 and 22,000 providers, which is a very large number of businesses. Many of them are now owned by very large companies, but they operate in local markets and operate sometimes, we have found, independent of one another even if they're owned by the same company. That is, a policy may be to require

adherence and you find that providers owned by the same company have different compliance practices.

The FTC has fewer than a thousand employees. So, the challenge already is that with fewer than a thousand employees and 18,000 to 22,000 businesses covered, should this rule be expanded to cover an additional number of entities, whether they are third-party casket sellers or monument sellers or cemeteries.

I'd be interested in comment during the remainder of the time about whether the FTC is the right entity to address problems with these kinds of businesses or whether the states are in a position to pick up more of the burden there, and I would look particularly to Jennifer and G. V. and any others who have a state perspective to help answer that question.

But, you know, what we are hearing in the discussion is this is a very -- there are a very large number of players in this business, and there are various perspectives concerning the existence of problems with different types of players, and much of this is happening at a local level in one-to-one transactions, and I think a fair question from the perspective of federalism and what that is about is whether this is a federal issue in all instances.

So, Maynard, do you want to comment on that? Do you have a microphone there?

MR. CHERIS: Thank you.

I came here knowing that the FTC is burdened with enforcement in the funeral business, and I thought about a way perhaps to assist the FTC in enforcement. I think that the funeral director is a professional in a position of trust. I think he holds himself out to be in a trust relationship.

Regulation is needed and perhaps could be recommended by the FTC to impose a fiduciary duty on funeral directors. Hold the funeral director to the standards of fiduciary and create a minimum standard of damages, such as in Truth in Lending, let's say three times the funeral cost plus attorneys' fees. I think that would ease the burden of enforcement. If the funeral director had fiduciary standing, every consumer would be a watchdog.

MS. HARRINGTON: Okay.

Jennifer, you don't have your tent up, but I'm going to call on you anyway.

MS. RAWLS: Should I --

MS. HARRINGTON: You need a microphone, because we all want to hear what you have to say about what more the State of Tennessee could do here.

MS. RAWLS: Well, perhaps I should start out by further introducing myself. I'm here today on behalf of NACAA, but I'm also Assistant Attorney General for the State of Tennessee, and I am charged with investigating and prosecuting, where appropriate, under the FTC's funeral rule and the Tennessee Consumer Protection Act, although the comments I make today are not those of the Attorney General or the State of Tennessee. I have to get the disclaimer in.

I think that the partnership that we have had with the FTC has worked very well. Tennessee's Consumer Protection Act specifically refers to interpretations and decisions by the FTC, which gives Tennessee a leg up in this area. Not all states do. All states have a Consumer Protection Act which in some respect protects consumers from unfair and/or deceptive trade practices.

In the cases that we've had, the funeral rule -- the funeral homes that did not provide GPLs were also those who made very, very hurtful comments to consumers in other respects about what would be done with their loved one's body, about where they would have to be buried, about how important it was that they buy a cemetery plot from their funeral home before we make arrangements, the list goes on and on. And to tell you that this rule is needed would be an understatement.

MS. HARRINGTON: What would we do if we had another hundred thousand entities subject to this rule?

MS. RAWLS: Part of the problem that we have right now is finding the folks who are doing it wrong. It's real hard for us in this industry to get people in there to "test shop." It's a little hard to act like you've got a dead body when there's not one coming. And so the way that we do these investigations are very difficult, and it's going to be hard to keep doing them with expanding entities, but I think what we have to do is build a relationship with the industry as a whole where we know who we need to investigate.

We have other investigative tools at our disposal other than test shopping, but unless we know who we need to be asking questions of, it's real hard to use a subpoena, it's real hard to go in and ask questions, it's real hard to know who to ask for a GPL from. But I think that this kind of discussion is exactly what we need to build that kind of relationship.

You know, we don't want to go after the people that are doing it right. We don't have resources for that. But if we can find a way to find the people who are doing it wrong, we're happy to take care of those.

MS. HARRINGTON: Well, this was not a planned

colloquy, but I would note that the GAO just put out a report that is critical of the FTC in a number of respects, but one is for not having a precise measure of compliance, and I think your point about the difficulty of measuring -- we're not the Census Bureau, so we can't, you know, law enforcement go door to door -- a fair point.

Paul?

MR. ELVIG: You asked a question, and I think it was a very good one, and that is where can these organizations best be regulated. And of course, I would beg to say the states, having been a regulator, I believe the states are in the best position to regulate cemeteries.

The ICFA has provided for the various state legislatures or attorneys general -- you're welcome to have one -- 27 sets of guidelines on rules and regulations that may be adopted to cover cemeteries, and they cover a wide gamut of issues, the issues that we really face as a regulator when we're dealing with consumer complaints. And so we would invite you to look at those. They're rather thick and detailed, and they're good.

I have it -- when I was president of the National Cemetery Regulators Association, I collected

all state laws governing cemeteries, and let me tell you, that stack was more than a yard high. There's a lot of regulation for cemeteries out there, and what's unique about them is that when the states adopt regulation or rule, they adopt it to what's unique about the practices in the area.

Example, Washington State has a 60 percent cremation rate, but another state, such as Montana, doesn't. A legislature is in great position to craft legislation that will address the specific issues of the consumer in that area. And so I would suggest the National Regulators Association, which exists today, should be checked about that. I would also suggest that you will find model legislation and across the board that regulations at the state level have addressed the problems consumers have had with cemeteries, and again, those problems have been outside of the scope of what the funeral rule presently addresses.

So, we think the answer is at the state level. It's been demonstrated to work well there.

MS. HARRINGTON: Okay.

Billie?

MS. WATSON-HUGHES: Thank you.

I think the funeral directors in the Washington metropolitan area would beg to differ with that. We

would be inclined to say that FTC should be the regulatory agency. As it stands now, we basically deal with three different states who have three different sets of regulations, and it's very difficult for the funeral directors at this point to know, going from jurisdiction to jurisdiction, what laws they're under. So, the FTC would be the entity of choice for us.

MS. HARRINGTON: Okay.

Whoops, I was just going to call on you, John, but do you want to defer?

MR. CARMON: No, that's all right.

I just wanted to reiterate simply for the record that currently, the only place the consumer gets a general price list, a merchandise price list, casket and outer burial container, all of the disclosures and everything that's necessary is from a funeral home. That's the only place now where that happens. And in the last 15 years, this marketplace has changed dramatically. I mean, that's what's happening and what's being said all around this table.

MS. HARRINGTON: Okay.

MR. CARMON: I just -- you know, clearly the --

MS. HARRINGTON: Okay, those points well made.

We have 12 minutes left, and so I'm looking for original and different comments.

Lisa?

MS. CARLSON: I think if you look at the change from state to state in pre-need laws, that shows the flaw of leaving it to the states only, that there are some basic universal rights that should be protected by the Federal Government, then let the states expand on that.

By having something that's established on a federal level, you also provide a vehicle for consumer education, and a lot of our volunteer groups can then go out there. It's been our volunteer groups, because of the FTC funeral rule, that we were able to do some of the enforcement for you. And if we don't have that, then we won't be able to continue on the cemetery level. So, take advantage of the free labor that we're going to offer you.

MS. HARRINGTON: Thank you.

G. V.?

MR. AYERS: Quite frankly, the issue of whether federal or state regulation is the best regarding the subject of expansion that we've discussed here is something that I'm not settled on. In California we're not really settled whether it should be federal or state. California tends to march to its own drummer somewhat, and so I just say at that point it's still up

in the air as far as we're concerned, but it does seem in general to warrant some type of expansion of the regulation.

MS. HARRINGTON: Thank you.

Glenn?

MR. MCMILLEN: Thank you, Eileen.

I guess I sit here in amazement a little bit as I listen to the comments of the very uninformed consumers that we have as a funeral, cemetery, crematory customer. I don't know of any time in the history of funeral service, the funeral service industry, and I have been involved for over 40 years, where there is as much information available to consumers that is available today.

That information is available through all of our businesses, through the Federal Trade Commission, through state consumer groups, regulatory agencies, as well as the mass communicator today, we have the internet, from as simple as the message boards on all of the companies to just type in the subject of death, dying and bereavement.

So, I think there's a lot of information being given to that consumer, and I think we tend to get bogged down and mired in what we think that consumer needs, and I wish that we had a little more empirical

evidence to deal with what the true needs of the consumer are so that it leads to disclosure.

MS. HARRINGTON: Glenn, let me ask a question about that. Since your company is so involved in the market, I would think that you would do marketing research that would reveal that information. Do you have that kind of research?

MR. MCMILLEN: We do not have specific marketing research to that, but we have spent I'm told amounts of monies in educating our employees to be able to communicate to consumers, not only how to comply with the funeral rule but to be able to give them all of their -- all of the facts so that they can make choices that are going to be best for them.

MS. HARRINGTON: But you don't have customer satisfaction research or marketing research or --

MR. MCMILLEN: We have customer satisfaction research based on every family that we have served.

MS. HARRINGTON: But no focus groups or no --

MR. MCMILLEN: But no -- we have not done any individual focus groups.

I'd like to move on to just a couple other points. I think we need to put into perspective here that there is absolutely no evidence of abuse by cemeteries in areas that are covered by the existing

rule, and that is the two areas of providing the casket price list and an outer burial container price list as it relates to the current rule. There's a lot of anecdotal information, there is some less than conclusive surveys that have been completed, but there is no evidence that has been documented.

But there is a tremendous amount of evidence that we have submitted to the Federal Trade Commission as it relates to the state regulatory statutes and regulatory actions that have been taken since 1996 in the 45 states that Service Corporation International currently conducts business, and there have been over 800 statutes and regulatory actions as it relates to cemeteries in those 45 states. And Eileen, I would encourage the Commission to research in that particular area.

Not only do I feel we are in a business, a profession that has a very high profile and there is a tremendous amount of communication with the consumer, I also believe that in the last four or five years, we've probably become one of the most highly regulated industries in America.

I sincerely believe that most cemeteries have price lists that deal with issues under the current rule; that if there is a pattern of abuse and that

pattern of abuse can be documented and there's a venue to deal with the rulemaking procedure as it relates to those abuses. The current rule in no way reflects a cemetery. It really is geared to funeral homes as to what the rule was designed to do.

I've heard a lot here today about leveling the playing field, and it was always kind of my understanding growing up and becoming a business person that there had to be rules for that playing field, and those rules were generally determined by governmental agencies, consumer protection groups who deal under deceptive and unfair trade practices both on a federal level and a state level, but I always was taught to believe that the leveling of the playing field is to be able to compete in the marketplace and that you will rise or fall in that marketplace based upon, number one, your pricing, your service and your ability to render the experiences needed to meet the consumer's needs.

I'd like to just close by saying that I've heard a lot of things at this table today that says that we -- we're all honest, we're all ethical, and I would certainly believe that of everyone at this table. I think we have all different competitive interests. But I think the current rule as it exists, with some minor changes, not only adequately serves the consumer but has

helped many consumers since its inception in 1984.

MS. HARRINGTON: Okay, thank you.

We have a number of people who have been waiting. We have five minutes left. I'd like to get to everyone, so please keep it as brief as you can.

Bill?

MR. SEALE: Thank you, Eileen.

I look at the funeral profession as -- maybe a little different than some of the people around the table do. We look at ourselves more as caregivers than we do as marketing people and merchandising people. The funeral rule, as it stands, probably with some finetuning and everything to cover some other areas would be a great thing, but as it's said here, it's do consumers benefit from the rule as it stands. I think it should be do the consumers and the provider benefit from this, and I think that we do.

The funeral rule has forced us as funeral directors -- and justly so and we appreciate it -- to discuss finances with families. Back in the past years, I was afraid to ask anybody to pay their bill, but now we present them with a price list and they determine -- they say, When shall we pay, after they've selected the things that they want. So, I think I sort of look at us as caregivers first and merchandisers or sellers of

merchandise as the second thing.

The consumers use the information required by the rule for shopping. They use it on an at-need basis, and our experience has been that they don't use it very much as an at-need, but we find that because we're in the pre-need business, they use it greatly in the pre-need area.

Does the consumer have harm and misrepresentations concerning the rule as it now exists? Any harm that would come, I feel like, other than in minor places, would be from the nonregulated people, such as the -- such as the casket store. They need to, you know, give a price list of all their caskets that they have available, and the scope of the thing, the rule, should be changed minutely to cover the ones that are not now in it, but the rule itself we feel strongly is doing a good job.

MS. HARRINGTON: Okay, thank you.

Is there anyone with a card up who hasn't spoken during this session? With a card up?

Okay, Randall.

MR. EARL: Thank you very much.

I sit here as a funeral director and am amazed at some of the comments around the table. I deal with families every day in my funeral home, and it's been

said that the funeral director is the position in the community that's very trustworthy, very upstanding, and I think that the rule back in 1984 enhanced that position of the funeral director. It gave them the ability to show people exactly what the costs were and the reasons why.

We heard nothing from the funeral directors around the table here this morning, and I find that very interesting, that we've all sat here and listened to everyone else in the industry, and the industry includes all of us, and we have sat here because we're normally the nice guys in the community.

Now, I think that it needs to be noted that yes, we are the ones that listen to the complaints from everyone else. We hear the complaints day-in and day-out. They're not going to the state regulatories, they're not going to the Federal Government. They come back to their home town funeral director, and they explain to them what has or has not transpired in their minds, whether it's right, wrong or indifferent.

We're the ones that sit there day-in and day-out and try to decipher contractual agreements that they've received from other entities, day-in and day-out, and I would just suggest that we take a look at

the industry as a whole and strengthen what we already have.

Thank you.

MS. HARRINGTON: Well, thank you. We're out of time. I know that there's much more that could be said, but I remind everyone as we head into the break and the next session, we have your comments. So, you don't need to restate the points that you've made in your comments. We are looking to move the record beyond the comments in some areas, and I think that we had some very useful and helpful discussion. I want to compliment the participants for playing by the rules.

It is now 10:30. We will resume promptly at 10:45, and if anyone is late, then they will be at a disadvantage for being called on in the next session.

Thank you very much.

(A brief recess was taken.)

SESSION II**PROHIBITION OF CASKET HANDLING FEES**

MS. HARRINGTON: There's been a question raised at the table about whether the gentlemen can remove their jackets, and absolutely.

Also, I just went down to say hello down in the overflow room, and it's a lot cooler down there and the TV coverage is very good. There are some people who would love to have seats up here, so -- yes, absolutely you can take your -- uh-oh, Voni or someone, we need a towel. We have got spilled water on the table. Thank you. Quickly.

Okay, we've got some -- the next issue on the agenda is one that no one cares very much about, but we thought we would just include it anyway. That's an attempt at humor. We're going to be talking about casket handling fees and the rules prohibition on imposition of those.

A couple of housekeeping notes. We have a substitute in for Nink, Nink's not at the table anymore, and would you introduce yourself for our reporter, please, and for all the rest of us?

MR. SIEDLECKI: Yes, ma'am, my name is Jonathan Siedlecki. I am a fourth generation funeral director from Illinois. I operate a funeral home in Illinois. I

am also regional director for the Illinois Funeral Directors Association and vice president of the Ethics Association.

MS. HARRINGTON: Thank you very much. That's okay, you don't have to -- thank you, Rebecca.

Are there any other substitutions? Scott?

MR. GILLIGAN: Scott Gilligan, general counsel for the National Funeral Directors Association, sitting in for John Carmon.

MS. HARRINGTON: Any others?

Okay, we are going to continue to stay right on schedule, which means this session will be ending at noon, and we will break then until 1:15 for lunch, and I would remind those of you who are not participants at the table that if you wish to make comments today, there is a session at the end of the day for public participation, but in order to participate, you need to sign up outside in the foyer, and if you're down in the overflow room, you should come up and sign up. Right outside of this room, there's a sign-up sheet for public participation, and that will occur at 4:15 this afternoon. And you should sign up before the end of lunch, because I said so. So, it's not a part of the rule, so I can say so. We don't have to have a basis.

Okay, I wanted to note, and I'm delighted, that

we've got some folks from some of the -- from the Hill here. Why don't you just tell us who you're from, because I think that people would be interested. Do you mind? I'm sorry, I didn't give you any warning.

MS. FULLER: Not at all. I'm Lauren Fuller. I'm the chief investigative counsel for the Senate Special Committee on Aging chaired by Senator Grassley from Iowa, and with me is Cecil Swamidoss of our staff and Kristy Tillman, who works with Senator Breaux, our ranking member.

MS. HARRINGTON: Great, we are really glad you could be here. We know the Committee has a strong interest in these issues.

Anyone else here from the Hill? Thank you very much for coming. We appreciate it.

All right, let's move right on now to the issue of casket handling fees, and right now, of course, as you know, the rule prohibits imposition of them. Some have suggested that that prohibition has created unintended results that -- unintended, that is, from the standpoint of the regulator.

We'd like to focus here on a couple of basic questions. A question that I have is why should a provider charge a fee? You know, why is that necessary? Are there costs? What is the basis, in

fact, for the need to charge a fee, which, of course, presently you cannot do?

So, I think that that's a question primarily for providers, but anyone, of course, is welcome to comment.

Maynard?

MR. CHERIS: Thank you.

I don't think a provider should charge a fee, but I'd like to ask the question why does it cost more to receive a casket from Batesville or Aurora than it does to receive one from a third party?

MS. HARRINGTON: Good question.

Randall?

MR. EARL: I would be happy to address that.

In my pricing situation, I do include taking care of the Batesville or Aurora or whoever's casket it is as far as the handling fee. I would say that we're probably one of the only industries required to receive and handle a competitor's product for no charge, for no fee.

The first particular thing I would think of that we have to do is to call the individual store or entity that sold this product and find out what it is, because the consumer doesn't know, and that takes some time to do that. It also takes time to receive, prepare and do

the things that we do as a funeral director to prepare this product for presentation.

As I said before, we're not going to put out a product that is going to reflect on us as a funeral home or whatever that looks inferior, and we're going to do everything to make it look as good as we can, and it takes time and effort to do that.

We also think that by not allowing funeral homes to offer a discount, there is also the probability of the Federal Government regulating how we operate, and so there's a couple issues that I think we need to recognize and be cognizant of.

MS. HARRINGTON: Okay, thank you.

Randall and then Jonathan.

Oh, I'm sorry, that was Randall. I'm really sorry.

Okay, Robert and then Lisa and then Jonathan.

MR. KARLIN: Rob Karlin, California Casket Retailers Association.

We don't think the funeral service should cost any different if the consumer purchases a casket somewhere else. We have families that come in and choose a casket from among 44 models we display --

MS. HARRINGTON: Rob, I am going to stop you right there. We know that that's what you think. We

have a comment from you that says that that's what you think. The question here is is there a basis for charging a fee. Different question.

MR. KARLIN: I'm sorry, I think that's probably for the providers to answer.

MS. HARRINGTON: Okay, thanks.

Lisa?

MS. CARLSON: I would point out that I don't believe extra charges are levied for military or shipment.

MS. HARRINGTON: Jonathan?

MR. SIEDLECKI: Yes, ma'am, I operate a funeral home in Chicago on a day-to-day basis, and with the advent of the rule and the evolution of the rule, we've experienced an expansion in competition and different places that we're getting caskets. Today it's possible to order caskets on the internet. My own -- I'm a veteran. My own beloved American Legion is selling caskets in their magazine.

Those caskets are shipped to us in containers, sometimes in boxes, and we are then faced with the problem of removing those and putting them into selection rooms or putting them into viewing rooms, et cetera, and guess who has to do that? The teamsters who work for me.

And teamsters, if you're familiar with them, have a very narrow job description. We also have -- no offense, I love my beloved teamsters, but if you know your teamsters, you have to keep that job description pretty well defined, and you are responsible for their health and welfare, which brings me to another point.

If one of my beloved teamsters stubs his toe while removing that casket, he has got a Workmen's Comp claim against me. So, those costs that are ordinarily not placed in the basic funeral services fee, because they are not supposed to be there, they are supposed to be on an individual basis, usually are recovered by me from the sale of a casket.

If I am not given the opportunity to sell that casket and recover those fees, I feel entitled to charge a handling fee for the individual caskets that are delivered to my funeral home to help recover the compensation that I need to keep my teamsters working.

MS. HARRINGTON: So, what does it cost you? Can you estimate that?

MR. SIEDLECKI: I can do better than estimate, Madam Chairman. One of our esteemed colleagues, David Pearson (phonetic), who was president of the National Funeral Directors Association most recently, he is also a certified public accountant, came up with an

accounting program that we would be happy to submit to you at a later date --

MS. HARRINGTON: Is that in your comment?

MR. SIEDLECKI: Yes.

MS. HARRINGTON: It's in the comment?

MR. SIEDLECKI: Yes, ma'am, in the comment.

MS. HARRINGTON: And what did he estimate that it costs?

MR. SIEDLECKI: His estimate was between \$360 and \$400 per case.

MS. HARRINGTON: To unload and carry --

MR. SIEDLECKI: No, ma'am, we are not just unloading.

MS. HARRINGTON: No, and cover the costs that --

MR. SIEDLECKI: Cover the costs that are involved in that, yes, ma'am.

MS. HARRINGTON: I'm just trying to clarify.

MR. SIEDLECKI: Yes, ma'am.

MS. HARRINGTON: Okay, Pat?

MR. GRAHAM: As you know, I have a funeral home and an interest in a casket store. It's my experience it takes two or three minutes to unload a casket, whether it's from Batesville, Aurora or any other provider. I tend to discount what I've heard here about how this is an immense amount of work, an immense

liability. It's not.

There's a basic fee that funeral directors are allowed to charge, it's nondeclinable, and in that fee should be allowed for 24-hour availability of personnel and regular business, which includes unloading merchandise.

In our particular store we own, we call the funeral home and ask them when they would like us to bring the casket to them, and we'll unload it for them. I mean, that's not an issue I don't think.

MS. HARRINGTON: Okay, Glenn?

MR. MCMILLEN: We believe that the lack of having a handling fee has benefitted the consumer, and we would not support a handling fee. I think it's evidenced by the fact that we have seated at this table a whole new competitive market that did not exist in the past in funeral service, that of the retail casket store.

MS. HARRINGTON: Okay, Glenn, I would like to ask you this question: Do you see a difference between a handling fee and a discount that applies to a package that is offered only when the casket is part of the package?

MR. MCMILLEN: There's a distinct difference between a handling fee and a package fee, and I would

like to maybe cut right to the core of the issue that seems to be the one that is most discussed in funeral service, and that's how do you arrive at a package price for the consumer, and the majority -- the highest majority of funeral providers will take their current price list, general price list, GPL, as prescribed by the industry rule, and they will pick out a number of items, and they will package a price based upon what the retail listing is on that and then develop their discount from that retail listing.

There is no artificial increase of price to be able to create a discount, and we are not supportive of any type of process that would create an artificial environment to discount. We believe the consumer can best be served through packaging. It gives them another choice. It gives them an opportunity to -- if they are price-oriented to save money, and I can't believe that anyone that is pro consumer wouldn't support a legitimate package offering.

MS. HARRINGTON: Okay, Rob, what do you have to say about that?

MR. KARLIN: Examples, specific examples of families coming in and purchasing caskets at prices that they can afford and then going to funeral homes or -- particularly one called Rose Hills, which is the largest

cemetery combo owned by Loehn. They're offered a 30 percent discount on the service fees contingent upon purchasing the casket. So, they literally crying, you know, saying you can't buy the casket that the family chose, because it's going to cost us a thousand dollars here at Rose Hills if we do that. This is a loophole.

I think the intent of the funeral rule to unbundle in the beginning was to provide consumers choice, and this is exactly opposite from what you said in terms of providing choice. Casket retailers cannot compete regarding service fees. The NFDA has commented that they -- you know, they would be at a disadvantage for a cemetery where there's a cemetery plot, and if the cemetery were to say, Well, we'll give you a discount on our cemetery plot only if you buy a monument from me or you buy a vault from me, is another form of bundling and packaging that's exactly correlative to this issue.

Typically when families come in to us, in our particular store, 90 percent of the time it's on an at-need basis, not a pre-need basis. Their loved one is already at the funeral home. I'd say 75 percent of the time when they come in to us, the loved one has passed away and is at the funeral home. They are not typically of the mind to suggest to that funeral home that they may take the loved one out of there to go to a

competitor, because, you know, the level playing field concept here is, Well, if they don't like it, they can take it somewhere else.

They're not going to do that. They're very intimidated by the process. When a death has occurred, the loved one is at the funeral home, it's not like they're not going to have the service at that funeral home. So, when the funeral home says your service fee will be less contingent upon you buying this casket, which costs much more at the funeral home, they're not going to -- they're not going to fight that.

And what we've done, actually, is said go ahead and buy the least expensive casket that that funeral home will offer, and we'll buy it from you at the same price that you had to buy it from the funeral home and then take advantage of that discount, and we've bought \$600 caskets that I wouldn't even show in my funeral home -- in my casket store, because they're cardboard.

MS. HARRINGTON: Okay, thanks.

I want to remind everyone, if you have your tent up, that means that you want to be called on, and I think that -- I can't tell whether some of you who have just spoken and whose tents are still up want to be called on again.

Maynard?

MR. CHERIS: Thank you.

The difference between a casket handling fee and the package discount is the inflation of the service prices. We have supplied the Federal Trade Commission with specific examples. We supplied the Senate Committee on Aging of specific examples. We have got dozens and dozens of them. It is the majority of funeral homes in the Chicago area. The amounts vary. They run as high as a \$2,500 penalty discount.

I think, referring to my earlier remark about making the funeral director a fiduciary, you can't put your interests ahead of the consumer's. It's a scam.

By the way, I had one comment on an earlier question, we moved to this, and I wanted to ask the funeral director at the other end of the table, who's a Chicago funeral home who incurs a \$300 to \$400 cost if he and his accountant have hired an extra person at the funeral home for the occasional third-party casket.

MS. HARRINGTON: Jonathan, would you just answer that question?

MR. SIEDLECKI: No.

MS. HARRINGTON: Thank you.

George?

MR. CLARKE: Thank you.

First I wanted to point out that NSM, National

Selected Morticians, is opposed to a casket handling fee. The reason for that is that we see the casket handling fee as, in effect, being a surcharge to consumers that potentially costs them more money and discourages comparison.

MS. HARRINGTON: What about discounting?

MR. CLARKE: On the other hand, we feel that discounting the package pricing is pro consumer in that it potentially saves the consumer money and does, in fact, encourage comparison, encourage shopping.

MS. HARRINGTON: Let me ask you a question. Has discounting arisen because of increased competition? Is that a business response by -- in your business?

MR. CLARKE: I don't believe that that generalization can be made, because certainly there are funeral homes around the country and certainly our members that offer packages not in direct response to the emergence of any alternative providers in their market. So, I don't think that generalization can be made.

MS. HARRINGTON: Did they offer packages before?

MR. CLARKE: Yes, ma'am.

MS. HARRINGTON: Okay. Did they offer -- did they -- well, did they offer packages that discounted

the price?

MR. CLARKE: Yes, I believe they --

MS. HARRINGTON: That is, if you added up the itemized prices and came to a sum, they previously were also offering packages that if certain items were purchased, the sum would be less?

MR. CLARKE: The itemized cost would be greater than that of the package, right. And if I may, I would like to make just one more point.

It's our view that the FTC, by virtue of the funeral rule or perhaps other action that the FTC has taken, does not seek to regulate price but rather to ensure the access of information for consumers by which they're free to make decisions, and we suggest that in the -- if there are some prices that exist within the realm of discount packages that are thought to be unduly high, that the consumer is free to make choices.

And we suggest that rather than the FTC attempting to regulate price, that the marketplace ought to be left to determine the viability of prices that individual funeral homes may charge. The consumer is free to bypass those funeral homes or other providers that they feel are prohibitively expensive in favor of other providers at which they can ostensibly save some money.

Thank you.

MS. HARRINGTON: Thank you.

Lisa?

MS. CARLSON: Having looked at thousands of GPLs, I can say that there were some minimal package offerings, but the degree of discount was very minimal. It tended to amount to the guest book and the thank you cards and so on. Since '94, the number of discounts has radically increased. So, I would say yes, it's in direct response to the third-party sellers.

The other point I would make, that discounting in a general marketplace is used to lure disposable income. When you go to McDonald's and you buy a meal, you get essentially your french fries for free. It's in a very different situation that discounting in funeral purchases is used, and it really is punitive to the consumer. This is an effort to punish the consumer.

MS. HARRINGTON: Scott?

MR. GILLIGAN: I think I have got a couple of points. First, going back to packages, packages have been around since the funeral rule started. Discount packages have been around. The Commission realized that and recognized that consumers may realize a discount by buying a package rather than buying itemized prices, and that's their choice.

Now, when we talk about a loophole, this is not a loophole. What the funeral home has, and in the past recognized this fact back in the early nineties, is we have a one-stop competitive advantage. Funeral homes sell 13, 14, 15 items. Casket stores sell one. By putting together a package and offering it at a discount, we can offer that to consumers. They benefit; the funeral home benefits because they're selling more volume. It's a matter of choice.

The courts realized that when it just went to the Third Circuit. We had the same argument back in 1994. We told them that there is no difference between a handling fee and a discount, because it both costs the consumer money. He can either pay \$300 in a handling fee or he can pay \$300 depending on if he doesn't get the discount.

The Court said no, you're wrong. The difference is there's choice. In a handling fee, he's penalized, it's a surcharge, as the courts recognized. With a discount, it's his choice whether to take it, and if he realizes a smaller savings because he went and bought things off the itemized goods and services, that's the consumer's choice and it's up to them. So, it's pro competitive as recognized by the Third Circuit, it's been recognized by the staff, been recognized in other

rulemakings.

With the eye ruling, the staff recognized the same thing and said that if someone wants to put together a discount that includes the eye examination and the eyeglasses, that's fine. As long as you don't compel the consumer to purchase both things, you can give them an incentive to buy both, and that's a legitimate discount.

Now, going to the point where somebody's charging \$2,500, are they getting into an unreasonable discount? That's going to have to be decided on a case-by-case basis, but there are laws. There's the Guide for Deceptive Practices that the FTC has, state laws that would prevent those kind of unreasonable discounts, sham discounts, that those kind of actions could be brought either by the casket companies or by the consumers under state law to enforce that.

MS. HARRINGTON: This has been a great day, because I heard a funeral director say that when the funeral rule was promulgated, it elevated the status of funeral directors, and now Scott is telling us that the Third Circuit had it right.

MR. GILLIGAN: Partly right.

MR. MCMILLEN: I don't think Scott went that far, ma'am.

MS. HARRINGTON: We can all come back tomorrow.
All right, Jim?

MR. PINKERTON: You asked if there was a
distinction, and I believe that there was one as Scott
and maybe some other people have said.

There should not be something that is punitive
to the consumer. Traditionally both the sale of
merchandise and the charge for services have contributed
to us meeting the expenses necessary to provide the
funeral. If you look at what we provide, the
independent casket marketer essentially provides the
service of delivering the casket from the warehouse to
the funeral home on behalf of the family.

We provide services to those families for days,
months, weeks and sometimes years. So, I don't think
there's anything wrong with us providing pricing that
encourages them to buy all the products from us and
continue to concentrate that cost and concentrate that
recovery. As long as it benefits the consumer, I think
it's acceptable.

MS. HARRINGTON: Okay.
Carolyn?

MS. JACOBI: Yes, I'd like to veer away from the
technical aspect and the legalese for one second, and I
think one thing is being overlooked here. The young

lady here to my left mentioned something about simplicity earlier.

When a consumer has a death, you're talking about a right of choice and the ability or the lack of the ability to make a wise decision. I mean, when you get down to this discount package versus the handling fee for a casket, how many consumers sitting there with a loved one on a cold board are going to be able to calculate right then and there?

Whatever their decision is, you must keep it simple. If you're here for the purpose of protecting the consumer, let's not make things any more difficult than they already appear to be, and let's keep it simple for the sake of the consumer.

Each of us sitting at this table are consumers. Each of us sitting at this table are going to experience a death. And I'm sure if you have this decision to make that you would not have to want to go through all this mental aspect. It's been proven psychologically that once a death takes place, that your ability to be able to make a wise, rational decision depletes itself. Ask any therapist, ask any psychologist, go to any doctor, and they will tell you. Please, keep it simple.

MS. HARRINGTON: Jim, did you have a response directly to that, because I saw your --

MR. PINKERTON: Yeah, I wanted to say one thing.

MS. HARRINGTON: Okay.

MR. PINKERTON: -- in terms of as long as we are competing appropriately, and I think this goes to the disclosures and the inclusion in the rule, as long as everybody understands what it is they're buying, and especially in the pre-need arena, but having some experience with third-party sales in Pittsburgh for many years, when we have the consumer come in and be under the misinterpretation or misimpression that somehow there is a relationship between that sale of the casket and the funeral -- in other words, they're back in the pre-'84 mode, they think that buying the casket is paying for the funeral, and they come in and they're surprised to find out -- and we hear consistently the comments that they were told that they weren't -- that this is the largest expense and you've already taken care of that.

So, as long as we're competing honestly, I don't think there's a problem, but whenever there is misrepresentation, if the consumer believes that purchasing that casket has paid for some part of the funeral, then I think there is a problem.

MS. HARRINGTON: Okay.

Jonathan?

MR. SIEDLECKI: Yes, ma'am, I'd like to address a couple points on this issue, two of which were brought up by Maynard.

One, I take great offense at the fact that he suggests through innuendo that a majority of the funeral directors in the Chicago metropolitan area are somehow dishonest or devious. I would suggest to this group quite openly that the FTC recently ran a sweep in the Chicago metropolitan area, and I think the figures will attest that the majority of the funeral directors in the Chicago metropolitan area are, in fact, complying with this rule.

Next, he brings up another subject from a previous topic regarding his idea of creating a consumer police force to somehow ensure the implementation of this rule, and if we were back in Chicago, I would assume that his brother-in-law was a badge manufacturer so he could sell 9 million badges to all the citizens in the City of Chicago, but he's not.

Right now, looking at the package dilemma that we're faced with, I would tell you that packages are established and evolving to give us as funeral directors on a daily basis an opportunity to present an incentive to consumers to use our products and services, nothing

more than that. Funeral directors do not have to use a package. They simply have the option of using that package.

You need to know that a handling fee, in my particular situation at my funeral home, would be utilized, once again, to recover the costs that are not recoverable from the purchase of a casket from a third-party provider.

Now, if I don't have that basic cost in my basic services fee, it is undue hardship on my operation of my business to expect me to just handle it that way, that I just eat that cost, or, as is suggested here at this meeting, that we somehow put that cost into another fee and thereby every consumer that comes into our funeral home has to pay that fee. Thereby we're punishing all consumers or giving them an undue burden of cost that would not appear if we were allowed to establish a handling fee that could be very realistically presented on an individual basis to particular people who need to be covered by that handling fee. And I think that that's a point that needs to be made. If you do not allow a handling fee, you are, in fact, saying that we need to pass that cost on.

Someone brought up and said, Well, Jonathan, did you hire somebody else to do that? No, I didn't. No, I

didn't. I'm absorbing that cost now, and the threat of me raising my prices \$362 to every consumer that comes into my door is something that this rule was intended to avoid. It was intended to minimize the cost and spread evenly the cost and allow the individual consumer to compete by judging costs from individual funeral homes.

MS. HARRINGTON: Okay, thank you.

Bill?

MR. SEALE: Not only are we in the pre-need insurance business, but we are partners in 57 funeral homes and six cemeteries, and we have bundled our -- for years, but it's not based on where you buy the casket. And I would venture to say that 90 percent of the people that trade with our funeral homes take the bundle, because they get a lot more for their money in taking the bundled package.

But there is bundling and packaging in a considerable number of businesses in the United States, everything from restaurants to computer software to automobiles. If packaging is not supported in the funeral business, then other businesses must unpackage, also.

MS. HARRINGTON: Talk to Bill Gates. That's just a -- that's just an FTC attempt at humor, and it doesn't reflect anyone's predisposed thoughts about

this. I just couldn't resist.

MR. SEALE: We don't believe in handling fees at all.

MS. HARRINGTON: Okay, thank you. Thank you, Bill.

Glenn?

MR. MCMILLEN: Thank you, just a couple comments.

First I want to say, Service Corporation International has had some form of package pricing in many of its locations for well over the past ten years. Much of it has been what we would refer to as a package to deal with lower-income families, but we've had many packages that would fit into the middle economic ranges that people would choose. They particularly enjoy the simplicity of it. They enjoy the savings that they receive.

The second comment I would like to make is that one of the representatives from the Casket Retailers Association stated that they were placed in a position of unfair competition, and I guess I would question, you know, what's more important, unfair competition as it relates to that group or a benefit to the consumer.

And again, the marketplace is going to determine what's fair competition and what isn't fair competition,

and it's an issue that -- to regulate bundling or package pricing would be doing a disservice to the consumer.

MS. HARRINGTON: Thank you.

David?

MR. SWIM: Does packaging encourage shopping or give the family a choice? Absolutely not. Most of the time when a package is offered, the body is already at that mortuary. The family mentions in an arrangement conference that they may consider something else, because they're looking at prices that they just can't believe, and they have somehow heard through a family friend or through an advertisement that they have a choice.

They make that call, sometimes even from the arrangement room and secretly, on a cell phone, outside the mortuary. What are your prices? Where are you? I can't hear you. You're on a cell phone. Well, we're outside the mortuary. I'm in my car. I've got a bad connection. What do you start at?

We give them our prices. In the State of California, we're fully required to distribute a price list. On my internet site, since I've been in business for the first two months, we've posted our prices. When we first did that, they used that to somehow compete.

I'll take issue with Mr. McMillen that bundling has been in regular practice. There is a free for all out there of discriminatory pricing that exists in both at-need and pre-need arrangements. The same family cannot get that discounted package many times on a pre-need arrangement but can get it on an at-need arrangement.

So, if they know that there's competition, it will be offered at that moment, but to be able to lock it in for mom ten years later is not the case.

What is the real price? Many times during these bundled programs the family has absolutely no concept as to what the real price is other than they're just told by the funeral home that they have now equaled the price of the casket store. When the family brings the contract back to us and we sit down with them and go over it item by item, not only did they pay a thousand dollars more for the casket, they ended up getting services they didn't want, they have been added other items, and they find out that they've been snookered and taken advantage of.

And so fees didn't work first for the industry, and now discount packaging is the second choice based upon a decision and promulgated largely by the NFDA out of a distortion of what that decision was based on in

1994, that there was no competition. Handling fees virtually eliminated competition for ten years. Packaging is going to essentially do the same thing.

My question would be, has the FTC or any of the funeral homes here got data to support in the states like Oklahoma, Mississippi, Tennessee, where you have to be a licensed funeral director, how much actual packaging exists there? How much actual packaging exists where there is no casket store or there's been no competition?

And yes, we do have documentation that the prices have been raised exactly, within 10 percent, to the amount of difference between a casket store's prices and a funeral home's pricing on the packaging.

MS. HARRINGTON: I have a question for the casket sellers --

MR. MCMILLEN: May I rebut, Madam Chairman?

MS. HARRINGTON: Just a sec, I want to ask my question.

MR. MCMILLEN: Thank you.

MS. HARRINGTON: Do you discount for purchases of more than one casket or -- I would imagine that that doesn't arise often, but I can imagine -- I mean, have there been -- this is a yes or no question -- have there been instances where people have come in to you and

purchased more than one casket at a time?

MR. SWIM: For pre-need or at-need?

MS. HARRINGTON: Either.

MR. SWIM: Well, yes.

MS. HARRINGTON: Well, it could be at-need if there were multiple deaths.

MR. SWIM: Yes, we have definitely helped a family where they had a tragedy and both were killed in a car accident.

MS. HARRINGTON: Do you -- in that situation, do you charge the same price for each casket that you would charge if it was a single transaction?

MR. SWIM: No, retailers are definitely, Eileen, involved in variable pricing, but not to the extent of 50 percent. You can go into these --

MS. HARRINGTON: I just want yes or no.

MR. SWIM: No.

MS. HARRINGTON: Okay, thanks.

Glenn, you have to rebut in 30 seconds.

MR. MCMILLEN: I can do it in 30 seconds.

Two issues that -- an implication, we have published pre-need price lists, published at-need price lists, which can be provided to dispute the comments that were made. And the second issue I'll cut out in the benefit of the 30 seconds.

MS. HARRINGTON: Thank you.

Randall? I'm sorry, your tag is down.

I want to hear from Rob, and we'll get back to you, Maynard, but I want to get to some of the people who haven't been called on quite as often, and then we'll hear from Pat.

Rob?

MR. KARLIN: We've asked the Department of Consumer Affairs in California to review this issue. We've asked the LA District Attorney to review this issue.

From the point of the original intent of the funeral rule, and if I can just read really briefly, when you talked about casket handling fees being prohibited, it says in this -- your book, and I show this to every customer, "This is simply a hidden penalty for those consumers who have exercised the right to purchase a casket from another seller."

We have no problem with packaging, offer packaging all day long, it's an appropriate marketing tool, but don't tie it to the purchase of the casket.

MS. HARRINGTON: Okay.

Pat and then G. V.?

MR. GRAHAM: I tend to agree with what he just said, allow competition head to head, apples to apples,

casket to casket. A casket retailer cannot compete with a funeral home when that funeral home ties not the casket to the services but ties the services to the sale of the casket is what it amounts to.

Discounting in my experience and in our last year and a half of operation of our casket store has increased a hundred fold in the city we operate in. It was not done hardly any beforehand, and now it's prevalent. What it amounts to is bundling is back. They've rebundled it back into the packages. And again, they have the advantage of being able to offer that service tied to the casket sale, not the casket sale tied to the service.

The package price list in funeral homes we visited has become the de facto price list. That's what they're offered, not the general price list, in many funeral homes that we've sent a spy into, if you want to call it that. That's a fact. They're handed a package price list.

Mr. McMillen, I've seen copies of the Dignity Plans that you all are using now, and they're very confusing. There's six or eight different plans with all different price ranges.

MR. MCMILLEN: They're also in compliance with the industry rules.

MR. GRAHAM: I understand that, but we're getting back to what Ms. Jacobi talked about as far as simplicity.

MR. MCMILLEN: We find them very simple.

MR. GRAHAM: When you have six or eight different package price lists, you have a general price list, how can a consumer make an informed decision when there is not something to go by in that respect?

I think on my comments I had suggested that maybe the Commission look at limiting the package price list to a percentage, but I mean, God, that's going to be even more confusing. I think it's either up or down, allow it or disallow it in connection with the casket pricing.

MS. HARRINGTON: Okay.

I'm going to call on G. V. and Scott and Maynard and Edith, and then I have a question, and any of you who I just mentioned are free to answer it, but I want everyone who knows anything about this to answer it, and that is this:

Do funeral providers offer packages with discounts where the package does not include the casket? That's -- I want yes or no on that.

Okay, G. V.?

MR. AYERS: I don't know on that -- on your yes

or no.

In '84, the FTC found that competitive offerings to shift overhead costs of the market in casket mark-up to professional service fees resulted in casket handling fees. Being not on the casket store side or on the funeral director side, I would raise the what if? What if there were no bundling provision tied to the -- tied to selling the casket? What if that were -- what if that were prohibited?

Would we see a result, then, of more out and out price competition on pricing caskets? Especially, I think that in many cases the funeral director might be at an advantage on that, because number one, they can offer services, and number two, often times they get volume discounts for the caskets themselves.

MS. HARRINGTON: All right, let me observe that the Federal Trade Commission Act prohibits deceptive and unfair trade practices, and a finding of deception or unfairness in a particular practice that is prohibited is necessary. So, we're not the, you know, "make a more perfect world" regulatory agency. We have a very specific statutory mandate and legal requirements that must be met in order to issue a trade regulation rule or provision. That's an editorial from the Chair.

Okay, Maynard? I'm sorry, then we will get to

you, Scott.

MR. CHERIS: Thank you.

I've read the Third Circuit decision. I don't see anything in there about inflating service prices before the discount. I've got in the NFDA guidelines on page 6 a section on unreasonable discounts, what the NFDA thinks they may inflate and how much would be unreasonable.

It's the inflation that is the problem to the consumer. The eye glass people, I don't know if they inflated the cost of glasses and then discounted it, but I know that that's common now in the funeral industry, and that's why we call it a sham.

MS. HARRINGTON: Scott? You probably wrote those guidelines, didn't you?

MR. GILLIGAN: Maynard, the response to it is if it's a sham discount, it's illegal, and there are laws on the books not only from the FTC but also from the state.

MR. CHERIS: How much is the sham?

MR. GILLIGAN: That's for the court to decide or the FTC to decide, that's why we have guidelines on deceptive practices.

Just to get to your question, Eileen, prior to the handling fee ban being put into place, 25 percent of

our members offered packages at a discount. So, this is -- package discounts were well before the ban on casket handling fees.

And the other thing I want to point out is --

MS. HARRINGTON: Are these packages -- do you know whether there are packages that don't include caskets?

MR. GILLIGAN: Yes, there are now.

MS. HARRINGTON: There were?

MR. GILLIGAN: There were before the rule and there are now. Right now, 14 percent of our members offer a discount tied to the sale of a casket, 25 percent of them offer discount packages. So, obviously there's ones out there that offer beyond the tying it to a casket.

The other thing I want to point out is we're talking about caskets right now, and they want to discount -- or outlaw any discount type of casket. Well, we sell a lot of other things. So, next time, are we going to have the vault people in here or the cremation people in here or people that sell funeral services, complaining that we can't put those in packages and offer them at discount?

You know, that's what we have to realize. Once you -- if you knock out caskets, then the vault people

would be in here or the people that offer just cremation would be complaining that funeral homes are putting together in their direct cremation packages discounts and that unfairly penalizes them. So, you can't just stop this at a casket. A casket is just one component of what a funeral service is, but you have to go beyond that, and that's going to be really problematic.

MS. HARRINGTON: Lisa?

MS. CARLSON: I saw almost no mention of caskets prior to '94 in packages conditional.

MS. HARRINGTON: Edith?

MS. CHURCHMAN: Yes, I think that I would like to focus this part of the discussion on strengthening the rule, again, for the benefit of the consumer, and if discounts are used as a lure, what about the casket store practices in my area of giving away things to the family, such as prayer cards, register books, a donation to the church for purchase of a casket? I think that that's a lure, also.

So, what is the real price of the casket? What -- you know, what is the issue of incentives here? How is a consumer to make an informed choice on whether a casket is more expensive at a funeral home or whether it's less expensive at a casket store if all they see is an ad saying, Yes -- at the casket store -- our prices

are 50 percent lower or 100 percent lower?

There's no, you know, there's no mechanism in place there for the consumer to be able to compare.

MS. HARRINGTON: Thank you.

Jim?

MR. PINKERTON: One of the things that I wanted to point out, and as we talked, and G. V., I think you brought up the point, that the shift of profit or cost from the casket sale to the handling charges, if we really wanted to put you guys out of business, what we would do is charge the casket at wholesale and elevate the service charge and recover appropriately. I mean, we know -- well, just think about this, though.

We know that there's going to be a certain amount of cost for our funeral home. The current method of pricing, which does have a throw-back to previous days, has a balance between the sale of the merchandise and the charge for the services, understanding that there are people who can't afford the same things all the time, that there is a balance.

By selling a range of merchandise that has the option or the necessity for people to buy up or down and having the service charge somewhere moderately, you have that sliding scale. If you charge everybody the same price for the services, you increase that baseline, and

I think you penalize people least able to pay for it. So, the current method has the sliding scale on the merchandise and a lower baseline on the service charge, and I think it is a fairer way to do it.

So, offering that -- again, the package for the conglomerate of services encourages the people to buy just from the funeral -- I mean, there's a basic premise here that more people's salaries you're paying, the higher the cost of the funeral is probably going to be. One of our efforts is to try to minimize the number of providers that are involved in any funeral transaction.

MS. HARRINGTON: Okay.

Pat?

MR. GRAHAM: Okay, number one, I have never seen a package price list or a package deal that I've ever heard of that did not include the casket. I don't know where the NFDA member there got that information --

MS. HARRINGTON: Hold on.

Scott, what's your basis for saying that?

MR. GILLIGAN: It's a membership survey that we have been doing, and we'll be happy to supply it to you.

MS. HARRINGTON: Is it in the record?

MR. GILLIGAN: We recited it to the record, but we didn't enclose the survey, but we have a -- in our

comments, we reference it, but we will be happy to give you. It's surveys that we make available to anybody who calls up and asks for them.

MR. GRAHAM: I would rather see that evidence come from an uninterested source.

MR. GILLIGAN: It's historical evidence.

MR. GRAHAM: Rather than a biased source, if you want to put it that way. You know what I mean.

Secondly, Mr. Pinkerton mentioned that service charges, if they wanted to run casket retailers out of business, they would merely raise their service charges and lower casket prices to a wholesale level. That's not going to happen, they haven't done that, and the only reason is the service charge is already so high, the public is not going to swallow it. And where they have gone up already, discount funeral homes are opening up and have taken a good percentage of that business away.

MS. HARRINGTON: Okay.

All right, Jonathan -- we are starting to run down on time, so we need to keep these comments now short.

Jonathan?

MR. SIEDLECKI: Yes, ma'am.

First of all, I'd like to inform the people at

this table who think that things don't change, prohibition was repealed. Everything changes. We are in a situation here where since 1994, I keep hearing it, we reviewed the casket handling fee, we looked at those things, yes, we did, and since that time, the rule has fostered competition and sources of caskets that were never before available on a level they were never before available to. So that the industry, the profession, is reacting to that.

You need to know that funeral homes offer a complete range of services, that was stated before. That's a very important fact, because when a family comes to the funeral home that I operate, they deal with me or one of my funeral directors. That funeral director guides them through a planning process which eventually evolves to the selection of a casket along with other products.

That funeral director costs me a lot of money to have him in that building. He has education, he has licensing requirements, he has continuing education, he has a whole series of things that give him accountability and credibility with that family.

If I were to open up a casket store, without offending anyone at this table, I could select anyone in this room and put them in that store and say, When

someone walks through that door, you tell them this casket is \$272. But I cannot, ladies and gentlemen, do that at my funeral home.

When people come in to my funeral home, they expect to be guided through a funeral service. They expect to be given competent and honest advice. And I provide that to them at a high cost, because incidentally, in the City of Chicago, all my funeral directors are -- guess what? Teamsters.

Thank you very much.

MS. HARRINGTON: I'm really sorry we don't have anyone here from the teamsters to rebut. Jimmy Hoffa's buried in the FTC garage.

Okay, Bill?

SPEAKER: They didn't comply with the rule when they buried him, either.

MS. HARRINGTON: It was prerule.

MR. SEALE: I know in our situation, the funeral homes that we are involved with, our service charge absolutely covers the basic charges. There's not a dollar's worth of profit put into our service charge.

As a for-instance, in one of our places, the taxes and insurance that we provide is \$400 worth of overhead cost that we're putting in there, but at most funeral homes -- and I'd like to ask the other funeral

directors here -- most funeral homes have always just shown the actual costs as their service charge, and I think that's the case, and so they are due to put in -- maybe put a profit over on their service charge. We probably should have done it years ago.

MS. HARRINGTON: Okay, let's ask one.

Randall?

MR. EARL: Thank you, I was about to jump up and down down here.

MS. HARRINGTON: We can't have that.

MR. EARL: Just a couple of points, please.

The consumer that we're dealing with today is an educated consumer, and if you don't think so, when they come into our office with 42 pages off the internet, I'm telling you, they're very educated today. So, I don't really buy some of the comments that, you know, we're doing this or we're doing that for someone that doesn't know. That's not the case today. That's definitely not the case.

To answer the question, have we transferred profit into the service fees, most definitely. We have learned how to compete with the casket stores. Absolutely. It's fair competition, and that's the way that we have done it as an industry.

To answer your question, Madam Chairman, are

there discounts for packages without caskets, yes, there definitely are. We discount services every day for infant services, indigent services, police and firemen and charity, every day of our lives. Any funeral director sitting around the table will tell you that. We do that every day.

Thank you.

MS. HARRINGTON: Okay, let's hear from Rob.

MR. KARLIN: So do casket retailers.

I think it's clear here from your comments and the gentleman down there that you have significant overhead. Customers come in to me and ask me, Why can you offer a casket for so much less than the funeral homes? And my answer is, I don't have the same overhead. That's -- that's absolutely true.

And to put things in absolute numbers, in general, casket retailers double their price. If you buy a casket for \$500 -- and by the way, we can't buy it as cheap as funeral homes can, particularly SCI, we'll sell it for a thousand, and as business people, we operate businesses and we can survive doing that and provide a service to the customer.

That same casket is marked up much more than that at almost every funeral home in my market. I am significantly lower on casket prices. So, what's

happening is, like you say and you say, the cost of your operation has been supported by the merchandise as well as your service fee, and what you need to do is transfer it to your service fee and compete head to head against each other for services, because with the internet, with casket retailers, the consumer is educated. They won't pay \$2,000 for the casket that they can buy from me for \$1,000.

MS. HARRINGTON: Okay --

MR. SIEDLECKI: Madam Chairman, can I have rebuttal just quickly?

MS. HARRINGTON: No.

What I'm going to ask is whether anyone at the table has anything new to say. New, I'm looking for new.

Just a minute, I'm studying to see who has new, and if you don't, I'm going to stop you.

Harvey?

MR. LAPIN: It seems to me that the big problem that we're talking about here from what I can see, and I'm sort of a neutral party here, because CANA doesn't really care about the casket handling fee, but the problem seems to be when they condition the purchase of the casket on the discount, when they're tied together.

Now, the rule seems to cover that in a general

way under 453.4 as it being an unfair and deceptive practice, but the rule also specifically mentions under 453.4 situations which are set aside, casket for cremation provisions and the other required purchase. So, why not amend the rule specifically to say that if you condition the taking a discount on purchasing the casket, that it will be a violation of the rule?

MS. HARRINGTON: David?

MR. SWIM: In San Diego County and most of California where we have documented price lists, Eileen, I just wanted to clarify, the only packages we've seen without a casket are direct cremation, ship in, ship out, and so as these comments are being made as to yes, we offer packages, it's very important to identify what specifically is that package.

MS. HARRINGTON: Thank you.

Harry?

MR. NEEL: The view taken here is one funeral, one profit, one recovery. I have seen few businesses that operate on such a small scale, regardless of whether you're 50 funerals a year or 300. I look at a year. I'm not going to look at one case. So, these recoveries of costs and expense are not on a one-family basis; they're over the business year.

I mean, I don't know -- no one's talked about

actual numbers. For the first three quarters of this year, I've accepted seven caskets from outside sources, about ten last year and eight the year before. Now, that's not a significant impact, but again, I don't look at the individual family for profitability. I look for a 12-month span, and I'm surprised that everybody's micro-managing to such a one-case/one-family basis.

It would just be interesting -- California may have a much different, as usual, impact, but Jim, how many do you receive a year?

MR. PINKERTON: We receive about two, so it's not a major issue.

MR. NEEL: And you, sir?

MR. SIEDLECKI: Me?

MR. NEEL: Yes.

MR. SIEDLECKI: Five years ago, I didn't get any.

MR. NEEL: How about this year?

MR. SIEDLECKI: Last year I got three, and next year I may get ten. That's the issue here.

MS. HARRINGTON: Okay, okay, Maynard has a question.

MR. CHERIS: Thank you.

Here's a question to think about, we don't have time to have answer. Does the consumer benefit if

funeral directors, funeral homes, funeral trade associations get rid of casket stores? Think about that.

MS. HARRINGTON: I would say a rhetorical question.

Merc and then Scott.

MS. BERN-KLUG: I have a different question, inspired in part from my neighbor's question.

This discussion, in part, kind of the underlying theme is are funeral providers going to be able to recover some of the costs, should it be through the sale of the casket, should it be through the basic services. My question is very different.

Can a family decide how much money they want to spend and then go and buy a funeral that matches that? And are we putting in disincentives to allow a family to decide, I want to spend \$2,700, and I want to use this funeral home, and if I can't buy a casket there for this amount, I'm going to buy it from a casket store.

I mean, this discussion hasn't really focused on from the family's point of view, can they buy what they want to buy and nothing else?

MS. HARRINGTON: Scott?

MR. GILLIGAN: I just want to clarify, Harvey, it's not a condition of tying a discount to a purchase

of an item. What the rule prohibits is you conditioning the purchase of anything on a GPL with a purchase of something else on a GPL. A discount is totally different.

And just a comment to Robert, he properly pointed out that they do -- his casket store has a big advantage over funeral homes, you have lower overhead. Funeral homes have an advantage that you don't have in that we offer a group of goods and services, and we can offer them at a discount package. So, let's compete.

MS. HARRINGTON: I'm still looking for new. We are not going to -- I am going to cut off speeches and rhetorical questions and stuff, because that doesn't help our record. I'm serious about that.

David?

MR. SWIM: I think Mercedes' point is the whole key. We've found that shopping doesn't exist until one of two things, that they've run out of money, because they go in to shop when they're at the funeral home, and they do start coming to us, and we had a family that wanted to buy a bronze casket. We didn't carry it. They came over, looked, they had been quoted no package price.

We mentioned to him that probably he could get a package price. We asked him extensively, looked at his

price list, hadn't been offered a package price, this was right in San Diego, and sent him back and said, Why don't you ask for the package price? You have got a certain casket you want. All of a sudden, that became an appearance there. And yet by the time he ended up there, he didn't know about how much he spent.

And families going on, they're so confused as to actually what are they going to get. If we had general price lists that stated here's the funeral service fee and here's what it's going to be no matter what else you buy -- they're doing this currently, Eileen, on general price lists with church and chapel ceremonies. You'll find that the exact same fee is charged to go to a local church as it is to use the funeral home chapel.

And is the cost the same? Most of the time not. It's all bundled in there, and they tie all these things in. So, the same thing with the family. They go in, and they're bundled with a potpourri of services, and then mention that, Boy, if you get the casket, it can save you a lot of money. And we get cancellations as casket retailers.

The competition, no problem. Bring the casket down to my price, no problem. But to hold the family hostage at that point, when mom is in that funeral home, is where most of the time we see the feedback coming.

MS. HARRINGTON: Bill?

MR. SEALE: I would like to answer Mercedes. Being a funeral director and owning funeral homes, one of the nicest things that happens is a family comes in and says we have got X number of dollars to spend, and I don't know any funeral director that has ever refused to take that amount of money and give that person a decent Christian burial.

MS. HARRINGTON: Okay, I have two more comments, and I would like them as close to 30 seconds as possible. We will have Jonathan and Glenn.

MR. SIEDLECKI: Just very quickly, I have heard a lot of talk here today about the expensive caskets at funeral homes. I would throw out here on the table today, that my price list for caskets, I have a casket suitable for viewing at \$258. I have a minimum metal casket suitable for viewing at \$554. I would ask Mr. Maynard and the other gentlemen to comment on that, please. Where are your base prices?

MS. HARRINGTON: Glenn?

MR. MCMILLEN: I'll withdraw, the point was made.

MS. HARRINGTON: I think we had some consensus earlier that third-party casket sellers -- I think we heard this -- would not disagree if they were required

to provide price lists.

MR. SWIM: Absolutely, full agreement.

MS. HARRINGTON: Under the rule, okay.

Okay, I don't think that we're going to have that discussion, because I don't think it gets us anything in terms of what we're looking for in our record, and I haven't -- unless somebody has something new to say, we will adjourn for lunch early. So, at the risk of knowing that you're standing between the meeting and lunch, would anyone like to say anything new?

Hold on, hold on, Mercedes?

MS. BERN-KLUG: Could we add the extra ten minutes into the discussion of the basic services fee? That's the shortest amount of time.

MS. HARRINGTON: Hold on, yes. Here's what we will -- well, we will come back at -- and resume promptly at 1:05, and so we will be able to move up the afternoon, and if we stay on track, we can have additional time.

Jim, question?

MR. PINKERTON: Can we also revisit the issue of jurisdiction?

MS. HARRINGTON: I don't think that we can revisit the issue of jurisdiction, because it's a legal question, and there isn't really anything, I don't

think, that anyone could say into the record that would help the record on a legal issue.

MR. PINKERTON: Okay.

MS. HARRINGTON: Thank you very much, 1:05.

(Whereupon, at 11:50 a.m., a lunch recess was taken.)

AFTERNOON SESSION**(1:05 p.m.)****SESSION III****PRE-NEED ISSUES**

MS. HARRINGTON: Thank you all for being back right on time. If everyone could please take a seat and end your conversations, that would be helpful.

Now, let's just take a look around. Susanne, are you good to go down there?

THE REPORTER: I believe so.

MS. HARRINGTON: All right, I believe we have some substitutions this afternoon, so let's get those on the record before we start.

Joe, could you introduce yourself?

MR. HAYES: Yes, I'm Joe Hayes with Service Corporation International, and I'm substituting for Glenn McMillen.

MS. HARRINGTON: Are there any other substitutions? I don't see any. Okay, very good.

Okay, how many of you had lunch with Mr. Ming today?

(Show of hands.)

MS. HARRINGTON: Yeah? He'll be so happy. That's right, it's a package deal.

All right, for the next hour we are going to

talk about pre-need issues. What we're going to do is do pre-need from 1:05 to 2:05. We will take our break from 2:05 until whatever time I say we're going to end it at, we'll see how it's going there and what it looks like we need in terms of either fresh air or movement.

Then we will do price list requirements, and we'll see how that goes. We may shorten that up, depending on what the conversation is like, so that we can make sure that we have a good and robust discussion on the basic services fee issue, which was requested earlier. So, I'm going to kind of play that by ear.

If I hear that we're going over the same ground here and that we aren't having new and enlightened discussion, I know that we all have views and we want them on the record and we want to make sure that everyone knows what they are and understands them, and we would all love for everyone to agree with our positions, but this really isn't the opportunity to restate the positions that are staked out in the comments.

It's an opportunity to help us narrow the issues or better understand the issues really by talking to one another and building on the discussion that we have at the table. And I know it's really hard, because you're all here as advocates, as well.

And I want to say that I thought that all of the participants really helped us a lot this morning, so I'm not restating the rules by way of criticism at all but only to say good work, keep it up, and let's go at it now on the pre-need issues.

I guess that the first basic question is how prevalent is pre-need purchasing, and if someone has some information on prevalence that they could just briefly summarize just to get the conversation started this afternoon. What I really would like to do, though, is to focus our conversation on the distinction between pre-arrangement and prepayment and focus on pre-arrangement here, the payment issues.

That is, what happens when people pay their money and what happens to that money are issues that are beyond the FTC's rule and really beyond our reach and ken. There are state laws about trusting, there's common law about trusting, that sort of thing, and I know that those are extremely important issues.

Now, if someone wants to disagree with me that it's beyond the FTC's ken, you're certainly welcome to, but we're interested in focusing on pre-arrangement, what happens when consumers want to pre-arrange, what is the information that they're getting, what is the consistency or lack thereof between the information they

receive when they pre-arrange and their experience when it comes time for fulfillment of a pre-arranged package or service.

But first let's talk a little bit about the prevalence of pre-need arranging or purchasing. Does anyone have anything on that? What is the prevalence?

Pat?

MR. GRAHAM: I don't have a lot to say about it other than it is prevalent. There's a lot of pre-need activity going on in both the funeral industry, traditional funeral industry and also in the emergence of the third-party suppliers.

MS. HARRINGTON: In your business, would you venture an estimate of pre-arrangement versus --

MR. GRAHAM: A percentage of business you mean?

MS. HARRINGTON: Yes, of pre-arrangement versus at-need?

MR. GRAHAM: Probably 30 to 40 percent.

MS. HARRINGTON: Pre-arrangement?

MR. GRAHAM: Pre-arrangement.

MS. HARRINGTON: Okay.

Anybody have a different view or any data?

Jeff?

MR. KRAMER: Our -- excuse me.

Well, I don't know if it's any different. We're

finding that -- and again, a lot of our data deals with prepayment, which is one of our big concerns, is that people who are being asked to prepay or who are prepaying in advance, but we're finding that 32 percent of people aged 50 and older have prepaid for funeral services and 25 percent 50 and over have prepaid for plots.

And on the burial side we are even more concerned, because nearly 60 percent pay the full amount in advance for their burial services.

MS. HARRINGTON: Now, prepayment suggests pre-arrangement, so do you have any data on the information that people are receiving when they make the arrangement that leads them to prepay?

MR. KRAMER: Well, I think we mentioned some of that before. We're finding that when people are going in to ask for information, we're finding on the cemetery side they're getting -- a third of the time they're actually getting a price list, a written price list, and when you get down to products and services, we're finding -- it skews about the same way. We're finding between 25 to 42 percent, I think, we're finding that people are getting the information up front when they go in to ask for information.

MS. HARRINGTON: With cemeteries only or with

providers, as well?

MR. KRAMER: With cemeteries. No, with funeral directors we're finding, as well, that it's a little bit higher percentage, but the compliance is not nearly the 90 percent that I think that the FTC found that it is, and we're finding it's about 67 to 75 percent compliance.

MS. HARRINGTON: Okay.

Billie?

MS. WATSON-HUGHES: What was just stated is a perfect example of why we need to strengthen the funeral rule, because there is a wide inconsistency in information that is given out on pre-need, for pre-arrangements and also for prefunding, and the consumer does not benefit from this discrepancy, and if the rule is strengthened, the consumer would.

But the pre-need area is so vast and the states have done a job already working on rules and regulations, maybe it would behoove FTC to work with those states first --

MS. HARRINGTON: Well, let's --

MS. WATSON-HUGHES: -- 49 states at this point.

MS. HARRINGTON: -- let's hear from a state who's not here speaking on behalf of her state.

Jennifer?

MS. RAWLS: Yes?

MS. HARRINGTON: Are your state regulations on pre-arrangement and pre-need sufficient from your standpoint?

MS. RAWLS: To my knowledge, other than the trust issues that you had talked about before, our state laws, other than the Consumer Protection Act, don't really address the concern that I have and the concern that I think some other state regulators share that I've spoken with, and that is the difference of what people pay initially, what they're asked to pay in addition to that when they actually get the service, and what disclosures are made in that process.

And what we are hearing -- and interestingly enough, although I don't have any kind of overwhelming numbers on this, the complaints that I do see that come through the state agencies on the funeral industry by and large are on this very issue, and that is somebody's paid, you know, whatever on the front end, they go to have the service, and they're told that they need to pay additional \$1,500, \$2,000. They don't know why, and they didn't know that there was a chance that that was going to happen.

The Consumer Protection Act, I think, can address that and would, but I don't know, you know, how

the industry is dealing with that issue.

MS. HARRINGTON: Okay.

Let's hear from Jim and -- Jim.

MR. PINKERTON: Well, as a state board member in Pennsylvania, I can tell that our regulations covering pre-need, it covers about 200 words, which we think it needs to be strengthened a lot. I think what would go a long way is the encompassing of the Federal Trade Commission rule on funeral service to incorporate the other entities and to cover both pre-need and at-need.

And I was interested by Jennifer's comments and I would like to expand on that discussion a little bit where you mentioned the sort of partnership that you have with the FTC, and I guess states can be empowered to enforce federal rules through the Attorney General's Office, and I think that perhaps your issue of the number of entities that you would be overseeing, if you could develop sort of a guideline and a clearinghouse, if you will, that you could help us in the state levels to enforce those laws, to create sort of a standard by which those laws could be enforced and working in cooperation with the states, I think that we could perhaps achieve the enforcement that's necessary. But I think that it would fall to you, your agency, to sort of oversee and spearhead that.

MS. HARRINGTON: I would note that, as Jennifer observed earlier, under some state statutory schemes, the states' unfair, deceptive acts and practices laws encompass Federal Trade Commission trade regulation rules, and in other states that is not the case. There is a very lively legal and policy debate about the Federal -- the appropriateness and constitutionality of the Federal Government imposing enforcement requirements on states, and so that there's some tension in this area about the Federal Government's ability to unilaterally require that states enforce federal laws. When the states opt to incorporate those federal laws into their statutes and then enforce them, that is not an issue.

MR. PINKERTON: Well, but I think if you offered and you were invited in, and I think that perhaps the offer hasn't been as clearly expressed as possible, that if the state regulatory entities knew that that was available and that there was a format to do that, that it would be perhaps much better received.

MS. HARRINGTON: Thank you, Jim.

Edith?

MS. CHURCHMAN: Yes, thank you.

Couple reasons, three reasons that I can think of right off the top of my head that people preplan funerals and perhaps prepay them. First of all, lack of

survivors, lack of family survivors. Second of all, people are in a Medicaid spend-down mode, so that they need to get rid of some of their assets in order to qualify for Medicaid. And the third thing that I'm finding right now, a lot of people prepay because of scare tactics that are perpetrated upon them.

And I would just like to give you one example of something that happened recently where a family that I was in touch with prepaid a cremation, and they were told by the cemetery, which interesting enough did not have a crematory, that cremation prices were escalating and that they needed to do this, they needed to take control of this right now, and the family was charged \$550 for cremation that's \$150 in New Jersey, and they were also charged a finance charge.

Also, I'd like to say that New Jersey has a great pre-need law for funeral directors, you should check it out.

MS. HARRINGTON: For funeral directors?

MS. CHURCHMAN: Yes.

MS. HARRINGTON: It doesn't extend to other entities?

MS. CHURCHMAN: No, it does not.

MS. HARRINGTON: Let me ask you, Edith, one of the questions on the agenda for this segment asks

whether the requirements for pre-need disclosure should vary from the requirements for at-need disclosure. Does New Jersey treat those differently?

MS. CHURCHMAN: No, our pre-need funeral is treated exactly the same as an at-need funeral in that we must, you know, present our price lists, and we do have 100 percent trust and 100 percent refundability.

MS. HARRINGTON: And Bill observes Texas, also. Okay, Lisa and then Scott.

MS. CARLSON: As in our commentary, we think it's extremely important that the disclosure of penalty for changing your mind on a prefunded account be disclosed, and not just in -- not just as 10 percent. It should be \$546 will not be refunded if you transfer this account.

MS. HARRINGTON: Okay.

Scott and then Jonathan.

MR. GILLIGAN: The NFDA certainly supports full disclosure, and I believe if you look at some of the states' laws, and there are some excellent state pre-need laws that cover just funeral directors, a lot of them detail just what Lisa is looking for, consumer disclosures that have to be made in the pre-need contract itself.

Now, when we talk about price disclosures, yes,

the funeral rule really covers price disclosure, but once you get on into portability issues, refundability issues, cancellation issues, there's a number of states, and we just did an analysis of all 49 states that have laws, some of them are very detailed, and your pre-need contract must include the following disclosures, one, two, three, four, and lays it out very clearly for the consumer.

MS. HARRINGTON: Would NFDA support an amendment of the rule to require those additional contractual disclosures?

MR. GILLIGAN: I think what we would prefer to see is for the FTC, if they deem it appropriate, to bring in other state regulators and go to the states, because they have been regulating this for 20 years, see what works and what doesn't work. Get their viewpoints. Talk to the insurance companies, because half of this is funded by insurance.

We're going to -- you're going to deal with issues of cancellability of insurance contracts. You have to get their viewpoints, too. So, bring in all these people, get their feedback, and then you could either -- either through guidelines to the states or amendment to the funeral law or funeral rule or some other appropriate device spell out what disclosures you

believe should be in there.

MS. HARRINGTON: Where there are state laws that require the disclosure in plain and simple terms in the contract of these additional terms and conditions, does NFDA agree that those are useful regulations?

MR. GILLIGAN: Absolutely. We have our own -- we came out with our Pre-need Bill of Rights two years out from our policy board, and it goes right on down the full rights, disclosure, portability, refundability and all of those, so it pretty much mirrors off of what a lot of states are requiring.

MS. HARRINGTON: So, if we were to select from, you know, the best of states' requirements, you guys wouldn't have a problem with that?

MR. GILLIGAN: No.

MS. HARRINGTON: In general terms.

MR. KRAMER: As far as consumer disclosure --

MS. HARRINGTON: Not waiving your rights to sue us again.

MR. GILLIGAN: And again. But no, we would have no problem sharing that with you.

MS. HARRINGTON: Okay, thank you.

Paul? I'm sorry, Jonathan, I said I was going to call on you next.

MR. SIEDLECKI: Thank you, Madam Chairman.

I don't know how many people at this table actually do pre-arrangements. I do on a regular basis. I sit down with families and discuss what their plans are, ask them what their outcome is -- what the probable outcome they want to happen, and I want to let you know that the same elements that go into an at-need arrangement go into a pre-need arrangement.

Do not fool yourself, ladies and gentlemen. We need to discuss strengthening of this rule to bring in people who are not included at this point, and I think that will eliminate a lot of the problems that we see pre-need and at-need. The strengthening of the rule will bring under the umbrella some of the problems that we are looking at.

MS. HARRINGTON: What are you talking about? Are you talking about --

MR. SIEDLECKI: I'm talking about people who are not included under the rule at this time.

MS. HARRINGTON: So, you are talking about extending coverage of the rule?

MR. SIEDLECKI: Yes, I am.

MS. HARRINGTON: Are you recommending that additional items or material terms and conditions be required to be disclosed under the rule?

MR. SIEDLECKI: Not at this time, but I would

say, Madam --

MS. HARRINGTON: So, your point goes really back to coverage, which was the first issue that we raised this morning.

MR. SIEDLECKI: No, it doesn't. No, it doesn't. We're talking about pre-arrangement issue here, and the pre-arrangement -- strengthening the rule will -- will cause a -- will eliminate many of the problems that we're facing with pre-arrangement. I -- let me just make a couple points.

When we do this pre-arrangement in the state of Illinois, for example, there are actually three ways in which you can do this. You can take a family and talk to them and develop a funeral plan, and that plan does not have to be funded. That plan can just be put in a drawer and put aside as a roadmap for future use.

They can designate an insurance beneficiary or a -- through a will or a trust, someone that will -- an executrix, et cetera, that may pay for this funeral at a later date.

We also are involved with a trust program. We also have many, many insurance programs that are funding pre-arrangement programs. I have to let you know that if the FTC were to go and get involved in that at this point, it would be a monumental task to sort through the

complexities of that issue. Each state, there are different rules in each state.

So, I think the simplest thing for the FTC to do is to strengthen the rule, and, if necessary, look at the complexities at a separate time. I don't think that we can properly deal with that issue at this point in this meeting at this time. I think it deserves and warrants a particular -- its own private attention, Madam Chairman.

MS. HARRINGTON: Okay, thank you.

Paul?

MR. ELVIG: Well, I would just like to set the record straight, this is Paul Elvig again with the ICFA.

We heard from AARP about their sample survey, their telephone survey and other surveys, and the figure's been used twice now by the representative that 36 percent of the people were -- who checked the cemeteries were given prices. Their own records indicate, in fact, it was 70 -- in fact, it was 64 percent received it. They're saying that the thirty-some did not receive it. So, that information is being incorrectly put into the record. The record they have submitted in writing will show the percentages are just the opposite as being reported here.

And while I have the microphone, allow me to say that the suggestion is already made that the funeral rule be expanded to cover cemeteries that have pre-arrangements. Again, we also believe that would require an entire different process for the FTC. There's all types of new information out there to be gleaned. I think the mere fact that somebody has made a pre-arrangement -- funeral or cemetery -- indicates they've seen prices, indicates that things have been disclosed to them, cancellation periods allow for people to have a rethink on issues.

The dynamics of pre-need are awesome and considerably beyond what we have seen with the funeral rule. I have personally audited over 180 pre-arrangement trust funds in my lifetime as a regulator, and let me tell you that the issues of disclosure are not the problems that states face. The issues states face are the finance of it, the funding of it, the integrity of those funds, but not the integrity of the contracts.

MS. HARRINGTON: Thank you.

John?

MR. WALLENSTEIN: I wanted to make two points. At present, obviously, monument dealers are not covered by the rule, although certainly in New York State and

other states that have pre-need trusting arrangements, we are covered by the requirement to trust those funds if we take a pre-need order.

And the way around that in the monument industry is easy. You make the stone and say it's yours, I'll keep it here until you need it, and then you don't have to trust -- place the funds in trust at that point, because you've passed title to the stone.

But I think that part of the problem is that when a consumer goes to a monument retailer pre-need and orders a monument, they get full disclosure, they get a full design, they get a full -- a full package of this is what your stone will look like, either I'll make it now or I'll make it when you call me and tell me it's needed.

What we've found is that the abuses occur -- and I hate to pick on funeral directors, Scott, but --

MR. GILLIGAN: Then don't.

MR. WALLENSTEIN: I have to pick on somebody.

The abuses we've found is that where a funeral director will make a pre-need pre-arrangement, as you've called it, where they'll say we'll take care of everything, don't worry about it. Monument, no problem, we'll take care of that, that will be \$1,500, and that's all they get, that's all they know.

And when the need arises, they suddenly realize they bought a stone 15 years ago that they really didn't want, they really didn't know what they were getting into, and there's really no disclosure to the consumer from that standpoint as to what it is they're getting. I think that may be a coverage issue, as well, but I think it's something that does need to be addressed.

I would also like to make one point with respect to what Jim said, the states really can't enforce the FTC reg unless it's adopted by the state legislature as a part of their enforcement scheme, and I think it's unfair to ask the states to do that, particularly in New York, the Division of Cemeteries -- and I know the director is here, and I'm not saying this just to butter him up -- the director of the Division of Cemeteries in New York has three investigators, three and a half investigators, and two accountants and himself and a secretary for 1700 cemeteries, God knows how many monument dealers and funeral directors in the state of New York.

He can't possibly enforce the funeral rule as well as New York State rules and regulations, and most of what he's got to do has to do with watching the numbers and not the monuments in and out of the cemeteries.

MS. HARRINGTON: Okay, there was something that you said that Randall wanted to respond to very briefly.

MR. EARL: Thank you, Ms. Chairman.

To address your comment in reference to the funeral director, I take great offense to that. We are the only group around this table that are covered by the rule today, right now, and we're the only ones that have abided by the rule today, and yet we're talking about contracts from all these other entities and what they do or what they don't do, and it all comes back to the rule and the funeral director.

We are abiding by the rule. It's been proven by the FTC, AARP in their surveys that they have done, we are abiding by the rule, whether it be pre-need, at-need or anything else. All we're saying is let's make sure that the guidelines are out there for everyone that comes under the rule.

MS. HARRINGTON: Okay, Jim?

MR. PINKERTON: I wanted to touch on something and Scott touched on it.

In terms of the insurance sales that -- and I understand that there is a barrier between insurance and the FTC, but in many cases insurance is used to fund pre-need, and I think there needs to be a distinction

that the arrangements part of it could still fall under the purview of the FTC in providing the information, and the funding is secondary and separate to that.

That brings up another question, and that is in terms of who is already under the rule, and I believe it probably is somewhat repetitive of my comments, but there is that issue of common interest and control, where we have entities -- and we have these in western Pennsylvania -- who it's the same ownership of different corporations providing funeral goods and services. We haven't even changed the word yet.

And yet they claim to fall outside of the scope of the law, because they are only providing one portion of it, and yet whether it's in pension law or whether it's in environmental law or whether it's in wage and hour, the issue of common interest and control -- they are all three companies, but collectively they fall under the thresholds, and they're covered, and I just wondered how that's applied in the Federal Trade Commission rule.

MS. HARRINGTON: Okay, Edith?

MS. CHURCHMAN: Yes, Madam Chairperson, I would like entered into the record --

MS. HARRINGTON: You can call me Eileen. The Chairman of the Federal Trade Commission is in the next

room here, and he would be the Chairman here.

MS. CHURCHMAN: I wouldn't want to make him mad, but I want to give you respect, too.

I would like entered into the record that the National Funeral Directors and Morticians Association certainly would like to come to the table with you to look at states whose pre-need laws are working, along with the National Funeral Directors Association.

Again, let's strengthen the rule. I'm seeing a lot of families that come to me -- I'm here representing an organization that represents African-American funeral service consumers in the United States. I'm seeing a lot of consumers who are coming to me who are not explained about cancellation fees, don't have any idea about what happens if they die before their contracts are fulfilled -- talking about cemeteries now -- consumers that are not given fair pricing information, that never even see a mausoleum space until the day of the funeral, that may purchase a preconstruction space, that are sold overpriced goods, that may, indeed, purchase a mausoleum space for \$5,000 when they could buy one for \$2,000 that is closer to where they live and that's already constructed. And so, again, let's strengthen the rule to benefit consumers.

MS. HARRINGTON: Thank you.

Carolyn?

MS. JACOBI: Yes, this category is a true indicator as to why I highly recommend revision and expansion of the present rule so it becomes inclusive. Not only are we concerned about disclosure as far as the aggressive trend of pre-need, but more importantly, I am very concerned about the trusting factor.

In the state of -- your great State of Illinois, I became a nonresident to campaign for the present state comptroller, because the one promise he made and is fulfilling, that he would make sure that the cemeteries would comply with the rule of trusting. This came about because of me being there activating for over a year, and there were two owners who had absconded with the consumers' monies that had been paid in on pre-need items. Not only these two owners, but many others who have run rampant through that one particular state.

So, the state comptroller realized outside disclosure, outside of the language, more importantly, they had to enforce trusting and make sure that there was an auditing process.

MS. HARRINGTON: And Karlin, were those mostly insurance products that were used --

MS. JACOBI: Yes.

MS. HARRINGTON: -- to collect prepayment?

MS. JACOBI: That's correct.

MS. HARRINGTON: Yeah. I would just note that there was a remark made about separation between the FTC and insurance, and that's the Karen Ferguson Act, prohibition on the FTC being involved in the business of insurance, which is the law.

MS. JACOBI: Well, getting outside of the insurance factor, which is law, you have got John Q Consumer's hard-earned dollar in many instances that are paying for these items. Enforcement through revision, through expansion, through inclusion would give that consumer more protection, and that we definitely need.

MS. HARRINGTON: Okay.

Joe?

MR. HAYES: Thank you, Eileen.

I think all of us at this table support the concept of full disclosure in the context of pre-need. When there are allegations of unscrupulous or deceptive selling practices, it harms the entire industry, and many states have recognized that, and there are a lot of states out there that have enacted very detailed statutory schemes on both the funeral side and the cemetery side to address the pre-need situation.

And some of these statutory -- most of these statutory schemes deal with trusting issues, they have

detailed reporting requirements, and there are audits that go on, and there are disclosure requirements. And if the FTC is getting into this area or considering getting into this area, I think it needs to work very closely with the states that already have these statutory schemes in place, because I think we would also all agree that it's very important to keep the transactions simple for the consumer.

If you overlay the existing state laws with a new system of federal laws, we may have inconsistent disclosure requirements, which will confuse the transaction. So, I think it's important that the FTC confer very closely with those states that have already addressed this issue before deciding how to proceed.

MS. HARRINGTON: Okay, thank you.

Pat?

MR. GRAHAM: In Texas, and I think Bill can verify this, we have a very strong pre-need law, which is enforced mainly by the Texas Banking Department but also through cooperation with the Funeral Service Commission, and I think from the FTC's point of view, you should separate pre-arrangements from prepayment, because prepayment will be more in the banking field than the FTC purview would be. That's it.

MS. HARRINGTON: Jeff?

MR. KRAMER: Thank you, Eileen.

Yeah, we feel very strongly that the rule needs to be expanded to include pre-need, that there needs to be minimum contractual disclosures regarding cancellation, portability, all of those issues, because I think, again, what we're trying to get at with this rule is to benefit consumers, and whatever steps we can take to make that more functional so that consumers will benefit is to be helped.

One of the things I want to point out is, and I know a lot of -- most of the providers at the table will agree with this, beyond being a business decision, for -- certainly for the consumer, it's an emotional, it's a spiritual experience, they're trying to get through it, and whatever we can do to standardize this, to make it easier for consumers, would be helpful.

We're finding now that 40 percent of people over the age of 50 are being solicited for pre-need either in the burial or the funeral industry, and we just think it's real important that as these numbers continue to increase and as it becomes a bigger sector of the funeral and burial industry, that there needs to be some kind of just general -- some kind of standardized contractual language, because I know Texas may have a great one and some states have really good pre-need

legislation and regulation, but some -- it's a mishmash. Some is really good in funeral, some really good in burial, and the two don't necessarily co-exist together.

So, we think whatever we can do to get that, so if we can get together, perhaps with industry, and talk about what states are working and what kind of language can be adopted at the federal level, we would really appreciate that.

MS. HARRINGTON: Let me just clarify that, of course, the FTC's rule presently applies to pre-need and requires the same sorts of disclosures that are required at need. So, I think that the real distinctions here are, number one, should there be an expansion of the term "provider," which is what we talked about first thing, and I think that's what many of you mean when you say strengthen the rule.

And then secondly, the question that's on the table for this session is are there additional or different disclosure requirements that should apply pre-need. And what I hear you saying and some of the others, Jeff, is that you think that there are some additional terms that should be disclosed and that perhaps the requirement for disclosure should be on the contract and not in a separate document. I don't mean

to put words into your mouth, but --

MR. KRAMER: No, that's right.

MS. HARRINGTON: For those of you downstairs and here, I just want to be perfectly clear that the rule does apply presently to pre-need.

Scott and then Harv.

MR. GILLIGAN: Thank you.

One thing I would urge the FTC, if they are going to get into this area, is do it with a little flexibility, look at maybe guidelines or a different regulation or especially exemptions for states that already have a system in place. There's ten states that require a funeral director to submit his pre-need contract for pre-approval before he can even use it. That's very detailed. They go down there and look and make sure you have all the disclosures.

I don't think it would be wise for the FTC to adopt either a dual standard or something that preempts that. So, I would urge you to look at exemption this time for states that already have this situation well in hand.

MS. HARRINGTON: Okay, we are going to have Harv, Lisa and then G. V., or we will have Lisa before Harv, if you want.

MR. LAPIN: I don't care, go ahead Lisa.

MS. CARLSON: I was just going to quickly say that the November issue of the AARP Bulletin went out with an article to, what, 2 million members, and our phone -- pre-need was one of the topics, and I would verify, given the hundreds of calls and the 4000 web hits last week, the issue, as Jennifer pointed out, of being required to pay more or being penalized are -- is a common complaint. So, there is a problem.

MS. HARRINGTON: Where -- Jennifer, where do people go -- I mean, if you had actually dealt with consumers who believed that when they pre-arranged and paid, that they had covered all their bases, and then find at the time of fulfillment that they're asked to pay more, have you looked at their paperwork? This is going to be anecdotal, but have you taken a look at the papers to see whether that's accurate, and if so, where do they go? What do they do?

MS. RAWLS: Well, what we usually get from consumers is the price sheet that they signed up for to begin with that says \$7,500 and then the price sheet that has a few items marked up when they go for need that will say, you know, \$8,500. Those are the two things we get. What we don't get are the contracts they saw beforehand, if there were any. We don't get any kind of disclosure documents from the home.

So, in those instances, you know, what we're faced to do is have them go back to the home first and say, you know, I think there's a discrepancy here, can you explain it? After that, we try to go through our funeral board and refer some complaints there. We have --

MS. HARRINGTON: Do these folks file -- ever, ever file suit in small claims court?

MS. RAWLS: Can they or do they?

MS. HARRINGTON: Both.

MS. RAWLS: Yes, they can, and I don't know whether they do. They don't make it a habit of telling us, unfortunately.

MS. HARRINGTON: Right.

MS. RAWLS: We have seen more complaints filed with our Division of Consumer Affairs, which is what, you know, lights up our board. In Tennessee, the way that our consumer division works, and I guess what I -- I had my card up, I don't want to jump anybody here --

MS. HARRINGTON: Sure.

MS. RAWLS: -- but I think I agree with what John said about some states have very strong contracts on some of the issues, like transferral or cancellation or that kind of thing, but what we're looking at is really a different issue, and that is the issue of the

increased costs, which I'm not sure that these contracts deal with uniformly. Maybe they do, you're certainly in a better position to know that than I am.

MR. GILLIGAN: May I respond?

MS. HARRINGTON: Quickly, Scott, then we will go to her.

MS. RAWLS: One more thing?

MS. HARRINGTON: Sure -- actually, I will come back to you, but let's have Scott just answer that question quickly, then we will come back to you and Harvey.

MR. GILLIGAN: Contracts definitely spell out whether it's nonguarantee or guarantee, that's the issue we're looking at here, and the issue is mother has died, the children don't know where the contract is, and mother says I've taken care of everything, but she signed a nonguarantee contract that says we are going to put this money aside and then we will use it toward nonguaranteed prices when you die.

She may not have communicated that to her children or may not have understood it that well, but it's all in the contract. They all spell out whether they're guarantee or nonguarantee. In the guarantee situation, what she has paid, the funeral director guarantees this will cover when you die and you're not

due anymore.

So, it's probably a situation where they've lost the contract or they don't have a benefit of the contract to be cleared up with the funeral home.

MS. HARRINGTON: Jennifer, back to you?

MR. SIEDLECKI: Madam Chairman, could I ask for a clarification, please?

MS. HARRINGTON: No.

Jennifer?

MS. RAWLS: I guess my response to that would be -- and is this is apparently one of those situations where there is a lot of consumer confusion, and I think including it in the rule would only help.

I would also like to clarify -- and this is only for mine and Eileen's benefit, when I talked about a partnership between Tennessee and the FTC, it truly is a partnership. The FTC does not require the State of Tennessee or any other state that I know of to enforce the rule. So, if there has been any miscommunication about that on my part, I apologize.

MS. HARRINGTON: Harv?

MR. LAPIN: I think I still remember what I was going to do.

I have a couple points, and strange as it may seem to everybody, Scott and I agree on this particular

issue. The FTC -- in fact, we've been requesting the FTC since 1984 to put out guidelines in the pre-need/pre-arrangement area, and one of my former associations I represented. The reason is it's a timing problem, and a lot of it depends on the way the contracts are, but right now, if you have a pre-need purchaser, the rule requires you to give them a general price list at the time the transaction is entered into. If it's a guaranteed contract, that general price list will be, in fact, what that customer is going to pay. They will never pay any more.

Now, in the meantime, their money has been put into a trust fund. Hopefully, if there's been proper investment of it, there will be more money there, but when a seller guarantees a contract, they get the benefit of the investment of the funds. So, the rule says you give them a general price list then. It also says if you change the arrangements at the time of death, that you have to give them an up-to-date general price list.

Now, let's take the situation where it's not guaranteed. At that stage -- and this is what everybody's having a problem with -- you give them a general price list when you enter into the agreement. Now you have to give them a general price list again at

the time of death, because the money that's coming out of that fund is just money. It's just like they set up an insurance policy that paid at the time of death.

And I don't think it's clear for the industry as to what the requirements are and what disclosures should be, and I think it could be done by guidelines. The rule is already complicated, and making it more complicated is not going to help the industry at this point. Guidelines, we could work with and adjust a lot easier than we can amending a rule.

And finally, I guess I'm the defender of Illinois, which is my home state, and my neighbor here, who I've been pouring water for all day, made some misstatements. The --

SPEAKER: Look out, she is going to pour it on you.

MR. LAPIN: No, I don't mean to challenge her. The situations that she was referring to -- first of all, let me tell you, Illinois is not running rampant with people that are misrepresenting and stealing funds and doing all these things. The two instances she's referring to were not developed by the present controller, who's been in office for nine months, but actually were before he ever came into term.

In fact, one of the situations has been going on

for eight years, and the present controller started enforcing our laws more stringently against these two people that we're talking about.

MS. CARLSON: But it is rampant if it's been going on for eight years.

MR. LAPIN: No, because we're talking about -- you know, you have got to understand, two sellers out of all the sellers in the State of Illinois is really not that significant, plus the fact that we have a protection -- consumers' protection fund in both cases which covered the consumers for items that they had purchased and weren't delivered. So, it's not exactly like there's running around.

Now, unfortunately the bad apples make laws more stringent, and we're not happy about bad apples, but it's not -- I just don't want you to understand that if you land at O'Hare you are going to be getting pre-need information of an abusive nature, because it's not going to happen.

MS. HARRINGTON: Well, I hear that we have very different takes on what's going on in Illinois, and as much as we're all desperate to know more about the Illinois situation, I'm going to go to G. V., and if we have time at the end of this session, we can hear from all of our Illinois people.

MR. AYERS: It's interesting to hear about somebody else's issues.

MS. HARRINGTON: But in California, you march to a different beat.

MR. AYERS: No, California we view, as far as disclosures, pre-need and at-need in the same -- in the same manner, much like the FTC does, as well. One anecdotal type of thing that we find from time to time are those who have pre-need contracts that are not guaranteed, they come to time of need, and then they have to pay more, and that's very difficult for consumers.

One thing we do with our consumer guide that all general establishments and cemeteries are required to make available to consumers is we try to spell out in there that that may be a possibility and that they might want to look when they're trying to do pre-need to obtaining a guaranteed contract.

The largest issue, though, is the trust issue, and that's really beyond the scope of what we're talking about here, but that's the -- that's kind of the iceberg that's below the surface there.

MS. HARRINGTON: Right.

Okay, Paul.

MR. ELVIG: Allow me to just further continue

with this discussion about the suggestion that the rule will be expanded to cover cemeteries in the area of pre-need. Again, we would point out that you would need to have a complete review of the whole process before you travel down that road, and I'm going to give you one example.

The purchasing of a grave, which in the State of Washington is generally done on pre-need basis 22.2 years before its use, 22.2 years before its use, are done by different -- pardon me, are sales made by different cemeteries and they sell a different type of grave. Some, they have actually sold the real estate; some, they sell burial rights; some, they sell access; some, they quitclaim rights --

MS. HARRINGTON: And is all -- for my information, this isn't rhetorical, is all of that disclosed in the terms and --

MR. ELVIG: That's all disclosed in the type of deed and contract used and --

MS. HARRINGTON: Are there any state disclosure -- separate disclosure requirements --

MR. ELVIG: No.

MS. HARRINGTON: -- on those? So, it's in the deed or contract?

MR. ELVIG: The State of Washington simply says

there will be a conveyance used, and so you have all these types of conveyances, and what you have just in the area of cemetery graves, grave sites, you have a variety of approaches in a single state to how the conveyance occurs, which says a lot about how the disclosures will be made. So, when you say cover the cemetery industry with the FTC rule, we're talking about a Pandora's box of definitions.

Example: If you bought a grave in the State of Delaware or the State of Texas or the State of Montana and you bought with it a second right of interment, can you use it for double death or are there additional fees? And that's why there are state regulations, state after state, 49 of them, of the 50, covering cemeteries that deal with what it is you're actually purchasing.

And so when we talk about expanding the rule, we're talking about moving into an area that is vast, cumbersome and would need in-depth investigation by the FTC prior to even adopting. And I would remind our -- for the record, the ICFA has prepared model legislation to deal with pre-arrangement contracts and the disclosures that would be appropriate, and we urge everyone to ask for it, look for it and to see if they cannot get incorporated with their own state law.

MS. HARRINGTON: Am I correct in assuming that

Jonathan and Carolyn would like to say more about Illinois?

MS. JACOBI: I would love to.

MS. HARRINGTON: Okay, I'm just checking. This is not about Illinois?

MR. SIEDLECKI: I'll be happy to talk about Illinois if you like.

MS. HARRINGTON: We will save that for the end. We will have Jonathan and then Lisa and then we will get to you, Carolyn, and then we'll be done.

MR. SIEDLECKI: I have just one brief comment on what this gentleman just said. It's been my experience as a funeral director, when I sit in my office and families come in to do a pre-arrangement or especially an at-need arrangement at this point, let me say that it's predicated on a pre-arranged program that cemeterians seem to think everyone understands.

I would bet that most people in this room don't understand that when you buy a grave, you're not buying everything that you need to buy at the cemetery. When you buy a grave, many of my families come in and say, Well, this is taken care of at the cemetery, we don't have to worry about any of those costs, because mom has her grave.

Well, mom doesn't have her interment fee. Mom

doesn't have her outer container. Mom doesn't have her headstone. And why doesn't mom? Because she thought all she had to do was buy a grave. There was nothing else that she needed to buy.

So, once again, Madam Chairman -- Eileen, excuse me --

MS. HARRINGTON: That's okay.

MR. SIEDLECKI: -- as I open Pandora's box on this issue, I want you all to realize that we need to strengthen this rule, period.

MS. HARRINGTON: Thank you.

Lisa?

MS. CARLSON: I agree with Jonathan in that if cemeteries were required to give out a price list, a GPL price list, it would have interment rights, opening and closing, it would have the range of costs so that it wouldn't be a surprise, and indeed, it is often a surprise that things aren't all taken care of.

Paul mentioned that there is a difference between owning a deed, a piece of land, versus interment rights. Most consumers do not understand that difference. They think they own the real estate. And as Merc said, let's look at what the consumer is buying. They are looking for a place to put a body, and that should be disclosed in terms of what rights they

are buying. We are asking for full disclosure of consumer rights and prices.

MS. HARRINGTON: Okay, Harry?

MR. NEEL: Pennsylvania must be the garden spot of the world. Of all the consumers --

MS. HARRINGTON: We often say that here.

MR. NEEL: I know.

You make it sound so terrible. 92 to 95 percent of our burials on an annualized basis, and Jefferson does about 1600 interments a year, 92 to 95 percent of those consumers that are buried have owned their graves for 20 or more years. My computer matches yours. That is a very high percentage.

Of all of the consumers we serve, those people I know in the funeral and the cemetery industry, these problems are so rare. People pay for something, they get what they pay for, they're very pleased that they did it, they saved their family an awful lot of headaches and money, and I just don't see these rampant problems that you bring to the table.

Certainly there are some, but they're the exception, not the rule to my experience. Funeral directors and cemeterians alike try very hard to explain to their families to do things correctly. Pre-need by its very nature is full of disclosure. I can't sit at

your table or you at mine and sell you anything if I don't tell you all about it and disclose all about it.

You probably don't really care if you're buying a burial right or a piece of grass. You do care about the interment and that the site will be properly maintained. I'm just disappointed that we can't see the good that we're doing and all we can bring to this table is the bad that occurs.

MS. HARRINGTON: John?

MR. WALLENSTEIN: I think that just to address what Harry just said, the rule originally arose because there were problems. The rule is under consideration for change because there are other problems. When everything works right, you don't fix it, as you point out, but obviously everything's not working right or there wouldn't -- we all wouldn't be sitting in this room discussing how to fix it.

I think that this issue comes back to what we discussed this morning. Whether it's pre-need or at-need and whether it's a headstone or a funeral or a grave, the issue is what is being sold to the consumer and what does the consumer know about it at that point in time. It -- I don't think it makes a difference whether -- whether you're buying pre-need or whether you're buying at-need if you know what you're buying and

you understand what you're buying and you understand what the consequences will be down the road, whether it be tomorrow or 20 years from tomorrow.

So, I think that this comes back to who's covered by the rule, what's covered by the rule and shouldn't it be what you're buying that's covered by the rule rather than who's selling it to you.

MS. HARRINGTON: The FTC has a program of regular review of all of its trade regulation rules, and we are here because we're reviewing this rule. That's part of our ordinary course of business. And the fact of a rule review doesn't mean that we've concluded that something's broken and needs to be fixed or that there need to be changes, but rather, that we are asking those questions. Does this rule work? Does it still serve a need? Do we need to re-evaluate any portion?

So, I just want to clarify that one particular point, which is that the staff of the Federal Trade Commission has reached no conclusion as to whether or not there are changes that need to be made based on the record. It's a point for the record, and I appreciate that your perception is things are broken and they do need to be fixed.

We're going to hear from George, Merc and then from the real garden spot of the United States, the

Illinois contingent.

MR. CLARKE: Thank you.

I think it's important to note -- my perception of the some of the conversations that have taken place is that the assumption there is pre-need arrangements are always made far in advance of the actual at-need event, and that's not always the case. And I may be stating the obvious, but I think it's important to remember that in many, many instances, the actual act of making pre-arrangements may occur only hours or perhaps days before the death occurs.

And I think it's important to keep that in perspective for this reason: The FTC, when they originally promulgated the rule, determined that the consumer was vulnerable at the time that he or she made funeral arrangements. It would stand to reason, then, that if the funeral home -- if the consumer, excuse me, is vulnerable during the time that he or she makes arrangements for a particular service or product with a funeral home, that consumer is equally vulnerable, regardless of who that provider is.

And to take it a step further, if that vulnerability exists in an at-need situation, there is no reason to think that it doesn't exist in a pre-need situation, and the two often times may not be easily

discernible for the reasons of timing that I mentioned.

So, I just submit that it's important to keep it in perspective, that we not automatically assume that people have the luxury, if you will, of making pre-arrangements at a time when there is no time press, that they are not dealing with raw emotions that are brought to the surface as the result of a death and that they have time to understand all of the things -- all of the components that make up that pre-arrangement.

And I just think that points further to the fact that all of the things that we're talking about with regard to reviewing -- the Commission reviewing the state regulations in the hopes of determining and gleaning the best of the best and developing them into a regulation that will, perhaps, address some of the underlying issues, as well, but it seems like a good and prudent first step would be to say let's take care of what we can today based on the products and services that the providers are selling, and let's ensure that the consumers have access to the information that they need regardless of the source.

Thank you.

MS. HARRINGTON: Merc, Carolyn, and then I'll give you instructions about the break.

MS. BERN-KLUG: In Kansas City, we collect

general prices every other year. One year we decided to try to do it for cemeteries. It took us six months. I think cemeterians are doing a very good job describing what they offer right there for that family at that cemetery, but in order to try to collect information ahead of time from cemeteries, there's no standard way to do that. There's no way to collect it.

Like I said, it took us six months to try to figure out -- to try to compare prices. So, for pre-need --

MS. HARRINGTON: And Merc, how does that compare with -- do you also collect price lists for pre-need purchase from providers?

MS. BERN-KLUG: We can collect the general price lists from -- assuming pre-need for --

MS. HARRINGTON: And you do that every other year?

MS. BERN-KLUG: And we do that for funeral homes.

MS. HARRINGTON: And could you talk about the comparison between --

MS. BERN-KLUG: There is no comparison, because there is no easy way to compare prices and options across cemeteries currently. We have 44 cemeteries in the Kansas City area, and when we went around and asked

people for information in writing, first of all, it was required to go there and sit around for about an hour, and still, when our committee got back together again to try to decide, well, what did you learn, there were no standard definitions, there were no standard ways that things were sold, people didn't know whether or not to ask about cremated remains being allowed on plots.

I mean, there's so -- what you're talking about here, the complexity to try to regulate this is underscored doubly for consumers. So, precisely because it is so complex, we need to try to standardize it in such a way that if people want to take initiative and try to get this information pre-need from the cemetery, also, that it's going to be available, because right now it's almost impossible to compare options and prices across cemeteries because there's no standardization.

Let me mention one other thing. I was absent at a couple of committee members -- committee meetings when we were talking about trying to collect this information. It never occurred to the committee that they could buy monuments elsewhere from the cemetery. So that everybody at that committee -- and these are people who are activists -- with final arrangements didn't know that you could buy monuments someplace other than at a cemetery. They also didn't know that

cemeteries sold caskets.

So, we need some basic disclosures for cemeteries, as we also do for the funeral homes, and we need to get this information in a standard format to families have the option of buying from whom they want because they can make sense of the information. The way it is now, you cannot make sense of the information across cemeteries, and you couldn't do it across funeral homes before the GPL.

MS. HARRINGTON: Okay, Carolyn.

MS. JACOBI: Yes, I would just like to state in response to my good friend Harvey, who has been pouring me water all day, that I did not make a misstatement of fact. I was there with Lolita Dierdrickson (phonetic), and there were rules on the books that were not being enforced, and through that when we got the new -- or when you got the new, because I don't live in Illinois, the new state controller, he made the commitment to enforce the rules.

There weren't just two sellers. I could name six. It's just that I was only involved with two of them, and that's all I have to say.

MS. HARRINGTON: That's all, thank you.

All right, we are at break time. We are going to take a 15-minute break. We will resume at 2:20

promptly, and we need an announcement. Hold on, I have an announcement.

The transcript of this proceeding will be ready in ten days. Well, what does this mean? Do they have to pay for it? Or we're putting it on the website? Fine, okay. I'm just -- somebody just handed me this note and told me to read it, and I'm trying to figure out what it means. It will be on our website shortly thereafter, so you can get the transcript then.

(A brief recess was taken.)

SESSION IV**PRICE LIST REQUIREMENTS**

MS. HARRINGTON: Okay, let's go, price list requirements. Some suggest that the price list requirements are just fine as they are and others suggest that there are some additional items that ought to be included in the required disclosures. Others also suggest that there might be some substantive disclosures or warnings, not itemized -- not items, but some additional information.

And finally, we're interested in exploring the notion that some have suggested that a standardized GPL format would make it easier for consumers. That doesn't necessarily mean that it's easier for I suppose providers.

One thing that I'm particularly interested in is whether there are items that can be deleted, whether this can be streamlined. We have heard from some that it's very important to keep this simple for all. So, I would also ask people to comment on items presently required for disclosure in the rule that might be eliminated, and if you think that there are some, I guess the question is for those who might disagree, can you tell us what the consumer harm would be -- what the harm to the consumer would be in the absence of that

particular information.

So, we're interested in talking about streamlining, we're interested in talking about expanding, we're interested in talking about standardizing. Those are very different concepts, but they're all included by various of the commenters.

Harvey, we are going to start with you.

MR. LAPIN: Yeah, I just want to clarify. You indicated when we first started this morning that if we had already covered something in our comment, you didn't want to hear anything about that at this point.

MS. HARRINGTON: We don't want a rehash of comments, but if you can, you know, make a point to -- especially to begin our conversation that's in your comment, that's okay, but we -- the purpose here isn't to bring everybody together so that they can restate what they've already stated but really to listen to each other talk and move the dialogue forward.

Is there something you wanted to say?

MR. LAPIN: Well, no, I just wanted to indicate that that was one of the big issues that we covered in the CANA comment and that I'm not going to repeat it. It's available to anybody, but it is a major issue as far as our members are concerned.

MS. HARRINGTON: Thank you.

Pat?

MR. GRAHAM: I particularly wanted to address the standardization format. I think it's a great idea, and as far as the consumer goes, if you can look at two price lists from two funeral homes or two providers, if the rule is extended, then you have a way to actually compare on a level field. I mean, look, there's a Welch's Juice bottle right there, the disclosures on it about what's in that bottle. I can pick up a bottle of juice made by another company and tell exactly about the nutritional value. And I think it would follow if you had a standardized format of general price lists, and that would work well for the consumer, too.

MS. HARRINGTON: Okay, thank you.

Merc?

MS. BERN-KLUG: Oh, I'm not up.

MS. HARRINGTON: Scott?

MR. GILLIGAN: Just to respond to Pat there, one of the things we're seeing in the industry and the profession is innovation, a lot of funeral services, a lot of funeral homes tailoring their services to a particular interest. For example, we had just a client of ours in Cincinnati just build a beautiful funeral home that's designed primarily cremation.

He's going to want on his price list to

highlight all the cremation options. Someone doing a traditional type of practice in Cincinnati is not going to be interested in highlighting that. So, that kind of standardization like that squelches innovation and really limits the consumer's choice by going to a uniform format.

MS. HARRINGTON: Well, does it squelch innovation or does it squelch the use of the price list as a marketing tool, which is not necessarily a bad thing, I'm not suggesting that, but I'm not sure that a standard price list would discourage someone from building a home that would --

MR. GILLIGAN: No, but it is going to make it more difficult for that practitioner to market his services, therefore giving him less incentive to go out, start thinking outside the box and offering different things that consumers may want.

MR. GRAHAM: May I respond to that?

MS. HARRINGTON: Yes.

MR. GRAHAM: When I said a standardized format, I don't necessarily mean a standardized list of the exact same items offered but a standardized format in the way it's presented.

MS. HARRINGTON: So, for example, what you're talking about is a tabular format that would -- that

would be standardized in terms of content and order?

MR. GRAHAM: Right, as far as understanding by the consumer, this is what we offer, these services, this merchandise, in that type of a format that's readily distinguishable, where I've seen -- I've got price lists, book of them that thick from different funeral homes, and some of them are pretty hard decipher and they're very hard to compare one price from one establishment to another.

MS. HARRINGTON: Lisa?

MS. CARLSON: I don't see that having a standardized format for the basic ingredients that are required to be on a GPL would stifle creativity at all. You can append as many pages as you want. We've got GPLs that are 13 pages long, some of which are really quite creative, but I think it is important to be able to compare apples to apples for the basic services that consumers need to shop for.

Lastly, I think maybe it ought to be renamed the general services list, that if people -- if the industry and the public really understood that this was a menu, they would look at it differently. Funeral directors wouldn't have to worry that they're shoving prices under the nose of the consumer too early if they're saying these are the services we offer. The fact that prices

are included is appropriate.

MS. HARRINGTON: Scott?

MR. GILLIGAN: Two points, Lisa: First, our office reviews 500 to 700 funeral or general price lists a year, and for the most part they are very standardized, because you have the same 16 goods and services on every one of them.

Now, going back to the innovation part, it will squelch innovation. For example, if the format lays out that you have to have your basic service fee first, embalming, visitation, et cetera, if I want to emphasize cremation, I'm going to have to put that toward the bottom of my list.

Why, if I'm in the business of primarily selling cremation services to the consumer, is it at the bottom of the list? I'm going to want it at the top of the list. So, you'll never get an agreement that it helps everybody present the information to the consumer, I mean, no way.

MS. CARLSON: I see it going onto a second page, Scott, or a third page, and you can give -- as long as you can give the consumer the GPL in that packet, the FTC hasn't told you which one has to be on top.

MR. GILLIGAN: Okay, Lisa, who is going to make that decision that we are going to promote this and

allow this to be on the front page and we're going to tell cremation you have to be on the second page?

MS. CARLSON: The FTC hasn't told you yet which page you have to --

MR. GILLIGAN: Right, they have allowed funeral directors to market to their consumers by having that innovation and allow them to do that.

MS. CARLSON: Fine, but we need to -- we need -- I think we've all agreed that there are certain basic ingredients, and one of the problems is that those aren't even standardized now.

MR. GILLIGAN: They are standardized. There's 16 goods and services that must go on your --

MS. CARLSON: But it is not clear. What is included with an immediate burial from one funeral home to the next is not clear. What is meant by a direct cremation from one funeral home to the next is not clear.

MS. HARRINGTON: And Lisa, if that is not clear, do you have a proposal for making that clear vis-a-vis the price list, or is there -- how might that -- if it is not clear, just for -- and that may be something that you dispute, so we'll note that Scott disputes that proposition, but let's just say it's not clear. How could it be or should it be fixed?

MS. CARLSON: I'm willing to -- I think a lot of us representing consumers don't really care what is included if it is clear that it's included across the board under everyone's definition. In other words, I'm flexible about what could be included.

MS. HARRINGTON: So, what you're suggesting is that there ought to be a common -- commonly applied definition for immediate burial, immediate cremation, direct cremation.

MS. CARLSON: Exactly.

MS. HARRINGTON: Okay. And do you have a view on that?

MR. GILLIGAN: Direct cremation is standard across the board. Now, you will, because of certain state laws, maybe come into -- maybe somebody's going to be required to have an identification of that body prior to cremation because of state law. That might be added in somebody's direct cremation package that's not in somebody else's.

If you want to standardize them and require that across the board, you can, but for the most part, direct cremation is extremely standardized, and like I said, we see hundreds of price lists, and it's the exact same thing. Transportation to the crematory, handling the body and getting into -- and cremation, and it's

covered.

MS. HARRINGTON: Robert, you're back at the table.

MR. NINKER: Thank you.

Cooking cutting has already taken place with the 16 items. We don't need to test the cookie anymore. What we need to do is be sure that other people who are providing similar goods and services use the same general format.

MS. HARRINGTON: All right, Joe and then George.

MR. HAYES: One of the things that we're noticing as a company is that we are serving an increasingly diverse clientele, and we're dealing with people that have very different religious beliefs and cultural customs relating to funerals and burials, and I agree with Scott, I think there's sufficient standardization already with regard to what's currently required on the price list, but if there is to be any consideration of further standardizing it, I think we need to maintain sufficient flexibility to take into account these various traditions and religions and preferences that we are going to see more and more of as you are culture gets more diverse.

MS. HARRINGTON: George?

MR. CLARKE: Thank you.

I guess I have more questions than they are statements or opinions. The first is, I'm still a little bit vague on what the notion of standardization means, whether it's format, layout, the order in which the various items appear, so I'm trying to weigh that and maybe make a decision in somewhat of a vacuum.

The other question that I'm interested in knowing the answer to is what is the genesis of this point? Do we have evidence that consumers are put at a disadvantage by the current lack of what some may deem as standardization?

MS. HARRINGTON: I can answer that. The genesis of this point of discussion is from comments that suggest that, that -- and that there would be consumer benefit, which is the real acid test for us, from standardizing the general price list. It's not clear to us what standardization means, however, within the framework of those comments.

And so I think that you correctly observed that some are discussing standardized definitions; others are discussing a standard format; and I think someone else may have suggested a standard format and order of content, which I suppose would be the most restrictive standardized approach. So, I think that there is a

range of suggestions on the table.

I want to ask a different question -- and I would like to ask a different question. Are there items that are presently included in the rule for disclosure that could be eliminated without causing consumer harm?

MS. CARLSON: Not counting the nondeclinable fee?

MS. HARRINGTON: Oh, we'll talk about the nondeclinable fee later.

MS. KARLSON: I just wanted to clarify your point.

MS. HARRINGTON: No, but are there any items that could be deleted without causing consumer harm?

MR. GRAHAM: I think any item if it's not offered by that establishment.

MS. HARRINGTON: But as a matter of rule, that is, so that if it is offered, it should be disclosed. Is there anything that could be deleted? Maybe not. Just checking.

All right, John, you wanted to say something?

MR. WALLENSTEIN: I think that in the context of our discussion this morning, if we're talking about expanding the coverage of the rule, then we're going to get into a discussion of expanding the GPL requirements to the point where I think you're going to wind up with

essentially three different types of GPLs.

Monument retailers don't offer any of the goods or services that are on the present GPL. Funeral directors who sell monuments are not required to disclose anything more, I think, on the GPL than monument, \$500, or whatever it may be, whereas we in New York specifically, with our separate contract, have a very specific requirement to disclose the cost of the stone, the cost of the inscription, the per-letter cost, all of the things that are associated with it.

If cemeteries are covered by the rule, you get into a whole host of other things, including what is the foundation charge, is there a monument handling fee, which would be akin to a casket handling fee. All of those things need to be disclosed, because the consumer has a right to know and a need to know all of those things, but what may happen is that you are going to wind up with essentially three, I think, separate GPLs. I don't know how you deal with that other than to promulgate three separate GPLs.

MS. HARRINGTON: Well, the current rule has a GPL requirement, a casket price list requirement, and we do have different price list requirements in the rule.

MR. WALLENSTEIN: Right, I understand that.

MS. HARRINGTON: So that it would be certainly

consistent to add, were this to occur --

MR. WALLENSTEIN: Two or three or four more.

MS. HARRINGTON: Uh-huh.

David?

MR. SWIM: The families that we serve as retailers confirm some of the feedback voiced by AARP, Lisa, Merc, in that when they come in, they're not so concerned about what all this standard format is, but they're wondering if I take the nondeclinable, do I have that in addition to everything else? The disclosure language tied into that as far as understanding in just plain English is are all these 16 items tied in to what, because of those 16 items, you may have different services for different items, and the family saying am I going to be still charged for those items if I'm going to have my funeral there?

So, again, I see expanded disclosure more the item rather than this standardization. There needs to be an understanding that families always need help on understanding that. And in the State of California, I must say that we've experienced extreme opposition to disclosure in these areas. In a bill we tried to introduce, AB-828 in the California State Legislature that was vehemently opposed in committee by the SCI Funeral Services in California, Mortuary Alliance and

the Interment Association. So, disclosure I see as still the issue where families are concerned.

MS. HARRINGTON: Randall?

MR. EARL: Eileen, at my particular funeral home, we do not have confusion concerning the 16 items on our price list, and I am not sure where everyone's coming from when they say that there's this confusion and everything about going through the GPL. I do not have that at my funeral home.

Thank you.

MS. HARRINGTON: Edith?

MS. CHURCHMAN: I would like to echo his remarks. There is no confusion at Churchman Funeral Home, and the last thing I want is for a consumer to walk away from my funeral home not understanding what it is that they have purchased. People come to Edith Churchman and to other funeral directors in the National Funeral Directors and Morticians Association because they trust us. The last thing we want is someone who's confused.

MS. HARRINGTON: Lisa?

MS. CARLSON: One of the easiest ones to explain is is the cremation fee included in a direct cremation or not? Is a graveside service or a committal service and is there a difference between a graveside service

and a committal service? This is not consistent across the nation.

MS. HARRINGTON: So, what you're saying is that it may be the case that at Randall and Edith's homes, this is all well understood, but this is not consistent, and you're calling for definitions?

MS. CARLSON: Yes, but --

MS. HARRINGTON: Or something like that.

MS. CARLSON: -- what consumer would think to ask if the crematory were extra? In other words, the -- New York State is unusual in that their GPLs say, "This does not include the crematory fee," but that is unusual. In other states, when we do a price survey, we can't -- we look through, and we see transportation to the crematory, paperwork, whatever, and they say nothing about the crematory fee. So, we assume that it does not include the crematory fee. We're right part of the time and wrong part of the time.

MS. HARRINGTON: Okay, I think we have some response on that from Randall, from Edith and from Scott.

MR. EARL: I still come back to the fact that if a family is asking us for a particular service, when we hand them the general price list, we would not only give that to them, but we would explain to them what is or is

not included. It would do me no good -- I've been in business for over a hundred years. It would not do me any good to try to fool people into thinking that they're going to get something that they're not. I just --

MS. HARRINGTON: We want to know what you have for breakfast.

MS. CARLSON: Those who are deaf depended on -- depend on the written word, and there are a lot of elderly who do not hear what you are telling them, and they depend on what they can read. They also, talking about standardization, need to be able to read it, and half -- I mean, I have got GPLs that look like someone tromped on them before they were handed out or that they were copies of copies of copies and haven't been changed for years. And in this day and age, with computers, there's no excuse for not having a clear-to-read GPL in sufficient point type.

MS. HARRINGTON: Okay, now, let me ask you, Lisa, Randall's point is that if he did those things, he would -- his business would suffer, that he has -- he relies in good part on reputation in order to maintain his business.

What's your take on the business model or the business plan for businesses that give out GPLs that

look like they've been tromped on or are copies of copies of copies? Do they have a different market? Are they not --

MS. CARLSON: Sometimes they're the only funeral home in town, so who else are they going to use?

MS. HARRINGTON: Okay.

Okay, let's hear from Edith and then from Scott and then from Maynard.

MS. CHURCHMAN: I would like to echo Randall's remarks, and I do think he looks remarkable to be a hundred, that I don't give a consumer a price list and walk away. I go over that price list item for item for item with the consumer so that they understand exactly what it is that they're paying for and exactly what it is that they're purchasing.

MS. HARRINGTON: Thank you.

Scott?

MR. GILLIGAN: Just to get back to the cremation fee, NFDA is not opposed and we would agree to add a disclosure onto the mandatory disclosure which accompanies the direct cremation fee to indicate whether the price of cremation is or is not included. That's not a problem.

What we do oppose, though, is having to include in the price of direct cremation what that cremation fee

is when for most funeral homes they have no control over what the crematory down the street charges, and for them to have to update their price list every time that crematory might change prices or take the risk that they're telling the consumer the wrong price and the crematory has raised their price in the meantime, we certainly would object to that, because we don't have control over them.

But we certainly -- if the price of direct -- if the price of cremation is not included in the direct cremation package, we would agree to add a disclosure to indicate that to consumers.

MS. HARRINGTON: Okay, a quick rejoinder of something from Lisa.

MS. CARLSON: Yes, under the current GPL, the appearance is that a direct cremation is the only cremation, and so we are asking for the cost of the crematory fee to be listed separately on the GPL as well as included in any cremation package.

The average consumer does not -- they are shocked when they find out there is an additional \$200 cash advance item for the crematory fee. How can you have a direct cremation without cremation? Who would think to ask?

The friend of one of the guys that worked in my

office, a friend of his mother died, and so I said, Call the local society in Albany and get a price for the immediate cremation. And I said, Did you ask if it included the crematory fee? He said, What do you mean? You're crazy. I said, Call back. No, it didn't include the crematory fee.

But who would think to -- and if that was the only source of information, then it's misleading. That's deceptive.

MR. GILLIGAN: And that's why we would agree to put that line that discloses that. If it is included --

MS. CARLSON: But that's on the GPL. This was on the telephone. How much is your price for an immediate cremation? And there's no -- nothing saying that the funeral director has to say, By the way, there's an extra \$200 fee for the crematory.

MR. GILLIGAN: If they ask about the price of direct cremation, that would not be a problem to add that on, that they have to disclose that.

MR. EARL: Excuse me, Eileen, just one question.

Were you talking to a funeral home or a memorial society?

MS. CARLSON: Someone in my office called a funeral home to get a price.

MR. EARL: Okay.

MS. HARRINGTON: Okay, now we're going to hear from George.

MR. CLARKE: Thank you.

I just wanted to point out that under the rule as it's currently written and looking at the FTC compliance guidelines, it does provide for the choice to be made on the part of the funeral director whether the price of the actual cremation is included on the GPL.

If I may, if you own a crematory, it would be appropriate to include the cremation charge in this fee, under the direct cremation; however, if you use a crematory that someone else owns, you may treat this charge as a cash advance item. In that case, you should make clear to the customer that there will be an added charge by the crematory. So, there is already a provision for this in the rule.

MS. HARRINGTON: Bill?

MR. SEALE: I'm willing to not do -- as he says, to put it in the price list that it does not include the cremation -- the crematory's charges. It happens that about two months ago, we had a case -- we don't have a crematory in our town. We had the amount, \$185, for cremation on there.

When we got through, we called the crematory and

said we're going to bring Ms. So and So over there at a certain time and everything, and it will be \$185 for cremation. No, ma'am, we get \$225 now. And guess what? We lost 40 bucks.

MS. HARRINGTON: G. V.?

MR. AYERS: Concerning the price of the cremation in there, we've talked about the issues, and I think it was touched upon just a little bit ago when someone read from the rule -- I'm trying to get this all sorted out in my head here -- when the same entity -- when the same funeral home also owns the crematory, which is allowed and has happened in California, then you have -- you have a situation where the individual, where the seller knows what the crematory fee is going to be and the cremation itself, and there is no need or no requirement at all to put that on there. To me, it seems like if it can be known, it might be appropriate to be on there.

MS. HARRINGTON: Billie?

MS. WATSON-HUGHES: In the Washington metropolitan area, for example, it would be extremely difficult for us to include the crematory charge, because we use various crematories, and their charges do change from month to month sometimes, and depending upon the day of the week even that the cremation is going to

take place. So, it has to be listed as a separate item in our case.

MS. CARLSON: May I ask how many different prices -- how many different prices you're dealing with, how many different crematories?

MS. WATSON-HUGHES: Basically three to four.

MS. HARRINGTON: Okay, Maynard?

MR. CHERIS: Thank you.

This is not about cremation charges, but I do have something --

MS. HARRINGTON: Could you speak into the microphone and loudly?

MR. CHERIS: Oh, I thought I was.

This is not about cremation charges but rather something I feel should be --

MS. HARRINGTON: Let's give you a different microphone. We seem to be having problems on that mike.

MR. CHERIS: Thank you.

MS. HARRINGTON: Much better.

MR. CHERIS: Okay, this is not about cremation charges but rather something else that I would like to see added to the general price list. We have consumers who come to our stores and when they buy our product or are thinking of buying our product, they almost always

ask will I get penalized or is there an extra charge at the funeral home, and, of course, we assure them that reputable funeral homes don't do that.

But I think it would be helpful to re-assure the consumer in the form of a disclosure if we could make a statement that says caskets and other funeral goods are available through third parties without penalty.

MS. HARRINGTON: Okay.

Edith?

MS. CHURCHMAN: I think that's a fine disclosure, and I think you should put it on your price list when the Federal Trade Commission regulates you.

Aren't we trying to keep this process simple for the consumer? Does it say on the price list what the price of direct burials is? Should we include on there the range and gamut of cemetery prices? You're making the funeral director -- if you want to include the cremation price on the price list, you're making the funeral home work for the crematory.

I work with about five different crematories, and the price can range from a simple \$150 for a cardboard container to over \$500 for a metal cassette. So, there is a wide range of prices.

MR. NINKER: Maynard, you already have us unloading your caskets. You don't have to have us do

your advertising, too.

MS. HARRINGTON: Excuse me, Robert, excuse me, but you need to be called on here.

Scott? You had your card up.

MR. GILLIGAN: Yeah, I did, and I just wanted to say pretty much what he just said, and that is that the disclosure recommended by Maynard, in the absence of any showing that funeral homes are imposing handling fees, which they are not, it's ridiculous to have that on there. That serves no purpose for the consumer.

MR. CHERIS: It's consumer education. They're asking the question.

MR. GILLIGAN: And you're answering the question to them. That's satisfactory.

MS. HARRINGTON: We are going to give Lisa the last word in this segment, because I am not really hearing -- I'm not interested in sparring between competitors here on this.

Lisa?

MS. CARLSON: We didn't touch on private family viewing or medical school donation.

MS. HARRINGTON: Okay.

MS. CARLSON: I did a very limited survey. We faxed out to Vermont funeral homes, 27 Vermont funeral homes, a question on how had it changed in Vermont,

because by regulation we now have private family viewing and body donation.

For the most part, they said it hadn't changed, that they were comfortable with it, although it was ironic that three who claimed that they had private family viewing already on their GPLs lied -- two of the three lied, because we have got their GPLs prior to. But in any event, the overall feeling was they were very comfortable with it. It was no problem.

MS. HARRINGTON: Okay, hold on just a minute. We have to huddle off.

(Discussion off the record.)

MS. HARRINGTON: All right, here's what we're going to do for the rest of the afternoon. We are going to take an unscheduled ten-minute break so that everybody can go out and cheer up. Then we're going to spend 45 minutes on the last item, the basic services fee item, which adds 15 minutes to what somebody earlier had asked if we could extend it by ten, we're doing 15.

And then at 3:45, we will evaluate whether or not we are in need of a leg stretch break, and then we'll head into our public participation segment so that we can make sure to give the people who have been listening attentively all day and wanting to speak an opportunity.

And I want to say that I certainly am expecting that all of the participants will remain through the public participation portion of the discussion, because this is very important. So, let's take a ten-minute break. We'll resume at 3:00. Everybody cheer up.

(A brief recess was taken.)

SESSION V**BASIC SERVICES FEE**

MS. HARRINGTON: Okay, we're headed down the sort of final stretch here. Okay, here we go. Now we're going to talk about the basic services fee issue, and as the agenda notes, the comments that we've received reflect disagreement among commenters as to whether providers should be allowed to charge a nondeclinable service fee.

The first question is a basic question, does such a fee still serve a useful purpose? In 1984, the Commission felt that it did. Does it still serve a useful purpose? Looking for yes, no and supporting rationale.

Lisa?

MS. KARLSON: According to our nationwide price surveys, the nondeclinable fee is now 40 percent of all service charges. That is too much for the consumer to have no control over.

MS. HARRINGTON: Do you think that there is a need for a basic services fee? Does the -- setting aside the amount of the basic services fee, should there be an option to include a basic services fee?

MS. CARLSON: No, what we recommended was a fee called an estate and records fee, but again, it would be

optional. The estate and records fee could be used for filling out insurance, veterans' claims, Social Security and any lengthy procedure in obtaining the death certificate. We know that doctors don't cooperate, that sometimes getting the death certificate takes an inordinate amount of time, but that should be optional.

Most families probably will not choose to do that themselves, but many times the doctor will be more cooperative with the family than the funeral director.

MS. HARRINGTON: Okay. Now, for probably a different point of view, let's go to John.

MR. CARMON: Thank you, Eileen.

Certainly on behalf of the National Funeral Directors, I would like to support the fact that this fee is a simple and a consistent disclosure of a price that the consumer can measure and can compare, use for comparison, and it should be retained in its present form.

Many have spoken here about simplicity, all around the table, that seemed to have been a theme all day, and certainly to keep the price list simple, to keep this price that is very inclusive of so many different services that the funeral home and funeral director provides, including certainly the arrangement conference, securing these permits and certificates,

making all of the arrangements for the disposition, sheltering the remains during this time, placing notices and a tremendous amount of work in each one of these areas, just the counseling of the families alone, that AARP had been quoted in that survey that they did that said that -- what was it, almost a 90 percent understanding of the general price list as it was presented, certainly points to the fact that there is certainly an understanding of this.

Mercedes said earlier that the GPL is working, and it allows people to make comparisons and also to understand the services and the charges that are made by the providers. It's an easy and available, and it also then puts a burden on the funeral home to explain all of the things that they do.

We have, in these 15 years or so that we have been involved in this, I have served several thousand families personally, and I can honestly say that I have not had any concern, any objection or any lack of understanding on the part of those families on the part of this -- on the basis of this fee.

It's effective for 99.9 percent of the circumstances, and then funeral homes do have in those other circumstances the right to make deductions or make changes in that as they see fit. That already happens I

think in some of the packaged prices that are already required. In the case of direct cremations, forwarding or receiving remains or immediate burial, many funeral directors do make allowances in those for something less than the amount of services involved.

MS. HARRINGTON: Are there basic services that apply to all situations?

MR. CARMON: Absolutely.

MS. HARRINGTON: What are those?

MR. CARMON: As an example, making arrangements with the family, that can vary widely depending upon their needs. Two days before I came to Washington, I met with a very -- some friends, people I had known for many years. Because of the differences in their family situation with divorces and children that were out of town, the original arrangements actually to sit down and plan this funeral actually took about four hours.

It became very difficult for them to even make some of the critical decisions, because some people weren't there. We were back two hours later to go over and review some of this information. They had a particularly difficult situation with some of their children, looking for our advice and counsel about that.

These are issues that you never know what you're

going to be dealing with, but for the most part, they are an all-encompassing way in serving a family.

MS. HARRINGTON: All right. So, the arrangements conference is one service that's common. Any others?

MR. CARMON: That's one. The next would certainly be securing the death certificate, obtaining the signature of the physician. As we all know, with managed care today, doctors are not all in the little communities they once were. They're clustered around hospitals and medical centers, and Lisa aptly pointed out that this can be a very involved process. We actually have a person and a half on staff just to do some parts of this.

MS. HARRINGTON: Okay, getting the death certificate? Anything else?

MR. CARMON: Absolutely, and to continue to file that and the registrar and obtaining the permits.

MS. HARRINGTON: Getting it and filing it, okay.

MR. CARMON: The follow-up on the arrangements, once you have spoken to a family about what it is that they want to do, making calls to clergy, churches, musicians, cemeteries, and many cemeteries, not like maybe some that are represented at the table, but around

the country, huge numbers are small entities, they don't have offices.

In many instances, we have to actually take the family to the cemetery to make absolutely sure where the gravesite is going to be opened, the importance of making sure of that before the event, newspaper deadlines. And again, with call-backs from clergy, it's the same situation. Our world has changed. No -- a lot don't have offices. The back and forth, the hours that are involved in that are considerable.

MS. HARRINGTON: And, of course, the cemetery follow-up wouldn't apply in all situations, because not everyone would want necessarily to involve a cemetery.

MR. CARMON: No, but then there would be -- there would be arrangements made with a crematory or whatever that disposition, maybe it would be an airline if you're going to ship someone somewhere, and the time involved in just making sure those arrangements, being liable for those arrangements in that time is considerable.

MS. HARRINGTON: So, you would say that the three elements that are basic services in all situations are the arrangements conference, implementation of choices made during the arrangements conference and obtaining and properly filing the death certificate.

MR. CARMON: That's correct.

MS. HARRINGTON: Okay.

MR. CARMON: There are other issues like preparing the obituary that you do often times in concert with the family. Some families may wish to do this themselves. Very few do.

However, often times most newspapers will only accept obituaries from the funeral home for verification purposes or they have a special format now. Again, because of the technology that they're all involved in, many of them want it on a specific format that many of us have had to purchase computer programs in order to format those obituaries in properly.

It's just a lot of time and a lot of equipment, as well as those general overhead issues that would be associated with that. Again, the shelter of that body during this process, maybe even before you can have authorization to embalm or even to refrigerate.

MS. HARRINGTON: All right, but now we're getting off of the basic in all situations. I understand that --

MR. CARMON: Well, but they are common to many, Eileen. It's important to remember that, again, with the change in demographics today, with people that all don't live in the same community, that being able to

reach family members, often times there's, you know, between a day, two, three days, even longer often times before arrangements can be completed, and that's not the exception. Often times that's the norm.

MS. HARRINGTON: Okay, thank you, John.

Pat?

MR. GRAHAM: Well, I agree totally with what John is saying, but there's some other -- there are also some other items that are coincidental, the shelter of the remains for the day, two to three days prior to the funeral, compliance with FTC, OSHA rules. Every state has its own licensing authority. We're required to provide licensed personnel and have them available.

Whether the family chooses minimal arrangement or not, we still have to provide all of those services to the public, 24-hour availability. I know in my small town, I have to have someone there. There's someone there right now that I am paying while I'm gone. There has to be someone there ready all the time.

Granted, that family -- particular family probably doesn't need me except at that one particular time, but I still have to be available all the time, and those are costs that are unique to the funeral business, and we have to recoup those costs no matter what services --

MS. HARRINGTON: Well, although it's not unique for businesses to have costs, you know, I'm thinking that many other businesses have costs.

MR. GRAHAM: Right.

MS. HARRINGTON: All of them, in fact.

MR. GRAHAM: Very few other businesses are required to itemize and offer --

MS. HARRINGTON: Right, not all --

MR. GRAHAM: -- services that can then be declined.

MS. HARRINGTON: Right, not all businesses are required to list services that you then cannot bundle.

MR. CARMON: Can I make a comment?

MS. HARRINGTON: Sure, then we will go to Jeff.

MR. CARMON: It is important, because those other items on the general price list can accurately reflect the cost to provide those individual items, and that's the fairest way for the consumer. You know, they should not only know and be able to make their choices, but they also should be educated well and also be charged appropriately for those items. Each one of those shouldn't be bearing some other cost that it doesn't belong to, and that if they either eliminate it, that they're given a fair credit, and if they add it, we're given a fair addition.

MS. HARRINGTON: Would it be more reasonable to just impose an hourly charge for all these things, for professional services rendered or --

MR. CARMON: I don't think an hourly charge -- no. In fact, we've tried that, and we've tried that in some unique circumstances. The difficulty with that is it then would be almost impossible to tell the consumer up front exactly what it was going to be. It would be almost akin to charging by the number of people that came to a visitation or the number of cars in a procession. It just -- and then afterwards to be surprised because it took an extra 10 or 15 hours, I don't think would -- I know it would not serve the consumer well.

They tell us they're glad that when we finish the arrangement conference and a memorandum of goods and services is made out and broken down and discussed with them, that they fully know exactly what that is at that point.

MS. HARRINGTON: So, your position is that by including all of that in a-- nondeclinable basic services fee, consumers know with certainty when they make their arrangements what this is going to cost?

MR. CARMON: Exactly.

MS. HARRINGTON: Okay.

MR. CARMON: And it still gives the funeral director the right to make changes. I mean, we're still serving people on public aid, infants, children and making major adjustments to this. It's not like this is some mandatory fee that's there no matter what.

MS. HARRINGTON: Okay, Jeff?

MR. KRAMER: Yeah, I agree with John about simplicity being important, but simplicity doesn't necessarily mean less information, and I think what we'd like to see is when you provide, you know, information on what your basic service fee is that you do break it down and tell people exactly what that fee includes, those kind of things Eileen was getting at, and if you provide a different service than someone else does under their fee, then at least a consumer at that point -- I'm not saying pick and choose between that fee, but at least you know which services you're getting with that fee so you can go to someone else and say, you know -- at least compare, compare apples to apples and see if there's an orange thrown in there that you don't want.

MR. CARMON: I think you'll find most GPLs will include a very accurate description of what is included by that funeral home under that.

MS. HARRINGTON: Okay, Billie?

MS. WATSON-HUGHES: In the Washington

metropolitan area, you'll find that most of our funeral directors do spell out exactly what the basic service charges are for, and in --

MS. HARRINGTON: How do they do that?

MS. WATSON-HUGHES: Because they use --

MS. HARRINGTON: No, how do they do it?

MS. WATSON-HUGHES: Oh, they spell it out on the general price list itself. They spell out exactly what is included in those charges, the arrangement conference, the planning, the filing of certificates, sheltering of the remains, obtaining authorizations and permits, coordinating with the various allied suppliers.

Also included in this, many times the cost of having a private visitation by the family is thrown into this -- is lumped into it. That's part of our counseling process. We bring the immediate family in to make sure everything is all right. This is part of our educational process with the family.

In our community in particular, we have to go through an educational process a lot of times. For many people, it's the first time they have ever dealt with a death. They don't know what to expect when they come into a funeral home. So, it takes time.

Sometimes we can't even make the arrangements on

the same day the family comes in because they're still in such an emotional state that they just can't deal with the hard facts of dollars and cents at that point. So, you have to work through that process with them first.

And once you get them to a point where they're in a agreement with what needs to be done and what they want to be done, then you can proceed with the arrangement conference. And sometimes that's done on another day and time, but if we were to break all of that out and itemize it, it would charge -- be more of a charge to the consumer. This way, it's simplistic, everything is there, they know in advance how much it's going to cost, and they're not given the hidden charges at the end of an arrangement.

MS. HARRINGTON: I would just note that our compliance guides on this item, by example, include a description of what's included in the basic services fee, and the provision of the rule on this point, at least the second proviso, would require that, and the first suggests some description, as well. So, it already is in the law, as well as by example, that this should be a descriptive item on the list.

Merc?

MS. BERN-KLUG: There's another item that didn't

come up in our recent enumeration of what's included in the core services, but it came up this morning, and that was profit, so I just would like to have that on the record.

The discussion did not convince me that in every funeral home the basic services lists are the same, and this discussion has not convinced me that these services that are included in the basic services fee are unique or are common to all consumers, and that's my understanding, that the only reason we should have this basic services fee is that because it's going to cover fees that are common to all consumer situations, and that's not the case at all.

The implementation of choices should be priced with the choices, not with the basic services fee. By making this fee nondeclinable, we automatically assure that consumers cannot really control the price of their funeral services or final arrangements. Absent a core set of activities, there should not be an FTC allowance to allow funeral homes to charge a basic services fee.

In Kansas City, that fee ranges from \$690 to \$2,770, and I have with me today, if it's not too late to put in the record, a listing of just all the general price list basic services fees, and you will see such heterogeneity within these listings that it is not in

the consumer's best interests to have this fee here, because you really don't know what you're paying for.

And you should not be expected to cover all the overhead in basic services fee, because then -- I mean, then what is the difference between what you're paying for a casket and what you're selling the casket for? Part of that should be your overhead, too. To put all the overhead in one fee and then say it's nondeclinable means that everything else that you're getting more money for than you paid for is all profit, and that makes me very uncomfortable.

We need to give families the last word in choosing just what they want and only what they want, and if we put all this packaging in basic services that does not apply to every service, it's unfair to families. I'd like to go ahead and circulate these if anyone's interested in seeing it. [Exhibit A].

MS. HARRINGTON: Yeah, and we'll put that in the record with the stenographer so that she can include that.

MR. CARMON: Eileen, could I respond to that, because there are some inaccuracies to --

MS. HARRINGTON: Well, I want come back to you, but I want to get to Jonathan, who has had his card up, but I will get back to you on this.

MR. SIEDLECKI: Thank you, Eileen.

I've got a few points to make. In listening to this discussion here this afternoon, we have heard over the course of this day many people already testify to the fact that consumers apparently are familiar with the price list as it -- the format of the price list as it is currently established. We've been doing this for 15 years.

I would caution all of you that one of the aims of our endeavor here this afternoon is to allow people to easily compare and to competitively price funerals. If we go to change the format, we are going to throw a monkey wrench into that. They are already comparing, they are already utilizing this price list, and they are familiar with it.

I would also move quickly to tell you that we're trying to keep it as simple as possible. By changing this price list, we are putting in other items and changing the format, we are making it more complicated. If the aim is to make it simple, I say leave it alone.

Number three, when we are looking at and discussing previously to this pre-need arrangements, ladies and gentlemen, I have hundreds of pre-need arrangements. How would changing this now affect those?

And let me offer this out as a question: If we were to elaborately change it, as some of the people here are asking us to do, and, for example, a family opted to select and make their own death certificate filing, and then when the person died, there was nobody to do it, what am I supposed to do?

Okay, number four, nondeclinable fee. Nondeclinable fee, ladies and gentlemen, where would somebody tell me, please, there is forever a nondeclinable fee? That individual family can do several things. They can say, Jonathan, your fee is outrageous, I'm walking next door. They can say, Jonathan, I am not going to deal with you with that fee, we're going somewhere else.

And I have heard people say, Well, the body is already at the funeral home. Not in all cases. In fact, not in the majority of cases. And I can tell you, ladies and gentlemen, I have personally been involved in situations when for whatever reason a family has had a body at another funeral home, they have come to me and said we've changed our mind, we want you to handle the arrangements, go and pick up that body, and ladies and gentlemen, I don't know -- I have never been refused by a funeral director or given any complication in doing that. We've done it.

The fifth thing is, everybody's talking about, Mercedes -- excuse me, did I pronounce it correctly -- okay, is talking about the range in price. Well, the whole point of the FTC was not to establish a price, ladies and gentlemen; it was to establish a format to compare those prices. We're not supposed to say you can only charge \$472 for removal, you can only charge \$76.75 to file a death certificate. We're supposed to say that that is supposed to be easily comparable.

And I'm telling you that a range of price is why we're all sitting under that dome down the street here. This is America, this is the land of the free, this is a capitalistic system, and so that's good.

MS. HARRINGTON: Okay. Lisa?

MS. CARLSON: It's obvious that Mr. Carmon doesn't understand the disclosure on his GPL that says this price is already included in our charges for direct cremation, immediate burial, forwarding and then receiving remains. Monkeying with that price is what prompted me, when grading GPLs from around the country, with magical math.

If you have a nondeclinable fee of \$1,295 and a direct cremation of \$895, please, sir, tell me how it is included.

MR. CARMON: I will, I will.

MS. CARLSON: The original intent of the nondeclinable fee was to be minimal, small enough that indeed it could be included. It was supposed to be those things that were common to all arrangements. I don't believe -- currently, I think the majority of the things under the nondeclinable fee belong elsewhere on the GPL.

You need the death certificate for removal. That should be part of the removal fee. Any other permits are part of the removal fee. In arranging an immediate cremation over the telephone with Margaret in California for her mother in Connecticut is going to entail far less in the way of coordination with other providers than someone who's coming in and arranging for a one-of-everything funeral.

And so I think that it's important to assign the costs of -- to the services that the consumer is, in fact, picking. When you are the only funeral home in town, consumers do not shop around, generally speaking, but with a nondeclinable fee, they can't shop among the services you offer in a way that will allow them to limit their costs.

MR. CARMON: I --

MS. HARRINGTON: John?

MR. CARMON: Could I respond?

MS. HARRINGTON: Sure.

MR. CARMON: Yes, first of all, the reason -- and talking about the math in that part of the nondeclinable service fee, the reason that that is stated that way is that that is the exact disclosure that is required by the Federal Trade Commission. I used to say in ours that a portion of the professional service fee is included in that, and counsel corrected that and said you must use the exact wording.

That's why that states that, but it still is the funeral director's right, when he sees -- he or she sees that there is less services involved in one of those limited cases, that they can make those adjustments, and we are doing it all the time in others.

MS. HARRINGTON: Lisa?

MS. CARLSON: The whole point was that it was supposed to be a basic fee, not a floating fee.

MR. CARMON: But it's the basic fee when it's included in all arrangements. These are adjustments that we can make, and that's good for the consumer. The consumer saves.

MS. CARLSON: Actually, your comment verifies why we should do away with it and you should charge according to the services you provide.

MR. CARMON: In those limited circumstances --

MS. CARLSON: Whether a direct cremation or a one of everything.

MR. CARMON: In those limited circumstances it's appropriate and, in fact, appropriate that those limited circumstances were recognized by the Federal Trade Commission when they delineated a direct cremation, a forwarding or receiving remains or a direct burial.

MS. CARLSON: That's a perfect example of why we need to get rid of it.

MS. HARRINGTON: Okay, very good exchange.
David?

MR. SWIM: An example of abuse was in San Diego where a large local firm was acquired by another company. We were -- it was brought to our attention by a family, because they had been quoted the competitive prices, embalming, visitation all those things that were intended to be pretty much in line with all the rest of the funeral homes, but surprisingly, overnight, the nondeclinable had gone from \$995 to \$1,995, and this was stated by a couple counselors that, well, we have got new owners now and, of course, they have got to pay for the things.

And John, in response to your question there, knowing that some families take four hours, six hours, other families are in and out in half an hour, they're

business like and want to get it done, why should the family who takes a half hour to take advantage of those services pay the same amount as the family that takes six hours?

And so by breaking up the nondeclinable, we're finding that it's just now a lump-all for expenses that have not been required to really be -- usually on phone disclosure we find that families aren't told about the nondeclinable. They are told about every other fee. The nondeclinable is kind of brushed over.

MR. CARMON: Well, it shouldn't be.

MS. HARRINGTON: Edith?

MS. CHURCHMAN: I keep hearing people talk about choice. If -- and I know we can go to the internet, we can come to the memorial -- Funeral Memorial Society, and we can get a list of the basic service charges and all other charges of a funeral home, then the consumer does have a choice. The choice is that you have chosen to come to me.

The nondeclinable fee is 40 percent of basic services? My word, I would love to work there. That's not how mine operates. All of my overhead is not recouped in my basic fee. And finally, profit is not a dirty word. It's not a dirty word, even for funerals. You have a choice when you buy a loaf bread. You can go

to the corner store, you can go to a grocery store, or you can go to a discount club. And certainly in most scenarios, the consumer does have a choice about which funeral home they want to go to, and if you look at your price lists, you will see where the lowest prices are.

MS. HARRINGTON: George?

MR. CLARKE: Thank you.

There's been some discussion that's been raised regarding charges and profits of funeral homes, and again, at the risk of being repetitive, I must state again that I think the purpose of the FTC is not to regulate price but to ensure access to the information.

The second point I'd like to make is that in the course of preparing our comments, NSM sought the assistance of Dr. Robert Tollison (phonetic), who was the director of the Bureau of Economics of the FTC at the time that the original rule was promulgated, and we asked Dr. Tollison as part of his work to take a look at the profits that funeral home -- the profit margins that funeral homes have realized over the last 20 years.

And it is documented, the research to this point is unrefuted, that between 1978 and 1998, funeral prices increased an average of only six-tenths of 1 percent per year, and that's corrected for inflation, which in our view is really the only accurate way to look at these

numbers.

At the same time, I think it's important to note that the operating costs for funeral homes for that same period increased at a rate of almost twice that. They had an average annual increase of 1 percent. So, as we begin to talk about or perhaps continue to talk about profit margins of funeral homes, we think it is really important that we actually look at the real numbers, the real dollars corrected for inflation before accusations are made regarding the profits of funeral homes.

Thank you.

MS. HARRINGTON: Jim? Your card is down now?
Okay.

Merc? Your card is down, too.

MS. BERN-KLUG: Well, I can -- I'd like to just make a little clarification on that.

MS. HARRINGTON: Okay.

MS. BERN-KLUG: I'm the person who brought up profits at least in the afternoon, not in the morning session. I have no problem with funeral homes making a profit. I understand how business works. I am a capitalist. What I have a problem with is the nondeclinable nature of an expense that does not seem to be standard, and if we -- is what is included in basic services at funeral home A the same thing that's

included in basic services in funeral home B and C? That has not yet been determined.

And what I think I'm hearing from some people is that yes, it is the same, but it doesn't come out that way on the general price list. So, if I'm not going to work through a clergy, why am I paying a basic services fee for my funeral director to work with the clergy? If I am not going to go to a cemetery, why does my basic services fee include dealing with the cemeterian?

You are lumping a lot of costs together that may be applying to many but not to all, and unless we can come up with a list that applies to all, I don't think there's any rationalization to have a nondeclinable fee that families cannot opt out of it.

MS. HARRINGTON: Merc, would you favor going to hourly billing, then, for the funeral director's time, even if that meant that -- excuse me, even if that meant that there couldn't be a certainty to the cost disclosure at the time of contract?

MS. BERN-KLUG: I favor -- if -- if the funeral director and the funeral director and her staff or his staff spend three or four hours talking with a family about making arrangements around a funeral service, to me, that is priced with the funeral service, you know, that should be priced with using the funeral home.

If it's -- if you're including time to track down a cemetery or a clergy, then price that with, you know, hosting the service there or things like that. It seems like it's a hodgepodge of prices put together. They no longer apply to anybody -- to everybody. And furthermore, with the increasing diversity in the American ritual and tradition based on more Hispanics and Asian people coming to this country, this set that was defined today as core services is going to be even less meaningful as time goes on. Unless we come up with a core set that applies to everybody, there's not a basis for the fee.

MS. HARRINGTON: Okay, hold on, John. Randall's had his card up for a while. I am going to get to you.

MR. EARL: Thank you, Eileen.

You know, it seems that we've resolved the conversation here to dollars and cents rather than protecting the consumer. I thought that we were coming together today to discuss consumers and what was best for them, not dollars and cents. It's clearly stated in the FTC rule that was promulgated in 1984 what the basic service fee included. It's right here in your book. And I'm having a real hard time understanding why that is hard to understand, it's in black and white --

MS. HARRINGTON: Okay.

MR. EARL: -- as to exactly what it --

MS. HARRINGTON: Got that point.

MS. BERN-KLUG: I understand what it says.

MS. HARRINGTON: We are going to need to move on for time purposes, so if we could make our points quickly, that would help me a lot. Thank you.

Go ahead. It's simple, it's in the rule.

MR. EARL: It's very simple. Don't complicate it.

MS. HARRINGTON: Okay.

MR. EARL: I can tell you one thing. If we do as the funeral industry go to an hourly rate, you will definitely not help the consumer. The funeral directors are doing it for nothing right now.

MS. HARRINGTON: I was just asking.

MR. EARL: I mean, I'm just asking --

MS. HARRINGTON: This is just discussion. We're not having pronounced regulation, don't worry.

MR. EARL: Okay, thank you very much.

MS. HARRINGTON: Okay, thank you.

MR. CARMON: I think I can be brief.

MS. HARRINGTON: Okay, good. Show me.

You've done a good job, I'm sorry, that's unfair to anyone.

MR. CARMON: Just the point again about the

charge. Again, if price is a consideration to that family, it is certainly a very easy way to make that comparison, much easier than if it is broken down into several -- into several items.

The other point is that there are differences that can be reflected in this and can reflect the difference in a state, for example, that does require the viewing or identification prior to a cremation, that that can be included. That is where that can be included into that charge, and that there are a core set of -- a core set of arrangements and issues that you deal with with every single family.

And Mercedes, you made the point about the diversity that we are, the changes that we are, the demographic changes. All these have made that even much more complicated. I mean, the family does not come in today that knows exactly what they want to do. The amount of discussion, the amount of options, the walking through all the authorizations, even understanding the cremation process. One or two family members may, but all of them need to, and that's what's so important today. There's so much more.

The counseling aspect of what we do, and on a normal, day-to-day basis with every family, everyone has different issues when they walk in the door. We want to

be able to respond to them.

MS. HARRINGTON: Okay.

Edith and Jim?

MS. CHURCHMAN: I again would like to keep this simple for the consumer. If we take the arrangement charge and put it onto the facility charge, I have a problem with that. I have a real problem with that. I think that what we're doing is taking this little old lady who's coming in to make arrangements that maybe we're with her for two hours and now we're with her for four hours, because we have a laundry list of 50 items that we are going to ask her, do you use this, did you not use this. People trust me. They come to Churchman Funeral Home because they trust Edith Churchman. So, diversity costs much more for me.

I'm now providing funeral services for people from the Caribbean, from West Africa, from East Africa. It's taking me more and more time, not less and less time. Let's keep things simple for the consumer.

MS. HARRINGTON: Jim?

MR. PINKERTON: I think the idea or the concept of using hour fees, if you look at it from the aspect of pre-arrangement and at-need, I think it's totally inappropriate. There is no way that we can quote an advanced fees so that people do know the fees in

advance, and in order to be objective for those families and treat them honestly, we need to take whatever time we need to take without concern that you're adding up billable hours for that family.

MS. HARRINGTON: Pat?

MR. GRAHAM: I'm not sure who it was a few minutes ago mentioned that the basic service fee varied in Kansas City, I believe it was, from \$695 to \$2,000. To me, that's the whole point of competition. That's where somebody can look at it and say, Well, gosh, they charge \$2,000, I am going to go over to the people who don't charge that much, and there's your choice.

MS. HARRINGTON: All right, the last word on this goes to Lisa.

MS. CARLSON: Anything that is nondeclinable takes away consumer choice.

MS. HARRINGTON: Okay, that's the end of --

MR. ELVIG: I have a question to ask on time. Are you done?

MS. HARRINGTON: Yes.

MR. ELVIG: Can I say something then to you?

MS. HARRINGTON: Sure. Well, we are not done-done, because we are going to move into the next segment, but --

MR. ELVIG: Well, you are done with us, right?

MS. HARRINGTON: Well, I don't know, we might think of something else to do with you.

MR. ELVIG: What I want to say, we have watched you now for hours, and I think, without asking the others, that we owe you a round of applause.

MS. HARRINGTON: Oh.

(Applause.)

MS. HARRINGTON: Thank you. I want to -- I think that this has been -- I want -- we could just repeal the rule and let me decide this on an ad hoc basis then.

MR. ELVIG: We won't go that far.

MS. HARRINGTON: I'm joking. That's a joke, that's a joke.

Well, I want to commend you. This is a process that depends on people who come to the table, reading each others' comments, being familiar with one another's points of view and being willing to extend the discussion past the comments, and I think that this has been -- I've done a number of these workshops in a range of -- concerning a range of consumer issues and industries, and I think that this is a very high-caliber group of participants.

Myra selected you, and she chose well. Based on the criteria, of course, she made those selections, not

on an ad hoc or arbitrary basis but based on the criteria.

In terms of process, we're going to get to the public comment, but I just want to reiterate one thing. We are at the beginning of this rule review process, and if we go forward, for example, with -- if the staff decides from looking at the record to recommend to the Commission that it's appropriate to publish an advanced notice, indicating that the Commission is considering changes to the rule, then it's very likely that we will use this process again, as well as the written comment process.

And I'd like you all to bear that in mind, because the alternative is to take written comments and then ask you all to file more written comments to rebut what the people who happen to disagree with you say, and our experience is that that isn't very helpful to us, because, of course, if you're filing a written comment to rebut what somebody who disagrees with you says, then it just doubles the disagreement.

It doesn't help us identify areas of common ground that could be achieved. It doesn't give us the benefit of the expertise and the insight that you all have to really pierce one another's arguments and reveal that there may not be much to somebody's opposition.

So, that's why we use this process.

And last, we think it's very important for this kind of important government process to be very open and transparent, and so I appreciate very much everyone's hard work here.

And what I think I would like to suggest that we do, we need -- we need 51 minutes for the public comment portion, and I think what I would like to do is just move right into it -- hold on, I'm hearing something.

No, we need a few minutes to set up. So, hold on. We need ten minutes to set up. So, what we're going to do is take a little ten-minute stretch here and resume at 3:50, and if any of you participants bug out, you won't get invited back. I want the participants to stay at the table.

(A brief recess was taken.)

SESSION VI**PUBLIC PARTICIPATION**

MS. HARRINGTON: Now, I think it's very good that our participants are facing those who they will be listening to and perhaps engaged in discussion with without any request for direction, very good.

Maynard is moving for us so that our public participants can see this timing device that we have here, which is just like the one that they use at the Supreme Court and on the Price is Right and at congressional committee hearings.

Do we have a microphone that works there now?

VONI: I am using two of them because they are kind of low in volume.

MS. HARRINGTON: Yes, and I think the first one works really well especially.

VONI: This one?

MS. HARRINGTON: Yeah, so the one that's pointed straight back is going to be the microphone of preference.

Now, while she's standing there -- Voni, don't you move -- the person who did all of these arrangements, who has made all of this go is Voni Eason. Thank you. And we all work for her at the Federal Trade Commission.

All right, I'm going to just -- may I take the list? I am going to call out the first several names on the list so people know -- in fact, I think I'll call them all out so you have an idea of the order in which we'll be asking for you. The first person we are going to hear from is Tom Crean, C R E A N, then David McComb, then the Reverend Patrick Pollard, John McDonough, Sylvia Brown, Gere Fulton, John Harron, Allisone Lasacco, Dino James, Steven Sklar, Robert -- is it Green or -- G R E A R or -- someone who's a funeral director for 50 years, who would be a good friend of Randall, who has been in business for a hundred years.

Doug Stowell, Richard Santure, Eileen Santangelo, Samuel Frane, Shirley VanArsdale, John R. Harmon. That's who we're going to be hearing from.

Okay, so let's hear from Tom. Let me explain, Tom, and all the rest of you how this works. When the green light is on -- we'll hit the timer, you will see a green light until you are at 2:30 into your three-minute time. The yellow light will come on at 2:30 telling you you have 30 seconds left, and the red light comes on when you have ten seconds left. So, if you can watch the light, it will give everybody a chance to talk and I hope that I don't interrupt anyone.

I don't know how to turn this on, Myra. Okay,

start. Hit it, Tom.

MR. CREAN: Thank you.

As I said, my name is Tom Crean. I'm the chair of the Family Funeral Home Association. We're a fledgling association with about a hundred members, 80 percent of whom are based in the United States, and our focus is to advocate on behalf of the bereaved, and we wanted to make some statements today about the status of cemeteries with respect to the rule.

We do support the commercial cemeteries being placed under the rule; however, we want to speak in support of the nonprofit cemetery community, because we independents are very dependent upon them, and that partnership is a big part of what we perceive is our ability to survive in the future.

The commercial cemeteries have a great ability using all kinds of pre-need techniques, and especially if there is no licensing for pre-need people, there's an ability to train unlimited numbers of these on a monthly basis. One report I heard was 40 a month. These people are able to go out, sell friends, relatives and associates, and sadly, in 60 days, there's not much business for them, but that's a tremendous route into the community for the commercial cemeteries, and the independents are concerned about that.

Also, disclosure of ownership. In September of 1997, it was reported that family firms on average spent \$3,000 caring for each family as opposed to the clustered corporations that were spending \$2,000. So, we think there's a substantial difference between the service that's provided by independent, family-owned funeral homes and the consolidator clusters, at least in the big cities.

So, on that basis, if you combine the data that's in the newspapers talking about big differences in terms of prices charged for funerals, and I think we can see that there could quite easily be differences there that are substantial multiples, and we would put forward that if you're looking at a difference in value of 100 percent or 200 percent, then that goes past capitalism into something which I would call opportunism.

Those in the -- the representation that Service Corporation mentioned earlier that there is a lot more available -- information available for the consumer today, which is a positive thing, also mentioned that a lot of that information is available on the website. Our website address a familyfuneral.org, and I would invite any of you to guess who owns familyfuneral.com.

MS. HARRINGTON: Thank you, and let's give a

hand to Tom because he came in at two minutes and 19 seconds. It's not that we don't want you to take your full three minutes, but -- okay, let's -- see, now this would be -- hold on, let's start him over, stop.

MR. HILE: You can take the microphone off of the rack and hold it in your hand.

MS. HARRINGTON: If you want to.

MR. MCCOMB: Okay.

MS. HARRINGTON: And before you start the clock -- before we start the clock, please give us your name and spell it.

MR. MCCOMB: Okay, my name is David McComb, M C capital C O M B.

MS. HARRINGTON: Okay.

MR. MCCOMB: There's a bunch of smart people in this room here today, and I'm certainly glad to be in front of you, very proud to be here in front of you. Like I just said, my name is David McComb. I'm from Fort Wayne, Indiana, which is northeastern Indiana, among the corn and so forth, and I'm here today just from our funeral home. I'm not with any specific organization here. I'm a member of a couple of them, but I'm just here basically on my own.

My feeling is the consumer is king, and for them to remain king, there needs to be competition within

every service and every product of this industry, and I feel very, very sure about that.

Madam Chairperson, I have something new, I heard you asking for something new earlier, so I am going to offer something new here. There shouldn't be any exclusive services like I mentioned, specifically, I have two things in mind, one of which is the opening and closing of a gravesite, and the other one is setting of a memorial, preparing of a memorial foundation.

Opening and closing of gravesites in our marketplace and around the country is becoming a larger and a larger percentage of the overall funeralization cost, and I have a study and a graph produced by an Indiana University professor that is here that shows over the course of the last number of years how opening and closing has exceeded inflation by five to ten times as much as inflation. [Exhibit B].

There is a cemetery in Battle Creek, Michigan that even boasts in its marketing pieces that the increase in opening and closing in Battle Creek at their particular cemetery goes up 15 percent a year. Meanwhile, inflation goes at less than 3 percent.

The practices of exclusivity for opening and closing of graves and the monument foundations is the direct result of cemeteries' rules and regulations.

Most states grant cemeteries the ability to set rules and regulations. Some states have even codified these exclusive provisions in state laws.

We, for instance, in Indiana now have codified the exclusive rights for cemeteries to open and close gravesites and also prepare monument foundations.

The ICFA, they have a model law that addresses the definition of opening and closing, and I want to read the definition, because it has some interesting things in it you would not expect. The process -- I'm -- the definition goes as follows:

"The process of making an interment including but not limited to administrative, clerical, legal and mechanical services performed by the cemetery authority in conjunction with the opening and closing of an interment space in preparation for the interment of human remains and the subsequent closing of the interment space after the interment has been performed."

I thought it had something to do with moving dirt. Apparently not. But opening and closing needs to be provided by third parties. There can be competition. There's already people out there that have ingress and egress to cemeteries, and they would love the opportunity to do this.

MS. HARRINGTON: Thank you, good job.

MR. MCCOMB: Thank you very much.

MS. HARRINGTON: And thank you for coming on your own behalf all the way from Indiana. That's really much appreciated here.

Reverend Patrick -- is it Pollard?

REVEREND POLLARD: Yes, that's correct.

MS. HARRINGTON: Would you identify yourself and spell your name for our reporter.

REVEREND POLLARD: I am the Reverend Patrick Pollard, P O L L A R D. I'm a Catholic priest and the archdiocesan director of the Catholic Cemeteries of the Archdiocese of Chicago. In the Archdiocese, there are 42 cemeteries which I direct, and we enter 20,000 persons annually.

I'm also representing the National Catholic Cemetery Conference. This conference has been in existence for 50 years, and within the conference we represent 155 Catholic diocese across the country, which cover about 5400 Catholic cemeteries and inter over 154,000 people in 1988.

I'm here to speak against the inclusion of religious cemeteries under the funeral rule. The Catholic cemeteries in the United States are an integral part of the Roman Catholic Church, and one of the

church's vital and integral missions, the corporal work of burying the dead.

One cannot isolate the belief of the church. It is a composite of all its missions and ministry, including funeral rituals. Catholic cemeteries further the church's religious mission by bearing witness to our faith and ministering to our faithful. The teachings of the Roman Catholic Church include the resurrection of the Body of Christ and the continuation of life after death.

The church believes that God did not abandon the creation of humanity to death but rather sent God's son to save humanity. The interment of the body of the deceased in a Catholic cemetery honors the body in death as it was honored in life, which is essential to what we believe. God is the source of all creation.

The Catholic cemetery has been seen as a part of the church from its beginning. Since the earliest catacombs, the church's priests, ministers and faithful have exercised a ministry of service, care and compassion, service for the needs of families, arranging for the burial of loved ones, care for the deceased awaiting the resurrection, and compassion for the families of the deceased.

Catholic cemeteries are owned and operated by

the church and are deemed by church law to be sacred places dedicated to the rituals of Catholic burial. The creed of the National Catholic Cemetery Conference acknowledges the sacred religious function of the Catholic cemeteries.

The Roman Catholic Church, the National Catholic Cemetery Conference, holds that the religious nature of the Catholic cemeteries is under the direction and supervision of the local church authority.

The purpose of the funeral rule is to provide information so that whoever is planning a funeral and burial can make an informed decision. In addition, the funeral rule is designed to prevent individuals from taking advantage. The conference's members are Roman Catholic, not-for-profit organizations. Rather, our mission is to provide burials for all and just not for those who can afford it.

Thank you.

MS. HARRINGTON: Thank you, Father. Let me ask you a question. Does your -- uh-oh --

REVEREND POLLARD: I'm sorry, I caused a beep.

MS. HARRINGTON: That was my fault. I'm not going to touch that again.

Does your association have a code for its members or guidelines for its members about disclosure?

REVEREND POLLARD: Yes, I apologize, my statement wasn't long enough, and that was the one positive I was going to suggest. As you were looking for new ideas, it would be appropriate for the Federal Trade Commission to encourage the National Catholic Cemetery Conference to regulate -- self-regulate, self-govern the members of the association to comply in the spirit.

MS. HARRINGTON: Has it done that?

REVEREND POLLARD: We have rules in effect.

MS. HARRINGTON: Okay. Did you file a comment?

REVEREND POLLARD: We did not as a national group file a comment. Some individual diocese may have filed comment.

MR. GRAHAM: May I ask a question? When you say that you are not for profit, however, aren't a number of cemeteries throughout the nation that are owned by the Catholic church leased or otherwise have an arrangement with for-profit groups to operate those cemeteries and the monuments and so forth?

REVEREND POLLARD: There are just a few of those, very few.

MR. GRAHAM: I've run into it.

REVEREND POLLARD: The vast majority are not.

MS. HARRINGTON: Okay, thank you, Father

Pollard.

MR. WALLENSTEIN: May I ask a question, as well, or do you not want to do that?

MS. HARRINGTON: Very brief.

MR. WALLENSTEIN: Father, my question to you is does the conference have a policy with respect to the sale of memorials by Catholic cemeteries and how would you justify that fitting in with your religious mission since it's a purely commercial venture?

REVEREND POLLARD: Well, we wouldn't consider it a purely commercial venture, because we're providing whatever is the service for burial, and, of course, marking the grave in memorialization is part of that service.

MS. HARRINGTON: Thank you very much.

John McDonough? And after John we are going to have Sylvia Brown.

MS. HARRINGTON: John, would you say your name and spell it for our reporter?

MR. MCDONOUGH: Oki-doke. My name is John McDonough, M C D O N O U G H. I represent -- I founded the Electronic Funeral Service Association and operate pretty much online with funeral service professionals all over the country. I just have a few little comments here. You guys did a great job. You should all be

proud of yourself, excellent. You did a really nice job.

There are points I want to make on funeral home, mortuary people, cemetery people, they should tell the contracting consumer whether or not they are an owner, that they're a salaried employee or that they are a commission-based employee. I think it's important that the consumer know that when they're getting a presentation.

The first page of the general price list, and maybe this general price list that I have seen around the country, they are getting pretty thick, but the first page should include -- I like the idea of the direct cremation, immediate burial, I like that idea.

In the same vein, a package price that would include a one-day visitation followed by an in-house service the next day, a product list price, a product list -- in other words, it doesn't include the casket or any product, just a generic package price of a one-day visitation followed by a service in the funeral home the next day, which is one of the most popular services in the country, to help the consumer shop.

Next, oh, the price lists, okay? The price list right now, a little bit of confusion on that in the industry. I'd like it to just have three or four or

five of your least expensive products that you provide, whether they be caskets, urns, vaults, monuments, have your three or four or five least expensive of those particular items on your price list.

Right now, we in the industry are understanding we have to put all of our caskets on the price list. Therefore, we're pretty much selecting one casket company to do business with. So, if I have a special line of caskets that, in other words, there are some caskets coming from Canada right now that are less expensive that I want to start to use, so I'm going to change the price list to incorporate those into the list, but it would be easier for me to incorporate those into my price list on a trial basis by not having those caskets on the price list at all, by letting me have special caskets whenever I want. As long as I have those five in stock for people to look at all the time, that's cool.

Confusion is do funeral service -- do funeral homes have to serve those families that buy a casket elsewhere? We don't know. Got to speed this puppy up. States cannot regulate the issue. They can't, okay? As I watched this poor woman down in Texas, Eliza May, okay, who was publicly held up to ridicule for a decision she made, crucified, and then taken away from

her position.

Lastly, internet people, internet companies, they should list geographically exactly where they can be located.

Thanks.

MS. HARRINGTON: Thank you, thank you.

Sylvia Brown, and then after Sylvia we're going to have Gere Fulton, so if Gere could be in the back -- Gere could be on deck, that would be good. We will have a little on deck circle.

MR. HILE: The mike on the side is what you want to use.

MS. HARRINGTON: Thank you, Sylvia.

MS. BROWN: Sylvia Brown, B R O W N.

MS. HARRINGTON: All right, thank you.

MS. BROWN: Thank you, the dreaded consumer. I'm here on behalf of my family, and I came on my own. I'm from Greensboro, North Carolina, but my main dealings with cemeteries has been in New Orleans. Before I go into my sad story about that, I would like to say that I learned something here today. Two people I'm going to contact about my problem, and the other thing is that I discovered on that casket price list thing, on page 15, that thing's been violated twice in my family, so -- another thing was we got charged once

for an embalming fee that we didn't need.

MS. HARRINGTON: Well, we would like to know about that, so --

MS. BROWN: Oh, really?

MS. HARRINGTON: Yes.

MS. BROWN: Not now, but sometime?

MS. HARRINGTON: Yes, absolutely.

MS. BROWN: And then another time, the last funeral that I was involved in helping to plan, we were shown two vaults, the \$99 version, the \$999 version, which lasts for a hundred years. Now, my problem with that one was who's going to check it, you know? I didn't see the logic behind that. So, I don't --

MS. HARRINGTON: Randall.

MS. BROWN: When I buy one, I'm calling him.

But on the cemetery, we need to have some type of federal regulation over cemeteries. I've been involved with a struggle with a municipal cemetery in the City of New Orleans. They govern themselves.

Now, when you get into complaining to them about what they did, they buried my father-in-law, but -- and they put it down on paper, but you can't take that piece of paper and find the spot, and the row of graves that he's buried in, there's 88 graves, 444 bodies.

Now, needless to say, in New Orleans, they don't

go six feet deep. You've got four, five, six people per grave. Now, if you're only four feet down, somebody's left out, right, but the way they're left out, their bones are scattered all over the place. I have pictures, I have videos. We went many times down there, and we're in the process still yet researching, trying to just go backwards through the records.

I send for records all the time. I painstakingly go back through them and figure out some of the people that are in some of these spots, and it's slow going, but eventually I'll get there, and when I do, I do plan to share that information with the city, but it would have been so much easier if I had had some federal persons to call on to help me with my dilemma. So, please consider that.

Thank you.

MS. HARRINGTON: Thank you. Thank you very much for coming. Sylvia, we really would like to know about the violations that you've experienced, so one of our people will get with you.

MS. BROWN: Okay. Okay, thank you.

MS. HARRINGTON: Okay. Gere Fulton and then after that John Horan.

MR. FULTON: Good afternoon, Madam Chairperson and members of the panel. My name is Gere Fulton. I

should probably spell the first name, it's G E R E, really is pronounced "Jerry," last name is Fulton.

I have been for the last eight years president of the Memorial Society of Northwest Ohio and for the past two years serving as a member of the FAMSA board, where I also serve as chair of the labor committee.

I would like to speak to two basic issues. First of all, before I do that, let me say hearing the discussion this afternoon, I think many of you at the table give consumers far too much credit for how much they understand. My experience has been very different than that.

Among other things that I do, what I do for a living, my salary is paid by the University of Toledo, where I have been a professor for the last 30 years in the Department of Public Health, and one of my jobs there is teaching undergraduate course on death and dying. So, I do a lot of work with funeral directors in the area, do a lot of work with students.

Two concerns that I have. One goes to the question of standardization of the GPL. Every two years, our memorial society, like many of the other 125 memorial societies throughout the country, do price surveys, and whenever we do that, I get to sit down in front of 50 GPLs and try to make some sense of them.

Some of those GPLs are one side of an eight and a half by 11 piece of paper, most of the information provided in 10-point type or smaller, so that it is both unreadable and also cluttered in a horrible fashion. Some of the other GPLs go on for as many as 15 to 18 pages.

Now, I would suggest that when I get those things and sit down and try to make some sense out of what are different funeral homes charging for different services and having done this for 20 years and have trouble doing it, I would suggest that many consumers are going to have even more trouble in doing that.

I heard Mr. Gilligan talk to the matter of not being able to do creative marketing if everyone were forced to use the same GPL. I think the answer to that is since the information is required by law at this point in time, provide that basic information and do so in a uniform fashion, and if you want to have pamphlets or brochures or books or whatever it is you wish to use to promote a specific service, you can do that along with it, but when consumers are sitting down to try to figure out where their dollars are best spent, it is very helpful if they can do that in a simple and direct and easily comparable format.

The other problem that -- I realize I won't have

time to go into this in detail -- has to do with the basic enforcement of the rule. I know the GAO has recently spoken to that. I think in many respects the group assembled here today doesn't need to be regulated. That comment has been made frequently, and I think it's probably true, but there are lots of people in your industry who do need to be regulated. Filing a complaint with the FTC, with all due respect, is like throwing paper into a black hole.

I know that because I've tried to do it, and it's taken us three years to finally get a funeral provider in Toledo to issue a GPL. We have had the -- we have had the Attorney General on it. Enforcement is really a problem.

MS. HARRINGTON: Okay, thank you, Gere.

MR. FULTON: Thank you very much.

MS. HARRINGTON: John and then Allisone.

MR. HORAN: Hi, I'm John Horan. I'm a funeral director from Denver, Colorado. I'm a family-owned funeral director for Tom Crean's benefit, which I'm proud of, fifth generation of my family. For 109 years my family has served families in the Denver metropolitan area.

I didn't come up intending to talk about the Catholic Church, but I do have to point out that I

compete with the Catholic Church in the Denver area. The Mount Olivet Cemetery and the Archdiocese Mortuary are both nonprofit organizations that I compete with. They sell vaults, caskets, markers, headstones, graves, funeral services, the works. So, you know, I didn't come up here to necessarily speak about it, but I do think I need to make that point, that I'm competing toe to toe with these people every single day.

I take pride in the fact that for over a hundred years my family has never turned anyone away for a lack of money. A discounted package benefits consumers at my firm. One out of every six families that we serve selects a discounted package, and these packages are usually selected by families who are either needy or families who prefer simplicity. They enable me to set a consistent guideline for my staff and myself.

I've offered these since the 1980s. They're simple to understand and available to every family that I serve. They're incorporated in my general price list.

These packages have enhanced my reputation in the community among clergy, among hospice workers, and in the very positive word of mouth from the families who have benefitted from these more affordable options. My conclusion is that there are thousands of families that

I've served through Horan & McConaty who have benefitted from these discounted packages. If you take them away, then it's going to make it much more difficult for me to offer this benefit to these families.

Secondly, I would like to talk about the basic services. It was said that consumers have no control over this fee. We talk to shoppers all day long. Shoppers is our language for people who either call us on the telephone or walk in to get information. They have got control. The control is in their feet, as the -- this funeral director pointed out. They always have the option to go somewhere else.

It's very easy to compare our charges with other people's charges. I've made thousands of funeral arrangements since the rule took effect in 1984, and I have never heard from a family who did not understand the fee for basic services.

So, if you want to complicate this, if you want -- if you want to divide it into more expense categories or create hourly charges, I'll figure out a way to adapt, but I just want you to know that I think it's going to make it more difficult for the consumer. I strongly believe that the consumer loses with unnecessary overcomplication, as I think was pointed out so well.

Thanks so much.

MS. HARRINGTON: Thank you very much, John, and thank you for coming all the way from Denver.

We are going to hear from Allisone and then -- you didn't come all the way from Denver?

MR. HORAN: Denver, Colorado.

MS. HARRINGTON: And then it's Dino --

MS. JAMES: Deicie James.

MS. HARRINGTON: That's not you?

MS. JAMES: Yes, it is.

MS. HARRINGTON: What happened to Allisone?

MS. JAMES: She went outside.

MS. HARRINGTON: Well, there you go. You are from Milwaukee.

MS. JAMES: Deicie D E I C I E, May James from Milwaukee, Wisconsin.

MS. HARRINGTON: Okay.

MS. JAMES: I'm here on the deceased's rights of Evergreen Cemetery of Milwaukee, Wisconsin. We had to move our daughter -- my daughter from there. We had peoples buried on top of one another. I discovered this on May 18, 1998, when I went to look for my daughter after I had buried her, that I couldn't find her.

And when I went through, discovered all of these bodies, it was more than one, I got over 2000 signatures

of peoples who can't find their loved ones. We found some of them, and we didn't find a lot of them, and they're still looking for them. Thanks to Ms. Jacobi -- I can't hardly pronounce her name -- she came there to help us. She's been helping us with this, and after she told me about the meeting today, I came, and I really enjoyed it, and I got something out of it that I will take back to the rest of my consumers to let them know what's going on up here.

So, I have a lot of things that I could share with everybody. These are the pictures that we took from bodies that we couldn't find and bodies that we found. That's not all. I know you don't want to hear all my story. And I have had two heart attacks since then, but thank God I made it through. Finally I made it.

And I lost another daughter, I buried her, but I didn't bury her there. So, I moved my daughter from there to Wisconsin Memorial. So, that's all I have to say.

MS. HARRINGTON: Thank you so much for coming. Let me ask you a question. Have you been in touch with Attorney General Doyle's office in Wisconsin?

MS. JAMES: No, I haven't. The one --

MS. HARRINGTON: Have you been in touch --

MS. JACOBI: He is now working in the midst of an investigation into many aspects of the case at this time.

MS. HARRINGTON: I think he would very much want to know about this, and so if there's anything that we can do to help you get directly in touch with Attorney General Doyle, we would be glad to do that, and one of our people will get your name and address and phone number so we can follow up with you, okay?

MS. JAMES: Okay.

MS. HARRINGTON: Voni, will you do that? Thanks. Thank you so much for coming.

MS. JAMES: Thank you.

MS. HARRINGTON: Steven Sklar, and after Steven we are going to hear from Robert -- Robert Creal.

MR. SKLAR: My name is Steven Sklar, with a V and S K L A R. I serve as director of the Maryland Office of Cemetery Oversight. We're the regulators of the cemeteries and monument dealers in the State of Maryland, a new office of about two years in existence. I also speak as chair of the consumer affairs committee for the North American Cemetery Regulators Association. We have an existing member, an alumnus here, and I want to acknowledge their contribution to the proceedings.

The question that was posed by Chair Harrington

earlier was is the FTC the appropriate regulator or is it the states? Our position is, and I think you've heard it from industry, you've heard it from others and you've heard it -- maybe a contrary point of view, but our position is that the state regulators are the most effective and capable regulators of the cemetery industry vis-a-vis the option of the FTC and expansion of this rule.

It's our feeling that there is plenty of work out there and plenty of consumer interest and help that's required of us. You build a state regulator's office, and they will come, and they have. In less than a year and a half, Maryland now has about 700 inquiries and complaints a year. Other states have in the thousands.

And it's not just complaints. It's requests for advice. What does this mean? What is the purchase required? How much do I have to pay? What else do I have to pay for interment? We all require that now in regulations.

We require not only price lists, because that has some value, and if it's a question of more information than less information, more information is preferable, but that's not the only way to do it. We feel that brochures, like the one in Maryland, maybe

some that AARP has developed for its millions in membership, targeted alliances I might add in the senior citizens, and other states, these are the ones that are even more important to a consumer.

They list not only their right of having a price list made available, but advice on how to proceed, how to go shopping, how to make an informed decision, how to approach a purchase, very important. These brochures are more important, we think, than just price lists.

We think that not only is the brochure important, but it's the question of access. When there are disputes and misunderstandings with the cemetery industry, many of these, two-thirds are straightened out right away, and a state regulator can resolve and mediate something immediately and fairly before it becomes confrontational, expensive and adversarial.

We would ask that if there is an expansion that there be due options in the provisions that states gain an opting out clause if they have the same or greater protections written into their structure. We thank you for your deliberations and thank you for your attention.

MS. HARRINGTON: Thank you. Let me ask you a question. Is there -- do you have a member body in Wisconsin?

MR. SKLAR: We have a representative there, but I don't know exactly who it might be, but I could refer this issue there.

MS. HARRINGTON: I would appreciate it if you can, independent of the Attorney General, which we will take care of.

Okay, Robert Creal followed by Doug Stowell.

MR. CREAL: I thank you for the opportunity to come before you today. Robert L. Creal, C R E A L, St. Petersburg, Florida, where we operate two funeral homes.

I was exposed to the funeral service at age 13, and at the age of 21 or 23 I was licensed and I've owned my own business since 1955. My concern is unique, I'm told, that it's not really an issue, so for 19 years I've been trying to get this issue before the public, and that involves cash advances and refunds as related to funeral services.

Most of us as funeral directors know, if you deal with middle class people, everybody who experiences death does not have ready cash available. If a family has ready cash, sometimes it's in the way of insurance or other benefits, maybe an estate, which could take weeks, months or years before this money is able to be converted.

So, we have third-party vendors who demand pay before they serve. It's a judgment call as to how the funeral director handles these charges. I understand there's some fast funding industries that has been created, and I understand from most funeral directors that they do not advance cash for third-party vendors. I think it's a judgment call as to how each funeral director will handle it.

First I'd like to mention that I'd like to see the term "cash advances" banished from the language and these transactions identified as third-party vendor transactions, which is what they are according to the FTC. Any service provided by third-party vendor and paid for by the funeral home is actually a third-party vendor, and it's confusing to say cash advances, because I find that most accountants don't seem to understand cash advances.

They can come up with all kind of ideas, and the source of the money is rarely determined. We have a law in Florida that was set up by the Florida Legislature, adopted by the legislature in 1993, which allows a funeral director to operate escrow accounts for paying third-party vendors and for refunds of money in excess of the funeral bill.

This would allow a funeral director to show that

I had this money here, I took it and I used it to pay this third-party vendor, and when I collected it, I put it back, which is a washed-out transaction. This is a determination by the Federal Trade Commission; however, the Federal Trade Commission say the law exists, but they have no enforcement power.

Internal Revenue says if you pay a third-party vendor, you're entitled to a deduction, so now that you have had your deduction, you cannot take a double deduction, so everything that you collect is taxable income. So, it's double taxation of what -- the taxation that the Internal Revenue is doing. So, this Florida law would help to simplify this rule so that accountants can understand it.

Accountants have experience with the IRS rules, but they very rarely have experience with Federal Trade Commission rules, and this is my proposal, that this Florida law be brought up for consideration for a national law and that further study be done for this issue.

MS. HARRINGTON: Thank you, Mr. Creal. Thank you for coming all the way from Florida.

Doug Stowell and then Richard Santure.

MR. STOWELL: Thank you. My name is Doug Stowell, S T O W E L L, I'm an attorney from

Tallahassee, Florida. I'm here on behalf of Funeral Services, Incorporated, which is the master trust for independent funeral directors in Florida.

My involvement with funeral service first began in the mid-seventies when I was secretary of the Department of Professional Regulation, and the Board of Funeral Directors and Embalmers was under that department. I subsequently became more involved with the profession, having represented the Florida Funeral Directors Association as well as FSI.

One of the things I would like to point out to you, I noticed that nobody on this panel is from the State of Florida. Florida is the -- has the largest population percentage of persons over the age of 65, and it's projected that that will continue over the next 15 years. We have very extensive laws that regulate both pre-need and at-need sale of funeral services. We, in fact, had an itemization and disclosure law before the FTC adopted its rule, and it is essentially the same -- the same law.

What I'm concerned about here in listening to what you all have to say, we started out with pre-need as an example with about six pages of statutory requirements. We now have 24 pages of statutory requirements, plus -- well, 40 pages of statutory

requirements and another 25 or 26 pages of rules, and if -- our view is that the regulation in Florida far exceeds anything that is done at the federal level and maybe at other state levels.

While I recognize that your charge is disclosure, it -- with the funeral rule, it is difficult for practitioners to comply with disclosure when it's not done in concert with, in fact, a transaction and the laws that deal with transactions. I would submit to you that you ought to include people from Florida in your studies. I would submit to you that you should consider allowing states that have extensive laws to be the lead agency or the lead authority in the regulation of both pre-need and at-need funeral service. I think that consumers are well-served by the Florida law and that you all should at least consider that.

Thank you.

MS. HARRINGTON: Thank you very much.

Richard Santure and then Eileen Santangelo.

MR. SANTURE: Yes, ma'am, Richard A. Santure, S A N T U R E. Please forgive me. I wear hearing aids, and one of them has a dead battery, so I was having -- I was very attentive, and I believe it was you -- I don't -- I'm sorry, I don't have your name, but I thought you had made a comment regarding the fact that -- talking

about the nondeclinable fees, that that should be abolished and a funeral director -- home should take their service charge and spread it out across all of those items, including caskets.

Did you say something like that?

MS. BERN-KLUG: Something like that.

MR. SANTURE: Well, obviously then you have no problem with a funeral home having a markup on a casket, and if that be correct, then I ask all of the funeral directors in this room, how do you arrive at that figure? Having been a funeral director myself, I have a pretty good idea.

Did you take a dart and throw it up against the wall and say that's a good number, or did you analyze what your costs and services were and what you were providing a family, and if that be the case, without actually spelling it out, what you had to include in there was a casket handling fee, even though it wasn't called such. So, you're playing with words, okay?

There was a gentleman of a few minutes ago who said he didn't like the term "cash advances," he liked "third-party vendors." Well I -- when I was a practicing funeral director, we called it cash advances, and we still do, and it was my understanding at that time that unless a funeral home was making a profit on

it, he had to put it under the -- the cash advance items, so a crematory charge would normally go under a cash advancement charge.

So, perhaps some funeral directors are a little careless in their wording, which is perhaps unforgivable, but the reality is if you say to me, how much do you charge for a casket -- a cremation, and I say \$1,000, it makes no difference really what the number is, and I don't say, and the crematory also charges you another \$595, I didn't lie to you and I didn't mislead you. You asked me my charge. I should have, in fact, been a little bit more elaborate, but you can't penalize me for that I don't think.

Finally, there are a number of self-interest groups here, aside from funeral homes or funeral directors, and I kind of wonder how many of those groups, not the individuals, but the groups were represented when the first FTC hearings began way back a gazillion years ago.

And at that time my question is while funeral homes and funeral directors were fighting we don't want this, you either remained mute or said you've got to have it. Now, it seems as though there's a role reversal here. Funeral homes don't seem to have a problem with the rule. In fact, they're working under

that rule very comfortably, and they're saying, Hey, fellow, how about joining us? You liked it in the first place. Why can't you like it today?

MS. HARRINGTON: Thank you, Mr. Santure.

MS. HARRINGTON: Okay, Eileen Santangelo, followed by Samuel Frane, but first, a towel. We have a little water problem up here.

MS. SANTANGELO: Hi there. I'm Eileen Santangelo, S A N T A N G E L O. I represent Evergreen Memorial Gardens down in Southern Maryland, not the Evergreen that buried Mrs. James' daughter. I come today on behalf of the consumers in my cemetery and my area.

I serve a population of about 85,000 consumers down in Southern Maryland, and in our community, we have two funeral directors. I took the cemetery over two and a half years ago. At that time, the funeral directors were the ones who were providing all of the products and services and were paying the property owner a fee for the grave. Since I took it over, I have given them -- families the opportunity to purchase vaults, caskets and memorials.

In doing that, I have had -- my grave digger has been cut off, told by the funeral directors that if you cut -- if you dig for her, I will not use you. The

vault company will not serve me in my community. I have to go three and a half hours out of my area. I have been told that -- families have been told that I make my caskets in the basement, so I had to resort to going to the casket warehouse and taking a picture and showing them that I do not make my caskets in the basement.

When a consumer is -- comes to me to buy a casket, they -- their question is, well, is there going to be retaliation against dad's body? Is he going to be okay? I try to assure them that they are a professional, but it is still a question in their mind.

So, I would ask at this moment that a handling fee be not assessed to the caskets, because the only other alternative the families have in my area is myself. I have gone out to other areas, I've shopped for the consumers, and I have a general price list, a book with them in it, and I show my families if they would like to go out of the area, and they can.

And I hope that we don't have to put a handling fee on that, because that would surely eliminate any kind of a choice that they might have.

MS. HARRINGTON: Have you had any contact with Attorney General Curran's office about your experience?

MS. SANTANGELO: No, ma'am, I haven't. I have a family who had a situation that they were going to go to

the Board of Morticians and then found out that one of the funeral directors in our area is on the Board of Morticians, so they threw the paper up in the air and said, Well, nothing's going to happen. Their loved one was embalmed without permission, and so there is a very strong influence there. One is over a hundred years old down in the community, and people felt that they just didn't have choices. And I reap the benefits of -- not the benefits, the retaliation daily when families do go to these funeral homes.

MS. HARRINGTON: I'd be glad to help you get in touch with the right person in Attorney General Curran's office, because there are state laws that prohibit unfair methods of competition as well as federal laws, and those -- there may be implications under those laws arising from your experience.

MS. SANTANGELO: Okay.

MS. HARRINGTON: So, Voni will get your name and phone number and will be in touch with you in the next few days and try to hook you up with the Attorney General's Office. Thank you very much for coming.

Samuel Frane, followed by Shirley Brown VanArsdale.

MR. FRANE: Good afternoon. My name is Samuel Frane, I'm a second generation funeral director from

Indiana. My brother and I operate a funeral home that does about a hundred calls a year. It's been in our family for about 40 years. I appreciate the opportunity to make comments to the Commission here today.

I'd like to comment on two areas, the first regarding cemetery inclusion in the rule. It was estimated earlier the number of cemeteries that would be affected and how hard it would be for the Commission to patrol or police those cemeteries. I believe the number was greatly exaggerated. I believe the number would probably be more in the area of 500 -- excuse me, 5000 to 10,000 cemeteries would be affected nationally.

I think when you take into account the number of cemeteries, especially in rural America, that are township-owned cemeteries or small municipal-owned cemeteries that have no boards, have no office, have no staff, do not sell goods or services, and the funeral director provides the grave opening in those cemeteries, they would not be affected by inclusion in the funeral rule. The cemeteries that would be are the ones that have offices, have sales staffs, and do conduct sales of services and merchandise.

So, I would ask that the FTC do consider including them when they do sell goods and services. I think the comment was made irregardless of who you are,

if you sell funeral goods or services, you should be included in the rule, and I believe that to be accurate.

The other area would be changes to the GPL. I've been working with the GPL since its inclusion 15 years ago in 1984. My families understand the GPL. I'm like the woman from Maryland. I take time with my family. They understand the GPL. It's easy for them to accept. It's easy for them to work with. It's simple.

And that's the key word we've heard all day, keep it simple. It already is simple. I don't know how you can make it any simpler than it is. So, I would just ask that before you make major changes, you take into consideration where we're at today, where we'll be if you make changes to the GPL.

Thank you.

MS. HARRINGTON: Thank you. Thank you for coming all the way from Indiana.

Shirley Brown VanArsdale?

MS. VANARSDALE: Brown, B R O W N, V A N A R S D A L E. Excuse me, I think I'm losing my voice today.

I am a very small funeral home owner. We have approximately 100 services a year. This year I will serve as chairman for NFDA on their governmental affairs committee. I've never been involved with the FTC except

when it began in '84, because that's when my dad, who had been a funeral director, and our firm is 114 years old, and I have taken different vitamins than Randall, so he was -- after 58 years of being there, really could not handle the change with FTC coming into his funeral.

He had done business with one sheet of paper and a handshake, and trust and the reputation of our firm has been very important, and I hope it will continue to be, so as voiced by Edith with her firm.

I now have two sons with me in my business, and so we want to continue. With that, our families are very appreciative of the GPL. It made me a better business person to have to go in and analyze my costs. My dad had two businesses, a furniture store and a funeral home, and as long as there were funds to feed us and raise a family of two, it was not an issue of what things cost.

He provided a service. He was there when families needed him. And that's what we've continued to do, only after '84, I needed to do it because my brother took over the furniture store and we split the corporations.

My dad used to sit in our lobby and say Shirley, you will never make it. You cannot survive on just the funeral home. He always thought the furniture store

carried the funeral home.

MS. HARRINGTON: Did he tell you that girls didn't do that business?

MS. VANARSDALE: Yes, and that was very difficult.

MS. HARRINGTON: I'm getting the picture.

MS. VANARSDALE: You got it. Anyway, I have succeeded, and bless his heart, he was a dear father, he passed away in '93, and I have succeeded since '84, and our funeral home is growing, and our community has, too.

With that in mind, I want to tell you that families do appreciate the GPL, but I do have a problem, and I have experienced one casket coming from a casket store. I was somewhat appalled by what I had to deal with. It was delivered, I never thought about the family being there to sign for it, and I want you to know it said there are no warranties on this casket once it leaves our outlet.

So, I called my attorney quickly and said what do I do? He said type a disclaimer on the bottom and make sure that it says that you are not responsible for this piece of merchandise if it does fail. It did not. It looked fine. I could not find a serial number or name anywhere.

I think that the casket stores and the cemeteries need to be included so that my family would have had some recourse, and maybe they did when they purchased it at the store, but there was no documentation that I saw.

I had a family member in front of me before I came voicing concern on another funeral home, three states away. She came in because mom said go talk to Shirley, you can trust her. I told her what I was coming here for, that you guys were discussing prices and how we're regulated, and her exact words were, and I told her if I had a chance, I would say it over and over, you cannot legislate integrity. Thank you.

MS. HARRINGTON: Where are you based?

MS. VANARSDALE: I'm out of Gardiner, Kansas.

MS. HARRINGTON: Thank you. Thanks for coming. Got a lot of good midwestern people here today. That makes me happy. The Chair likes the midwest. The chair is a cheese head.

Okay, John Harmon. John? There you are.

MR. HARMON: Thank you. First of all, my name is John Harmon. I'm from Tyler, Texas. I'm an independent funeral director there and I come here on my own, and I have truly enjoyed today. I journeyed here to be -- I'm a member of the NFDMA, Ms. Churchman and

all the members are here, and I would just like to say I'm glad to be here, I have enjoyed it, and I'm proud.

MS. HARRINGTON: Thank you. We're really glad that all of you are here and with your participation. I went to Texas -- the first time I ever went to Texas was, oh, I don't know, 15 years ago, and I was called in on short notice to give some testimony before a legislative committee, and I don't know if you all know that the Texas legislature is only in session every two years, and for only about three days or something, so they do floor action all day and then they do -- I'm sorry, I know it feels like way too long in Texas, but they do floor action all day, they do committee hearings all night.

And so I walked into this room, and it was the transportation committee, and this was in the eighties, and there weren't any other women in the whole room, and there were about 200 guys who were all there on transportation issues, and they all looked at me.

I stood in the back, and one by one people came up and said, New here? And I said, Yes, I am, I haven't been here before. Welcome to Texas. And I said, Thank you so much. Isn't it wonderful here? So, I wanted to -- I thought of that when I said the Chair likes people from the midwest. We also like that chauvenism that you

all from Texas bring to it.

We are finished now. We missed one person who stepped out. Did she come back? Did Allisone come back?

Well, I want to thank all of you again, and last and certainly not least, my colleagues, Myra Howard and Allen Hile, who have been here all day and have done a huge amount of work and will continue to in this area. Myra prepared our agenda after carefully reading all of your comments, has focused the issue and is the person who has principal responsibility for this proceeding, along with Allen, and I want to thank you again for coming and urge you to keep in touch with us.

This is an open process, as I said, and when we know what it is that's going to happen next, we will make sure that all of you know it in a very prompt manner. So, thanks a lot for coming, and let us see you again.

(Applause.)

(Whereupon, at 4:50 p.m., the workshop was adjourned.)

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

DOCKET/FILE NUMBER: P984407CASE TITLE: Funeral Rulemaking and Marketing PracticesHEARING DATE: November 18, 1999

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 12/3/99

SUSANNE Q. TATE, RMR

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

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

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