

Symposium Transcript:
Unsolicited Calls and
the Right of Privacy

by Mark S. Nadel

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**TRANSCRIPT OF A
SYMPOSIUM ON

UNSOLICITED
TELEPHONE CALLS AND
THE RIGHT OF PRIVACY**

by
Mark S. Nadel

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The following is an edited transcript of the symposium held at Columbia University on February 7, 1986, 1-4 p.m. at Faculty House and attended by those listed on the next page. The quality of the tapes made it difficult to ascertain who was speaking in many instances and so a speaker is identified only when it seems clear who that speaker is. There are also some short gaps from when the tapes were turned over or changed. Light editing was done to eliminate redundancy and clarify passages that were unclear from the tape. A copy of the symposium outline which was distributed as an informal agenda is included at the end. On the whole the transcript provides some interesting perspectives on some of the more difficult issues on the matter of unsolicited telephone calls.

#122

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Unsolicited Telephone Calls and the Right of Privacy
Friday, February 7, 1986 1-4 p.m.
Faculty House, Columbia University

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Columbia University Center of Telecommunications
& Information Studies

Edited Transcript

[already in progress]

Rupp: . . . It is crucial to the ability of a pollster or a survey researcher to be able to reach a particular category of telephones, because if you cannot do that you cannot construct a probability sample that will permit you to project your results.

If you permit asterisking, if you will, there are several kinds of problems that will be created. First, you will, by the very nature of the operation, destroy the probabilistic aspect of the sample. You are permitting a discrete category of persons to set themselves apart from the process so you are destroying the projectability of it. Also there are enormous practical problems because in a national probability sample you are making telephone calls all over the country. You have to be in order to be constructing a probability sample. So if you are to try to comply with an asterisking system you have to have access to those asterisk directories all over the country which is a physical impossibility.

Now, if there were a national computer data bank of some sort that might assist, but I think one has to take into account in those circumstances the privacy interests that you're invading in the process of developing that sort of national data bank that expresses in kind of respondent identifiable terms preferences of various sorts. You start to distinguish among the types of calls, purposes of calls, and so forth -- a good deal of information about individuals.

One of the things that the survey industry does to try to protect privacy, which is very important to the industry, is that we prohibit in our code of standards -- our ethics standards -- the linking of the identity of the respondent with the information that they provide so that the client for the survey research firm is not permitted to know the individual identities of the people who were included in the sample. They're not able to link people, addresses, incomes, other kind of information in order to protect privacy and to protect against harassment.

So there are a combination of practical restraints on the kinds of things you discuss in your books as far as survey research is concerned. Essentially the proposal that you were talking about in the book would destroy the use of the telephone in the survey research industry.

Oppedahl: Just had a couple of questions. . . . the suggestion is

that people put their names in some sort of computer data base
. . . .

Rupp: You can't If you permit five to ten percent of the population to set themselves apart, to self select out, you're destroying the probability aspect. There's also an irony here. A lot of the questions you would be asking in survey research or in polling would go to privacy. So you would have the people most concerned about privacy -- personal privacy -- excluding themselves from the survey and thus their views not being reflected in the course of the survey.

There's a great irony in the Washington bill which I think you mentioned in your study ["rings of Privacy: Unsolicited Telephone Calls and the Right of Privacy"]. There was a question about whether the problem was really as large as some had suggested. And how did they determine whether there was a problem? They did a survey, you know. And if you permitted the people who thought there was a problem to opt out by putting an asterisk in the book the results of the survey is that there's no problem....

Bowers: Because their answers wouldn't be in the survey.

Oppedahl: I had a couple of questions about what you'd said there. One is, there already is a database of people who have told AT&T they don't want to receive collect phone calls. Yes, that database exists right now. Its available in every TSPS in the country and somehow it got paid for. However much money we save in the cost, it somehow got paid for. And isn't it the case that when you successfully manage to question, say, 852 people and manage to make projections as what it would be if you managed to call everyone; those 852 are the 852 who didn't immediately slam down the phone?

Rupp: There is a non-response rate for any kind of survey, and the larger it is the more of concern it is in terms of attempting to project the results. On the other hand, survey researchers and pollsters fight very hard to get a very high response rating and that's one of the great values of the telephone of course, because it's the least intrusive way that survey researchers and pollsters have to get at the views of people. It involves the least amount of personal contact, the least expenditure of time, the least display of irrelevant information, whether its the number of paintings in your house or anything else, you don't actually have to go door-to-door. It's the safest survey in that respect. But you begin to develop concerns about the strength of your probability sample To the extent that your response rate is down and significantly to the extent that you have reason to believe that the non-respondents are unlike respondents.

Oppedahl: Sure, of course.

Rupp: You can have concerns because of the length of the interview or the nature of the questions....It may be a real problem if you exclude people who are not prepared to listen to a 45 minute interview. Non-response rate can be a real problem, but typically there is not reason to believe that non-respondents are unlike respondents. But with the proposal for asterisks, there is substantial reason to believe that they will be quite unlike the respondents.

Oppedahl: Don't you have a similar problem concerning people with answering machines, since people with answering machines are by and large people who don't want to be annoyed and are more concerned with privacy?

Nadel: ...or people who don't have telephones?

Bowers: Yes, there are ways to deal with that, though you cannot use demographics to substitute for probability sample. You cannot simply correct mathematically for your inability actually to ask people drawn randomly from the population in a representative way. Otherwise, I could take, Bob's views on some matter and then somebody at a different point on the socioeconomic scale and then simply mathematically correct and project....You have to worry about margin of errors.

Whenever you're playing mathematical tricks, you are essentially compromising what you are doing. So, that I think is a major and unlooked at problem in the study that we saw.

From our own perspective, additionally, I think it's important to distinguish clearly between various problems. I think that one basic problem I would have in the pieces, as we saw, is they failed to distinguish between what is really telemarketing and other uses of the telephone that may be in a sense, perhaps not unappreciated, but at least, as an initial matter, perhaps valuable. Telemarketing by definition is a telephone call that is made for the purpose of marketing or selling by telephone a good or a service. That's not what pollsters do that's not what survey research is about. We are not, in First Amendment terms, proposing a commercial transaction. Telemarketers do. They're trying to market a good or service by use of the telephone. Now in terms of whether what survey research and pollsters do is even commercial speech, it clearly is not a form of commercial speech; that's not what we are doing.

Nadel: What if your research was marketing for a commercial concern which was going to sell a good or service in a community. They were introducing a new good, and they wanted to do research on consumers' willingness to purchase that good. Would that be similar to a person -- a telemarketer -- calling up to say "Would you like to purchase this good? If you would, we'll send you a letter." If your intent was to market the product if there was a big enough response.

Rupp: I think that the answer to that is no. I think that it is essential because of the difficulty of the legal problems here, the closeness of the First Amendment problem to avoid destroying privacy interests in the process of trying ... to protect them. One tries to get as close as one can to where the Supreme Court and other courts have been in defining commercial speech. What is commercial speech? And while the court has never been entirely successful in defining the parameters of commercial speech, what the cases seem to have said is that commercial speech is speech that in and of itself proposes a commercial transaction.

Whether it's market research, or more generally survey research or polling, I guess that it's not a call that proposes a commercial transaction. The interest is quite different, and also the predominant reaction is much different. When you're asking somebody to sign up on the telephone, buy something if you will, there are of course potential problems that legislatures have been concerned about. The kinds of pressures that you have in those circumstances are why the legislature has enacted cooling-off periods. If you purchase something on the telephone, you have at least 24 to 48 hours to cancel the order. But if you're simply being asked for your views of the matter, it's quite different. The amount of pressure is different, the pleasantness typically of the call is different, you're not being put on the spot in the same way. You're not being asked to say "no" to somebody. And so forth.

Nadel: I can see distinctions; I can also see distinctions within the realm of telemarketing...people who call you at 3:00 in the morning to sell you a burglar alarm device are different from those calling you at 5:00 in the afternoon noticing that you're having a wedding and asking whether you'd like a photographer. Some people would say "The second call I don't mind, the first call, that's incredibly annoying." So I can see it as a continuum and I think that survey researchers who are polling are certainly least disturbing to people.

Rupp: I think that's right....

Oppedahl: I wonder whether anyone had mentioned yet what I see as an important constitutional value to polling simply because of the marketplace of ideas, that sort of thing. It's important that somebody other than the governor be able to announce what people think.

Rupp: That's right. That's why I tried to indicate that you have to put commercial speech in one category...

McDaniel: I would disagree that commercial speech is necessarily more obnoxious than survey calls.

Nadel: ... I just received a report from the State of Washington,

legislative hearings on a bill to do some regulating of telemarketing or unsolicited phone calls. I haven't received the actual poll that they commissioned, but I have a summary of the poll. It shows that calls from charitable organizations were considered less intrusive because people feel a lot more sympathetic... I guess....Obscene calls are the most obnoxious. And I think research calls are the least annoying; they are less disturbing to the general public. Some people like the calls...

Rupp: I will say this, in the ten years of CASRO's [Council of American Survey Research Organizations] history, we have never gotten a complaint from a respondent in a study, and it has never been reported to us that complaints have been received from people who said, "Look, I received a phone call that was survey research and I don't like to receive such calls." That just hasn't happened. Now that's not to say that everyone has an equal delight or that there aren't people out there who would prefer not to receive calls for any purpose. There undoubtedly are. But, we just have not seen the problems that people seem to fuss about.

Ruesch: I don't think the problem is really there. I handled the annoyance call bureau for the Downstate area....but I don't see any problem with survey calls, number one. Survey calls that we receive complaints about are the ones that are not done like survey calls.

:They're fundraising calls.

Ruesch: No.

: Oh, they're encyclopedia calls?

Ruesch: No, they're people who are taking surveys illegitimately...

Oppedahl: And by the end of the conversation they're asking you to buy... They talk to consumers by pretending to be doing a survey or something else.

Ruesch: Yes...We get complaints about marketing calls, but very, very few. And usually the complaint goes: "They called me and disturbed me while I was eating dinner." and they're annoyed. Or, "They woke up the baby," and they're annoyed because of that. But they're really not annoyed because of the content of the survey or marketing calls.

They get annoyed also at the marketing calls where there's high pressure. I've experienced these. Newspapers especially: "x" amount of dollars will go to the blind or something like that. They make you feel that if you don't support them you're the worst thing going and I don't like that kind of thing. But

it's a tactic, and my belief is that the company that's making such calls wants you to buy their products and they want to present the good image. If they annoy you, by ruffling your feathers, you're not going to buy from them next year. And if they're good to you that you might consider buying their service or their product. I don't see how you can differentiate and eliminate one type of call from another type of call....

Brown: Especially in the consumer's mind, regarding any kind of legislation or limitation placed on the telephone industry. Consumers don't see a research call that annoys them any differently than a marketing call that annoys them. All they see is a call that annoys them. Right?

:That's right.

Bowers: I think our point is that such misrepresentation damages all of us. Usually such misrepresentations, obviously we can't say 100% of them, are on the part of those people who are attempting to sell a good or a service. They're simply using some other method of getting you to buy. Researchers, however, can afford to say "We're conducting a survey on this subject. Here's who we are; here's who we represent."

Ruesch: People can get annoyed at researchers too. . . .

Bowers: Yeah, but they have the opportunity...

Ruesch: . . . It's also the time of day. . . . You come home after a hard day's work and you want to sit down at 8:00. You might want to watch television and all of a sudden this telephone call comes in; it's irritating. Maybe if it was during the daytime you wouldn't be so annoyed, but, O.K., it came at a time when you wanted to relax and unwind.

Bowers: But then you hang up.

: Wait a minute...

Bowers: Then I would ask when would be a more convenient time, a more convenient time to talk with you.

Singer: I'm sure you review this in the paper but I confess I do not get all the way through it. What is the status of regulation about ringing your doorbell? I mean can you . . .

Nadel: I found that very analogous to this. You can open your door, see that you don't like the person, and shut it, immediately.

Singer: Yeah, I mean, but is that, can you forbid that?

Nadel: Yes. The Supreme Court has addressed that issue twice. Once it said that a city could not ban all door-to-door solicitors, although that case involved Jehovah's Witnesses and so there's some religious freedom aspect to that. The Court suggested that the proper alternative was to allow people to make that choice individually. If they wanted to put up a little sign on their own door "Do not disturb me between 7 and 8 at night", that was the right response....

Singer: Can you say "Do not disturb me ever", and enforce that?

Nadel: In a second case the Court did allow a city to ban those trying to sell subscriptions to publications, but that case seems to have treated the solicitations as "commercial speech which was not accorded First Amendment protection at the time. It's unclear whether that still stands now that commercial speech is protected. I would like to think it doesn't, that the proper response is up to the individual. If the individual has put up a sign saying "I do not want to be disturbed at all by anybody, at any time" I would think that would be upheld....that you can keep people out. That's your right of privacy. Don't ring the doorbell unless you're a friend of mine.

Rupp: Look, wait, it's different from saying you can prosecute someone or prosecute someone civilly. That kind of case is going to be regarded as just nonsense. The fact is that there are no damages...Think about it as a practical fact, there are no more than a handful of cities, and they generally tend to be very wealthy bedroom cities, that have any ordinances that restrict generally, door-to-door canvassing. Now there are some that require permits, there are a few that have some regulations dealing with time-of-day, but this is a very rare kind of thing.

Nadel: And also, those regulations also address another aspect that's not relevant to telemarketing, that is, burglary. There's the fear that if people come around late at night it might be a burglar.....

:yeah....

Rupp: Our point would be that you certainly don't want to drive people from telephone to door-to-door canvassing, both because it's more dangerous for the person who's doing the canvassing and also in terms of the destructiveness of privacy. You have to open your front door to admit someone...

: But, you just said that was nonsense...

Rupp: No, I say that there are very few people, that very few places in the country that regulate it or attempt to regulate it. I know of no cases, civil cases, that have returned any damages for the mere fact that someone was required to get up out

of his chair and open the door and found out that they were soliciting for the "Sierra Club". I don't know of a single case. So in terms of it being a hot issue, it isn't.

Smith: Well there are cases involving credit-type dealers, who do go door-to-door and the owner sues them for trespass.

Rupp: Yes...

Smith: But isn't that a rare situation.

Rupp: Yes it's a rare situation.

Ruesch: With annoyance calls that lead to investigation in acute situations, people usually don't want to go into...pursue any kind of serious legal action, very few people want to make a legal mess. They just want the problem stopped. You know, I personally feel that we cannot just ban all survey or marketing-type calls; you should let the person decide if he wants to or he doesn't want to receive it.

So you say, well, how can you prevent the person from getting the call. The time is probably near when someone is going to develop a telephone where the customer can restrict incoming calls when he wants to. Such as if I don't want to receive any calls after 6:00 at night, I just flip the switch and it restricts anybody access to my line, to my telephone, by the ability of not having the access code. I was talking about a Prive-code, I hadn't even heard of it. Its expensive, like \$300, an elaborate thing. A bit more simplistic thing

: A Prive-code is a device where you code in the numbers of your friends and when they call, you get a ring, and when anybody else calls, you get a buzz to distinguish strangers....

Ruesch: That's the thing that I think that we have to look to. Let the person make the decision...no calls...calls from the general public during the daytime hours. To enforce the law ... we might need a threat...

Nadel: I think I speak for everyone here at the table when I say that nobody's in favor of banning telemarketing calls, or in general, or any particular type, as I think it would be unconstitutional, as I understand it. I think the question is how to help individuals who want to ban particular types of calls at particular times of the day, or whatever in the least restrictive way.

:Well that sounds like the least restrictive way, allowing the individual to handle it, and encouraging the collection of information by the various industry organizations

Nadel: Well, if the technical device was available at \$350 and

what it does is block all calls except those from certain numbers, and you can't get a call from a friend calling from a pay phone or in an emergency, or someone calling you from the police department or the hospital, than that might not be the best device, but...

:I think that the system in Orlando is not that at all. It is simply a different signal when a stranger is calling and you can choose then whether to answer or not and you can also psyche yourself up.

:How do you know when a stranger is calling?

:You have a mini-computer attached to the telephone. You program into it all the numbers of your friends. When they call you will get a ring.

:But what if they're calling from the police station?!

:You get the buzz, you get the buzz.

:But I think the buzz let's you psyche yourself up that this might well be a call, a solicitation from a stanger. I think that's one of the problems, that people at 8:00 are not in a marketplace mood. They're not ready to bargain. They've done that during the day and so they're at a decided disadvantage. With this device they're more on an equal-footing. They can say ah ha, they may well have to resist a sales pitch.

:I'm surprised.....the reactions of the people around the table that somehow a friend who's at the hospital is not going to reach them at home. There are people who unplug their phones.....

:Not if you have kids. What if one gets hit by a car?

:What if you're in a grocery store and one gets hit by a car?

:When I'm home its...for me to have my kids call me. I think you'd be negligent for me not to have the phone on....but if I'm sitting there reading a magazine and if I've got a kid in a hospital hit by a car and the question is whether they can operate and later I'm in a position where I was watching some soap opera, heh, heh, and I've unplugged my phone, I mean, think about it...

:Those people should get answering machines.

:But the point of all of this is that these are all individual decisions.

:You make it sound as if it's un-American not to be totally in touch with the rest of the world.

:No, no, no, that's not right....I don't think that everyone has to play around with a buzzer on their thing so that they always have access to the rest of the world through their telephone. On the other hand, I think one has to be careful about an over-intellectualized reaction to...I think there's a bit of a burden on the people who would chill...that there be a significant enough problem here to justify the kind of prophylactic measures that are discussed in the book. Because those measures are also destructive of very real and vital interests.

Nadel: When you say "prophylactic" and "over-restrictive" if it says only individuals who affirmatively make a statement pay a fee or something indicating that they do not want to receive a particular kind of call, you're saying that despite that you should still have a right to disturb them with a ring. Maybe they perceive it as a big problem, maybe they don't, but isn't it their decision on an individual basis?

Rupp: Let me answer the question only from the perspective of survey research and, if I may, polling. Obviously disagree if you care to, but I regard the two as virtually the same. I distinguish both from telemarketing because again we have a major conceptual and definitional problem in the notion that either polling or survey research, which does not propose a commercial transaction like telemarketing does; it just isn't regarded in that way...pertinent...or for purposes of regulation. ...

Nadel: I guess I'm not making myself clear. If a person specifically says, "I'm one of those weirdoes that doesn't like to answer questions and I don't want to be disturbed between 7:00 and 8:00 by telemarketers or those survey people, so I would like to indicate in some way, I'd like to put a sign on my door that says 'Don't call me, survey researchers until 8:00', but I can't, so what I'd like to do is take out a classified ad, or something, be listed in some way 'survey researchers, don't call me 7:00 to 8:00'."

Rupp: Let me respond specifically to that...Let's take the situation of someone who has so adverse a reaction to being asked for his or her views about public policy that they are prepared to spend money on that to have their views respected; what you are doing on the one hand is you're saying, you're taking a very small number of people, it's really an infinitesimal number of people...

Nadel: One-half of a percent or less who do not want be disturbed at 8:00 at night.

Rupp: O.K...and if you don't respect their views in that respect the cost they're going to pay is once every year, once every six

months, having to pick up the telephone and being told "I'm calling from XYZ Research Company. We'd like to ask you about this year's Presidential election" and he says "This is precisely the kind of call I don't want to take." and hang up. Now, that's the benefit you're providing to the public.

Nadel: And what's the cost?

Rupp: The cost, if you respect the views of that essentially handful of people...You are creating a system, when you're talking about national probability samples, that will be enormously expensive to implement...

Nadel: But, we've said that such a small number of people...

Rupp: No, because you've got to check. Every telephone call you make has to be checked. Maybe 99%...

: But why would you? I mean, you have this device which some people install....

: No, no we're talking about the asterisk.

Nadel: I said if you took out directory-type ad, equivalent to the telephone preference service. But instead of just listing or not listing, where you could list with a little code number. It gets a little complicated and I'm not sure whether this is right, whether there's a better technical way, but I just want to hear your responses to this. Suppose I list my phone number and said "7 to 8 o'clock I don't want to be disturbed by survey research" and I was one of the, let's say tenth of one-percent in the United States.

Let's say there are 100,000 numbers, and you pick a random sample of a 1,000 numbers. Your question is are any of your thousand numbers on the list. O.K.? You could just say "Look the odds of any of them being on the list are "0" so I'm not going to be bothered checking. Right? So you make all of your calls and no one might complain. Or you could use some service. Say there's some service in New York City or Washington who will take your list, screen it through those 100,000, and send you back the list noting "This is the only number that you want to call from that list....[end of tape]

[Move out of dining room into conference room]

Nadel: I'm Mark Nadel. Can we go around the room and everybody identify themselves: their name and where they are from, or what their interest in this issue is?

Ruesch: I'm Gus Ruesch. I'm the manager for the N.Y. Telephone Company Annoyance Call Bureau.

Smith: I'm Bob Smith. I publish Privacy Journal, which is a newsletter in Washington. Could I ask what are the ground rules for the conversation? Is it off-the-record, is it just for your use?

Nadel: Well, people who couldn't make it, some who couldn't come because of the snow, others who just couldn't make this date, asked for transcripts. Is that a problem for anybody?

Smith: As long as we know -- so what we say is attributed to us...

Nadel: Yes, we're going to try to transcribe this so that people who weren't here can read it.

Oppedahl: I'm Carl Oppedahl. I'm a lawyer here in New York City and I take an interest in telephone technological issues.

Brown: I'm Duncan Brown, I'm with the DMA [Direct Marketing Association], I manage the Telephone Marketing Council and other special interest councils like DMA.

Brownstone: I'm Pat Brownstone. I work in the fundraising office of The [Columbia] Business School. We run telephone solicitations.

McDaniel: I'm Morey McDaniel and I invented the asterisk system 20 years ago.

Bowers: I'm Diane Bowers and I'm Executive Director of Council of American Survey Research Organizations [CASRO], a trade association of survey researchers.

Rupp: I'm John Rupp and I'm their lawyer and a partner at Covington & Burling in Washington and New York general counsel for CASRO.

Singer: I'm Eleanor Singer, I'm editor of The Public Opinion Quarterly and I'm here representing the American Association for Public Opinion Research.

Nadel: O.K....I'd like to keep this informal, like we were talking upstairs. I have some issues I think are an interesting

way to cover the points that I thought were the most interesting, but we're not bound by that and we can skip over that. I thought that the telephone preference service was an interesting example of one way of dealing with the problem and what modifications on that might be made....But, we've talked more about survey research. I think I talk about that in my number three. [My outline is as follows]

1. Talking about the telephone preference service, what it does, how it works.

2. Talking about the "Tell-M" device which we'll not be able to do because their representative is not here.

- 3 (2). Distinctions among callers. What distinctions might be made? Is it useful to make those? Most of what we spoke about upstairs was in that category.

- 4 (3). What kind of regulations would be appropriate if some were to be passed? What would be the right forum or why is self-regulation best? How could that be enforced against people who do not observe the code of ethics of the industry?

As other background, Morey was the one, the grandfather of this, so to speak...

McDaniel: With gray hairs, I guess!

Nadel: In 1965, in California this disturbed him, and apparently a number of other people had been disturbed over the years -- sometimes by automatic dialers, sometimes by live calls -- enough to lead state legislatures to introduce legislation. Bills have been introduced in Congress. The FCC looked at this issue and there were 4,500 comments.

How big is the problem today? I don't know. I mentioned some numbers about how fast the telemarketing industry is growing and I don't know whether the survey research is growing as fast, but the phone is a very effective device for reaching people. It appears to be more effective than the mail for many purposes. And my feeling was that the number of bills introduced in state legislatures roughly reflect the degree of annoyance created by such calls. So the problem is growing. It might not be big enough to warrant any serious response for 2 years, 5 years, 10 years, but my feeling was that it would be useful to look at the problem now and try to anticipate and maybe have something in place for when the problem is larger or maybe a solution could be imposed now that would be a minor burden; I mentioned at lunch that if there's a small burden and it imposed a small cost, that might be appropriate.

I do not come into this with any preconceptions. I have, I guess, biases that I can't help, but I'm going to try to write a final version of the study incorporating any points that are made here. I will include my own opinions about which options might be most desirable, but I will try to present all available options.

I'd like to begin by asking whether anyone here has data on how big the industry is, how fast it's growing, or the extent of the problem?

Rupp: I don't, but I think you have to distinguish between the mere growth of an industry, and whether there's a problem. The relevant consideration is, what is the incidence of calls that are made that actually offend someone in a significant way. Not how many calls are made, but how many offend in a significant way. You cannot go from any industry's billing -- whether it's telemarketing or survey research, or anything else -- and say "that is the size of the problem." That's not the size of the problem at all.

Secondly, you have to be very careful about attaching too much significance to the mere introduction of legislation for a variety of reasons, whether it's an individual piece of legislation or legislation in a number of states. Such might only be the result of a very few people who have a particular idea or who are ideologues on a particular issue, have a good deal of enthusiasm for an issue, and are quite effective at presenting their views. It does not necessarily reflect a groundswell of opposition or unhappiness. It can, but it doesn't necessarily; I've seen it go both ways. Sometimes issues whose time has come, everybody is just fed up, the threshold has been reached, and then legislation gets introduced simultaneously in a number of states. I've seen just as often that you can trace legislative proposals to a very few people while the vast majority of people oppose the whole idea. So you can't count the number of bills and say "now we've got a terrific problem." You may, but you may not.

Nadel: My question would be: how do you measure the size of a problem?

Rupp: Take a survey. (Laughter)

I hope the irony of that's not lost on you. How do you determine that people are sufficiently excited or upset about a problem. One of the most efficient and effective ways of doing that is to take a survey. Again, I say the proposals in the study, which is why we got kind of excited about, would essentially, in a very significant way, eliminate survey research by telephone because of the actual impediments of doing it, of doing it in a way that results in a national probability sample, in a way that permits you to say in an unbiased way.

Brownstone: I think that I'm not so well-versed in the breadth of the full field of this and I know that we have to, over the last couple of years, we had complaints on our own phone program and when I had to do an evaluation to decide are the number of complaints that we were receiving...what's the realm of it, and also: do we stay on the phone or do we not stay on the phone or do we change telemarketers and all that kind of thing. I did it

on the basis of refusals and people. I had actual feedback from the people making the phone calls and I could analyze that feedback. People who said "I hate the phone, don't call me again or I'll take you to court," people who hung up, people who refused the call, people who sent letters to my boss complaining about the phone. So if you don't want to do a survey, I just think that there's another way by evaluating your own phone program.

Nadel: O.K., but that's like asking the industry when they should be regulated.

McDaniel: Is there anybody in this room, I'm just curious, who favors more regulation? Am I the only one here or is there anybody else?

Nadel: No, no. I think some things should be done, but on a more individual basis.

Ruesch: I would agree, the same thing. Really, regulation isn't the answer to this problem.

Nadel: I don't think anybody's in favor of a ban and I mention in my study, I think some of those bans on automatic dialers are unconstitutional, I think.

Ruesch: Right now there is some regulation, which New York State and all the other states have concerning annoyance calls. The regulation specifically states what is annoyance and we're picking on telemarketing and there are other calls that people receive that are not telemarketing survey calls that people object to also. You know, who wants what calls, the individuals have to have the right to make that decision. They have to have the right to make the decision if they want them during the daytime hours or during the nighttime hours. To put a blanket ruling, and have a law that prohibits it, I really don't think that we need that, and the enforcement would be tremendous also. It would be a real monster, I think, to enforce anything like that.

Even now, with annoyance calls themselves, the most we can do is prove the existence of telephone connection between Phone A and Phone B; we cannot prove whether or not that was a harassing telephone call. The only time we can prove harassment is when there is a large quantity of calls generated, so that the mere existence of that volume indicates harassment. But otherwise we really can't.

They go to court, I see cases go to court all the time, and it's his word against her word, or whatever. And then the judge has to decide, was it harassment or was it not? We have women that go to court and say "Well, the only reason I was calling him was because he had some of my belongings," as an example. You know, you know, so it's a tough thing to enforce. People resort

to non-published telephone numbers to protect themselves from that. Yeah, sometimes it does, alright, but that's not the ultimate solution. Alright, technology is the ultimate solution, as I said before, by having "smart-type" telephones that the controlling party would be the person who receives the telephone calls.

Nadel: O.K.. We can discuss that under number 2. on the agenda. Suppose that there was a device that could tell the caller "I do not want to receive your call at this time." Then the question would be, does the caller still have the right to make the call? The individual puts the equipment on his phone and it indicates to you -- as a caller doing a survey -- that "I do not want a survey call at this time." Could you be legally required to hang up the phone? And if you continued and rang and disturbed that person, could you be prosecuted for a trespass, a minor?

Rupp: But you'd never do that, because what you've got would be a recording that says "I don't..." or you've just got a buzz, a particular kind of buzz that became well-known because it was standard, you wouldn't be reaching the person. There'd be no incentive to call and listen to the buzz again. Sure a person has the right not to have a telephone and has the right not to answer the telephone. A person has the right to hang up the telephone, if they answer it and find out they don't want to continue. People can't be forced to express their views.

Nadel: O.K.. In between the last examples, I'd rather wait until we get to that under 2.. But just with the size of the problem. What percentage of the population would have to say it's a problem before something would be justified? I don't what the answer is, but the State of Washington Telephone Commission asked the consulting firm Ebasco Business Consultant Company to survey the state about the issue. I don't know if the firm is very reputable or not, but of the total sample base...562 subscriber responses were included in the survey. And I quote "The following summarizes the results of the subscribers who responded: 75 percent of all respondents favor some form of regulatory action to control telephone solicitation activity. Of this percentage, one half favored prohibition of all telephone calls. Alternatively, 13 percent opposed regulatory restrictions and 12 percent had no opinion.

Singer: It depends on how the questions were asked, it depends on who was in the survey?...Everyone will say "I'm for this" until you present them with the opposite.

:Just like divestiture. (Laughter) It seemed like a good idea then...

Nadel: I understand. I agree. O.K..

"Charitable and political solicitation calls are considered more acceptable than commercial solicitation. 78 percent find commercial solicitation not at all acceptable whereas 56 percent and 41 percent, respectively, find political and charitable calls unacceptable."

Rupp: What are political calls? Are they asking for contributions for candidates, or are they asking you for...

Singer: Are you going to pass a law on the basis...

Nadel: No...The issue is, if something should be done when this problem gets big, or, let me ask, if this problem got big, and a lot of people objected, would that justify action?

Singer: What kind of action?

Nadel: Well that's what we're going to talk about what kind of action. But the first question is, would it ever justify an action?

Singer: Passing a law?!

Nadel: Would anything justify passing a law?

Brown: Isn't it already doing that?! Haven't we got 60 pending bills at the state level right now, limiting telemarketing in one form or another?

Nadel: O.K.. It's just that I've heard some people say that it's a very minor problem now and we won't know if it gets large. The fact that there's a lot of legislation being introduced, that the industry is growing, is not good evidence, or maybe is some evidence, but it's certainly not conclusive. And this survey is not conclusive. But I think each individual...all three of those things are evidence, that should be considered. So, I think that if evidence shows that the problem increases because the surveys show more people feel that way, more bills are introduced suggesting that maybe more people are being annoyed, that then something would be done. I think there is a problem out there. We're not going to conclude how big. I don't know what the answer is...

Now what I'd like to do is talk about what the telephone industry has done to deal, the telemarketing industry at least, has done, because they perceive some problem ... for some people, and they've tried to address it themselves, because they think

they can do a better job at it than the government and it's easier for the industry to self-regulate.- Duncan you just...

:What kind of complaints do you get? You know...

Brown: I don't have any statistics to tell you what kind of complaints...I think that the telephone marketing industry is reacting to the things that are happening on the state level. There are enough bills out there that are limiting people in so many different ways that there's obvious need to forestall this by policing the industry, self-policing the industry, and that's one of the goals of, I think, every association. So they've set up a telephone preference service which is exactly patterned after the mail preference service. A consumer can have his name taken off a master list, that list is then sold to people who subscribe to that service.

: They put it on a master list?

Brown: That's right. And then that tape is sold to, say, list brokers and to everybody who'd like to subscribe to the service. In other words, to self-police against intruding on the privacy of people who don't want to be intruded on.

: So is there one group, telephone preference survey group that compiles this list for the entire United States?

Brown: Yes. The DMA, the Direct Marketing Association and the telephone marketing association within it...

:But if I don't subscribe to that...?

Brown: That's right, if you're a telemarketer or a researcher and you don't subscribe to that, then obviously, those people are obviously still going to receive calls. It's not a foolproof situation, but it is the only viable method that anybody's been able to come up with, short of real policing asterisk bills, or something like that, that completely eliminates...

McDaniel: How do you define the category of people who are entitled to get on this list. I mean anybody can get on it?

Brown: Any consumer that want's to, any consumer that has a problem with receiving phone calls...

:Free of charge?

Brown: Free of charge he can call up the DMA. And for a nominal charge ...

Nadel: They can call you, or do they have to send...

Brown: They can call....or no, they have to send a letter, but you know, it's...

McDaniel: What kind of calls would you not get by being on that list?

Brown: It's not foolproof...The kind of call that you wouldn't get would be those from the 25 to 30 telemarketing companies that subscribe to the service, and those companies range in size. Some of the companies are very large, information service bureaus and things that cover a wide variety of names. The people who are selling things, commercials,

McDaniel: It sounds like a commercial call, commercial solicitation that you'd mainly prevent. I wouldn't expect it to stop survey calls...

Brown: That's right...unless they were to buy lists from a list broker who's policy is to use this tape overlay.

Oppedahl: I have a question about that...Don't you suppose there are some people who have unlisted phone numbers who are inhibited from taking advantage of your service because to do so would reveal the phone number that they want to keep secret?

Brown: Yes...I said it's not foolproof at all. There are a lot of loopholes in it.

:How large...? How many...?

Brown: 20,000 individuals have subscribed so far.

Ruesch: How many solicitors, groups, have bought your list?

Brown: Only 20, but that's misleading because, the information people, like Donnelly Marketing, that have millions and millions of names that they control, use it. They sell names to thousands of companies across the United States, and their lists all conform to this provision, so that...

Brownstone: How do you make known within the general public that this service exists?

Brown: Well, that's the problem, it's a pretty big public relations problem for an association with our limited resources to make a supposedly national solution available to the entire public. It's a big problem. Right now we're going out with a small mailing of about 30,000 names in the next couple of weeks with a promotion designed to increase the subscription rate of companies, not necessarily individuals. And we've also got, as noted down here, a test of including a description in the Yellow Pages and telephone books. We did a test of that with the

Baltimore....

Nadel: I describe some of the history....They tested an "800" number. You could call an "800" number and you'd be listed. I want to ask you about the cost because it's being borne by the industry.

Brown: It's not a real expensive thing to do...

Nadel: What happened with the "800" number was that it's availability was reported by action reporters, radio stations, newspapers, and all of a sudden the number was deluged by calls. The industry decided either they could't handle it or ..., I don't know exactly. Fred Tregaskis would probably be able to answer that. He sent me a piece, but it said "We were so overwhelmed, we couldn't handle them on that 800 number" and people were overreacting. And I think some people do. They get one lousy call and they decide "I don't want any unsolicited calls" and they might write ...

: His response was people were overreacting? ...

Nadel: Well...probably some people did overreact. I think that some people do. The industry did not want to...

Smith: We're trying to look for evidence that people care and view this as a large problem. When people deluge an "800" number that means that they care! It's not overreaction any more than people who buy a product are overreacting to a sales pitch...

Nadel: O.K., but I think the industry paid, they were paying for this. AT&T did offer to roll this out and I don't know whether AT&T was going to subsidize it. Somebody from AT&T was going to be here but they're not. I was curious. I think the industry just said, "we don't want to bankroll this when there will be some overreaction as well as...we'll generate a huge list of people we can't call, some of whom might like to receive calls from us."

:Working too well?...

Smith: I commend the association, because I think it's a good effort, but we heard with the mail preference service quote "only one percent wanted to get on the list to eliminate unsolicited mail". Now we hear that there's too many people that want to get off phone lists. So the association is trying to have it both ways. I always argued that the association would be jubilant if they got a one percent response to any solicitation. All people in the business are. A one percent response means people care.

Nadel: O.K., with the "800" number, my question, and Duncan I

guess you don't know, was: do you think the industry would find it acceptable -- if that was financed by somebody -- for people to call up this phone number. I guess you now have a non-800 number, but if this was tested and if it, again, was too successful...as Bob mentions, its sort of contradictory.

Brown: Well, I think you're talking about two things here. If it was too successful, that's good, but if it was too expensive, that's bad. You know, it's really a question of finances, if we can't afford to do it then we're going to have to get other people involved who can. I think that would be the only limitation...

Nadel: O.K. then the question is with the 800 number...

: Great idea...again.

Nadel:...the industry did try this and my question, and maybe you can get back to me, exactly why wasn't that introduced? Would ...anybody here object to a requirement that telemarketers respect that list?

Rupp: Whom are you referring to...telemarketers?

Nadel: O.K., telemarketers meaning....I guess those, like the 20 companies that subscribe to the list consider themselves telemarketers. The service...is strictly voluntary. If you were going to have some legal sanction, though, you have to give a much more formal definition...

Brown: ...and we probably wouldn't want to get involved... We would not...that would become completely untenable from the association's standpoint. We couldn't very well take a stand, otherwise we would be restricting trade, and all kinds of other fun things...

Nadel: O.K. I'm just curious if telephone companies have been asked, and Morey in a sense asked the Pacific Telephone Company to set up a list...in the telephone book by putting asterisks. My idea is a little different. The telephone company would compile a list of people the way that the DMA does with telephone preference lists. People would pay for it the way they pay for unlisted numbers, and it would just be publishing another directory. The phone company is in the business of publishing lists of phone numbers, if it covered costs. Is there any reason which I might not understand, why the phone company would object or wouldn't be interested in another revenue-generating activity?

Ruesch: When I read your study I made a little note that said possible, another line of business for NYNEX. (laughter) Whether or not it would function as a deterrent from calls, and I really

... See, I didn't imagine this was a big problem, O.K., and that was just because we, in the telephone company, really didn't receive a large amount of this type of complaint...

: It's really not.

Ruesch: So that's why I said, really, how many people would even want their name put in such a list, because right away... Now you have a list where somebody doesn't want calls and now somebody's going to use that list to irritate those individuals, you know, which is basically in the annoyance call arena. People pick up things, alright, and they like to do things for fun in their spare time...

Oppedahl: There are people who intentionally call the listings in the phone book that have only a first initial rather than a first name: the very people who are nervous about what could happen to them on the phone...

Smith: There was a real experience with the DMA when they did their mail preference service and they generated their list of people who didn't want unsolicited mail. Mailers, being what they are, couldn't resist using that list. They would mail solicitations to both lists (laughter)...

: Nobody can pass up a good list, regardless. (laughter)

Smith: ...they found out that the response rate was equal. (laughter)

Singer: Because you're making an abstract decision, you don't want to receive any mail or any calls, you really cannot ever imagine what lovely things you're missing in life...

Ruesch: Just like non-published telephone numbers, alright, you have a non-published telephone number you can't get that telephone number. Now, if you have an emergency, you can tell the operator "this is an emergency" and they'll connect you with the non-published number bureau -- this is a bureau at 1095 -- and you explain to this person that it's an emergency...they won't give you the number, they won't connect you, but what they'll do is they'll call the person you want, and say "Hey, I have Johnny Jones, wants to get a hold of you, it's very important, would you call him back." Well, in that situation you say "that's pretty good", right? Many of these people who get called say "I don't want to be disturbed, that's why I got a non-published number. What are you doing calling me for?" You know, you really can't

Oppedahl: The annoyance bureau, having been told that there's been a death in the family rings a lady at 3 in the morning... (chuckles)

Ruesch: So now what we say to the customer, you don't want any calls, you send us a letter stating that you don't want to be interrupted for any reason. [end of tape]

New tape:

.....
:This thing going in Baltimore sounds like a fairly recent event...

Brown: It is, it's recent and it's generated about the type of response as a direct mail campaign, the original direct mail campaign.

:How many people did you get?

Brown: Oh, I don't know, I don't have the exact numbers. We originally got, from our first campaign we got 20 subscribers and that resulted in about 3,000 people; we're up to about 20,000 people at this point, so ... it did pretty well, it's only been in there for a while, so I think it was worth doing.

:Have you had any feedback from people who subscribe to this service, is it working out, is it...?

Brown: I don't know, I don't know, I don't think we have, nothing I've heard of.

Nadel: I just have a little notice here on page 48 of the report that says: "In 1981, with the cooperation of the Rochester Telephone Company, notices were inserted with the telephone bills sent to Rochester subscribers. A sample of Rochester subscribers were split and offered an option to register for more or less calls. The total response to the insert was below one percent." This suggests that, assuming that the survey was reasonably done, this group didn't perceive it to be a problem. They might have answered a survey to say they wanted to ban such calls, but when given the opportunity to do so they did not take advantage of it.

Before we close this section, I'd just like to say I'd be curious to see a copy of the insert that the DMA felt was reasonable because that way if other telephone companies desired to follow the lead of the Baltimore telephone company they might do so.

Brown: I'd be glad to send you anything we've got. I'm sure I can dredge that stuff up.

Nadel: Good, and the industry, I presume, would not be adverse to creating it if it doesn't...

Brown: No, I think quite the opposite, that we're glad to have it

published in any way that we can right now, we're trying to promote it as much as possible.

: Have you thought about trying it in New York?

Brown: I don't think we have, I think we're waiting to see how the Baltimore testing goes. It's unfortunate, however, that we don't have more companies who subscribe to the list.

Ruesch: Are there any legal problems with disseminating those notices? Because if there's no legal problem with it, I think it's a nice service for the few who would subscribe to it. I think only a few would, but when you talk about one percent, it really seems small, talk about 20,000 people, it seems large. I mean really, in our society -- we've got 200 million people in this country -- one percent of anything in a society like ours is a big number. I mean, people will kill for one percent....I think the absolute numbers here are fairly imposing ... the percentages of some larger denominator...

Nadel: I think the neat thing about that is if it is relatively small then it's relatively low cost. If only one percent of subscribers do not want to be disturbed then the cost is relatively small.

Rupp: Well, I don't know whether that's necessarily true of the solution you've got....I was once involved in a proceeding at the Federal Trade Commission concerning the warnings that should be included in a particular kind of advertising. A couple of professors came in and made the point that the solution the Federal Trade Commission had proposed was so costly that it would have been less expensive to take all the subject population on vacation rather than using the advertising warnings. Take them once a year to Florida by plane, put them up at the best hotel at Miami Beach (laughter) and give them an all-day seminar, so you may not realize how expensive regulation may be...

Nadel: O.K.. Understood. You don't want to see a costly regulatory scheme. Ideally you want a regulation that reflects the degree of the problem. Also I think, I'd like to say that I think that the costs should be borne by the appropriate party....Does the consumer deserve a right of privacy as an inherent right? If consumers purchase telephones do they still have a right to be free of unsolicited calls free of charge? My own personal feeling is that if you don't want a telephone you're not disturbed. That's your right of privacy. If you want a telephone and you still want privacy you might be required to spend a small amount to warn callers. That would not be unreasonable. Thus you have three options: no phone, a phone without protection, and a phone with the warning and the third one costs extra. I think, therefore, if the costs were borne by consumers and that callers did not have to pay that would be

better from the perspective of the caller and, in my own personal opinion, more appropriate. But maybe the government would subsidize the right of privacy. There are a lot of worse things you could spend money on... (Laughter)

The next question, with Duncan, is if this turned out that there were 500,000 or 1.2 million people on the list would it reach a level where the DMA felt that it was too big for them and they'd rather somebody else kept it?

Brown: Well, I think right now it's designed to pay for itself neatly and I think it will continue to do so. I don't think it's going to reach the stage where it's going to be unwieldy. It's a simple list, it's maintained on a magtape and the tape is sold at a rate to make the setup break even. It's pretty simple. But if some people want to use it and they don't want to pay, whatever the cost is, as you get more names on the list it becomes more expensive if you don't get a comparable increase in the number of people who want to pay for it there's a chance that there's a time when we wouldn't have the money to pay for it, and I don't know what we'd do in that case.

I think it's going to end up being the best solution to the problem. This kind of thing is going to end up being the best solution to the entire issue of privacy and the telephone and I think that if that's the case, then the telemarketing industry is going to be willing to pay for it. They've got to be.

Nadel: Would you consider charging consumers, asking them to send in a dollar?

Brown: I think that inhibits the response to it, I mean, why should you have to pay? I mean, I think people see it that way. And why should they, when the industry would do it? The industry is going to benefit from it. Not only from the standpoint of good will and being perceived as a responsible industry but also from a cost standpoint; every 100 calls that they don't have to make that they know for sure the people are not going to respond to they'll say that's real dollars, man-hours and things, it's a very simple equation, they can save money through this.

Rupp: I think it's important, though, in thinking about this preselection... to take just what you said and contrast the situation of telemarketing and the survey research industry. Say you have a person who is gay and who would be disposed, without thinking about it very much, to enter their name in a preregistry of that sort. And then let's assume that the federal government is doing a survey to find out whether there should be increased federal funding for AIDS research. Would that person want to be contacted? You better believe it. And the inability to make concrete, when somebody is being asked to make the decision to pre-opt out or not, from our point of view and I think from the point of view of political polling, is a fatal flaw. The cost that one pays for not opting out in advance is a

periodic phone call, one or two a year, on some public issue. And that, we have always thought, is a terribly small price to pay for access to people's views that are so critical in a democratic society.

Nadel: O.K., But if you are permitted to explain to people why they shouldn't opt out; you could write up a little one page or something small enough that people would actually read, and it was included in the telephone book or something comparable. You said to people "when you are given this option to opt out, pick the choice of opting out for, you want to opt out of commercial calls, sales calls, or calls to make contributions, but mark down that you do want to receive survey research because if you are gay....."

Rupp: You can't do enough in the way of making it concrete in advance. Issues come up all the time that no one foresaw. They affect various groups in our not so homogeneous society very differently, in disparate ways that a number of public policy makers can only vaguely understand about data and information feedback, and you simply can't deal with people effectively enough in advance to say "you may be sorry if you simply opt out of the society by saying I don't want be bothered at any point for any purpose for anything..."

McDaniel: In general people are permitted to make decisions, to opt when they want to. To take a really crude example, when you get married you choose to opt out of all the people you could have married, I mean, we do make decisions in life ...

: Regrets.....possibilities...

:...this is a list on which you put your name and you are requesting people to honor your preference not to be called. Do you know whether people that do surveys would honor that request?

Bowers: No. They couldn't and still continue to do surveys...

We can't do a survey without calling the people. They can say no, but at least they're not saying "no" in a way that we have a reason to believe reflects their feelings about the specific survey, without introducing systematic bias in the results.

: And you as a consumer have put your name on that list and might then, you know, be spared some percentage of calls that you would otherwise get; it would not guarantee that you would not get any such calls...

: And it wouldn't prohibit anybody in a research situation from using the phone book or using anything that's in the public domain...

Nadel: Let me just modify it a little: suppose I wrote a letter

to your organization CASRO and said "I do not like receiving survey calls between 7 and 9 o'clock. It wakes up my wife or my husband, my baby sleeps then, so I would appreciate you keeping away, or I'll pay 50 cents to be listed in the directory with the indication 'don't call 7 to 9'. I would like your calls, I would like to participate, but I'm very annoyed 7 to 9 when people wake up my baby." Is that something you would consider?

Bowers: It's not possible...

Rupp: Let me ask this question. If you think hard, how many survey research or polling calls, political polling calls, have you received in the last year?

: I've received none. Albeit...

Rupp: Has any of you received one? [Yes.] Anybody else received one? [One.] How big a problem is it. How big a price are you prepared to pay for that kind of thing?

Bowers: What I was going to say...when a research company calls and the person responds, "You're calling at 7:00, the baby is asleep, I really don't have time to talk now," what I would respond, as a researcher, is: "Thank you, when would it be convenient for me to talk with you about this issue? You're an eligible respondent and we would appreciate your opinion on..."

McDaniel: Pampers...

Nadel: I sense a contradiction. You're saying very few people are upset about it, almost nobody, and very few people even get the calls, and yet you're afraid of the cost of, this burden...

Rupp: The complication. The complication and it's not really a cost. My basic objection would be the difficulty of explaining to people in advance in ways they can truly understand, because there are 240 million people in the country, what they're giving up by making requests about specific hours.... If they want to be listed as "Do not call Friday" or "Do not call between 7 and 9" it makes it prohibitively expensive for you to contact them, thus biasing your survey.

Nadel: But, if it will protect some sense of privacy they want to maintain, and the cost would be some kind of list or directory that either you would do voluntarily and your members could observe voluntarily... Maybe you could ask them to contribute, "Look, you know that the kinds of things we do are important, could you send us a dollar to be listed, and we will put you on it for 12 months. And for the next 12 months if anybody were going to call you we will not call you during those hours, or days, or whatever."

Rupp: The way surveys are done, you don't have a list of people's telephone numbers. Now I'm not saying it can't be done...

: But you generate numbers. You're generating 7-digit numbers, with an area code. In fact you generate 10-digit numbers.

: But don't you avoid unlisted numbers?

: No you don't avoid unlisted numbers, because if you avoid, if you're restricted by the unlisted numbers then again you have the problem of bias. So, now that doesn't mean, computer technology being what it is I can imagine what it would be, you know, what it would cost, obviously...you have a list of numbers, people, numbers that is...

: Small, maybe a hundred people. And then you'd have to match your randomly generated sample with this preexisting list just like DMA members are doing....

: We couldn't...

: It wouldn't be that hard. How many people does the DMA employ to handle this? Five people?

...It's not so easy. Just because there are computer doesn't mean that it's not terribly labor intensive and often terribly inaccurate as time moves on.

:O.K., well, I mean, just that the telemarketing industry has been able to do that merge/purge type of thing, I would think that your organization could too. What's the size of a standard survey? I mean, how people...

Rupp: Well, a typical survey, telephone survey, will be 1,100 respondents, that has a statistical margin of error of 3 to 4 percent swing one way or the other.

: Is that respondents? Number?

: Yes, number of respondents.

: O.K. and what's the gross number, 1,200 to 1,400 or 1,500...

: Oh no, you've missed...You're starting with a list of randomly generated numbers with certain kinds of techniques for eliminating non-working banks, and so on, right? You've got to allow a minimum of about 20 percent over, just because those are going to be non-working numbers ... You have to generate working numbers and then, and then from that you work down if you want completion rates of 70 percent or something like that or 60 percent, but you're going to start with a lot more numbers. I'm not sure how many numbers actually...

McDaniel: These surveys, I mean, like Pampers, you might call up and ask a question about it, what kind of survey ...

: I don't know if Pampers would...I mean that's not we're talking about, really. Not consumer research...

McDaniel: Well, let me put it this way. I guess I'm not entirely convinced that calling up somebody to ask a question to enable somebody else to sell more Pampers is in reality on a different plane or entitled to greater privileges than somebody who's actually calling up to sell the Pampers. I mean, I'm not sure that's a great difference. You know surveyers tend to present themselves as "we've got to get this valuable economic data to make our society a more bountiful..." I mean, really what they're doing is helping other people hawk the wares that the other people get on the phone to actually hawk. And I guess I'm not convinced that telephone surveyors are entitled to any special privileges.

The second thing is, I've seen this happen, is that people who are selling wares -- I'm not sure that they're not members of the DMA -- one of the ways they begin the sales pitch is "We're taking a survey." It's one of the standard opening gambits to get people's attention because people, you know, people apparently do like to answer questions and they get sucked in that way, and then they get mad when they realize that, Jesus, this isn't a legitimate survey at all, this is another con job. And so, I'm not blaming your organization, I'm sure your people don't do that,

: We don't and we consider it fraudulent...

McDaniel: The point I'm making is that if you try to have two classifications, commercial, on the one hand, whatever that means, selling stuff, and surveyers on the other, there are going to be all kinds of people trying to get from one box into the other box, and I guess I'm not convinced there's anything wrong with having people be able to say "I don't want to be called by anybody." Now I mean when you put a sign on your door which says "No trespassing," I've seen a lot of signs that say "No soliciting or no trespassing, they don't say when you walk into the New York Telephone office, it doesn't say "No soliciting except A, B, C, D, E", it says "No soliciting." And I don't think there's anything wrong in our society with having a sign that says "Don't call me on any account, I don't want to hear from you."

: Just to follow, O.K., to follow...Let's take it first two steps at a time. A lot of people in our society at this time of our history talk a lot about economic law and economic incentive, there's a lot of economic incentive on the part of a lot of people to adhere, to observe that request. O.K., there'll be

some that don't, but if you're able to exclude the people who are willing, your life's going to be a little bit better, you will be disturbed substantially less than you were before. Alright, if other people ignore and it gets to far out of hand, I think society, there will be laws and there will be ways to track them down.

The technology. I'm astounded at what's happened in 20 years. These smart telephones are absolutely dazzling. We will get to the stage where, when somebody calls up, it won't be that difficult to find out where that call came from, and who made the call. And once you can do that, then I think the problem will begin to shrink down to practically nothing.

Nadel: The CLASS technology is being developed right now. And right now there is also a device being developed: TELL-M -- the patent application has been submitted -- and I'll just say that the device can indicate to the caller that "I do not want to be disturbed." Either a "yes/no" type of "I don't want to be disturbed" or it could be modified to give various different responses. For example one might mean "I do not want to be disturbed by anybody" another might mean "I do not want to be disturbed by commercial calls or non-profit calls or survey research calls."

: Does it talk, does it...?

Nadel: No. I feel a little constrained about what I can say because I signed a confidentiality agreement, but it can indicate, let's assume that it can indicate, that it works, and it sounded to me like it could work...

: Well doesn't the guy at the other end, if I picked up the phone to call him I'd have to know...

Nadel: No, no your phone has not rung yet. I call you and I am informed, and not a voice saying "Do not call me" but in an unobtrusive way.

: It doesn't use words and if it doesn't have a code, if it doesn't have a code how the heck does it work?

: Like call forwarding? You just forward it to the garbage dump...(Laughter)...I love this...

Nadel: Whatever, if a telemarketer heard this and it said "No telemarketing" he would probably hang up anyway, I assume. At least your code of ethics says you will hang up when the person called asks you to hang up. If this device communicates the message "please hang up," then I presume you would hang up. Would you be adverse to a law stating that when a telemarketer was informed that the caller wanted to hang up or terminate the call, you would have to terminate the call? If not, what would

be the reason?

: I don't know, I ...I'm sure they'd come up with something...

: I understand that if there's a law it might get out of hand. If you let it get out of committee it might become unreasonable, overrestrictive.

: O.K., maybe you don't need a law, I'm just curious whether...

: Who's a telemarketer? I mean, is the person calling for their church as a volunteer, and they hear "no telemarketers," do they...I mean it gets into...

Nadel: Suppose you were clear that this meant you. There wasn't any ambiguity. ... You could always just break the law and assume the person was not going to prosecute, because once they heard what you were selling they would say "great, I'm so glad you ignored my warning." And if it's survey research that's the other question, if you thought that the people were going to enjoy the call, they would never...

: On what grounds could you enforce such a rule? On privacy grounds?

: Yes, I said "I don't want you to call," and I put a sign ...

: But you haven't said it, you've put a little electronic device. We really can't distinguish very well between, you know, me and Joe Blow, and I don't think you can prosecute...

: Well, if you admitted that you called up and you were informed and you knew whatever...

: I didn't know, I didn't hear the message.

: O.K.. Right, if there is one case you probably could use that excuse. If, however, 400 people, or 20 people made complaints to New York Telephone against you and you said "Oh, I didn't hear them, I didn't hear that..."

Ruesch: Yes, and we tested the device and it seemed to work but...

: See, we have rules for that. It's like ... you put a sign that says "no trespassing." That comes under "harassment" right now. Right now under New York Telephone tariffs that comes under harassment. When you disregard a person's statement that "I don't want any calls," as with calls from debt collectors, that can be harassment. ... It's based on the system that there are 20 calls placed to one number. I mean is society better if the guy

harasses 20 people one time, or one person 20 times...?

: No, it's not based on 20 calls to one number, it's 20 calls; 20 complaints.

Nadel: It's like trespassing. I think if you're doing door-to-door sales and you ignore one person's sign and you say "I didn't see the sign," it's probably O.K., but if you disturb 20 people and they all call up the mayor's office the D.A.'s going to come and say "What's the story? You are disturbing people..."

Ruesch: If we had a system like this people probably would call up the phone company and say "I've got this electronic device, this guy ignores..." The phone company would say "call up the District Attorney's office" or "you could have a lawyer...." That's basically what we do now. When we get verbal complaints like this we make a record of this and we may refer to it to the manager who's responsible for serving that company. And depending on the complaint, you know, when he says it's a legitimate complaint, number one, he calls the company saying, "Hey, I've got a complaint from Johnny Brown about this type of call." Now he keeps seeing the same type of complaint coming in, now he has to go out there, sit down with the management of that corporation, and say "you better cut it out, because otherwise you're putting your phone service in jeopardy of being disconnected."

: ...The enforcement mechanism already exists, the phone company, you guys, you have...

: But what's lacking is something to inform the caller that you don't want to receive calls and a listing on the telephone preference list would be evidence of that, but it's not binding. You don't have to observe...

: But why would you need to do this at all? If there's an annoying phone call, why can't the person make a complaint right now?

Nadel: There's no regulation, as far as telemarketing is concerned, prohibiting one from calling up a person on the TPS list. It is not harassment if they call and are told "I didn't want to hear from them and I asked them to hang up and they were very nice and hung up." Even if there are 20 complaints. As long as they honored your request.

But if this device exists and does work, and you were given the message that I didn't want to get a survey research call and you ignored that, and then they were upset at you even after you had the survey -- and I presume most people would not be upset at you after the survey if they really do enjoy it -- but if enough people were then those complaints would go to Gus and he would be

able to do something because you would have ignored their warning....

Rupp: Again, I raise the question, I want it to be clearly understood that we just don't see a problem for us, but we don't define ourselves in telemarketing. We deal with, we spend a lot of time making sure that people who do survey research understand the importance of respondent cooperation. Time of day is important, length of interview is an important element, and we simply do not see complaints.

Smith : O.K., I have a complaint. (laughter)...I don't think the person ought to be in jail or anything, but I'm subleasing a condominium and the owner of the condominium wanted to get in the lease that I was not a smoker. I happen not to be a smoker, but I said, "I'm not going to agree to that, I'm a private person. I got a call last night asking for Mr. Jones, who is the landlord. I have the same phone number as he, and I said "He isn't here, may I take a message?" and the caller said "I'm calling from Pendex Research Company, may I ask you "Do you smoke?"" Perfectly innocent, I think, maybe somebody was trying to catch me. I don't know (laughter)...you know, I hear from people, I get mail from people who object to survey research. I don't think you can continue to say that nobody complains.

...

Rupp: What we're saying is that what we do is try our best and by the way we have a brochure that we hand out to respondents, a thank you card that explains the research process to them and if there's a problem with the survey they've participated in they can call us, talk to us about it, complain about a particular event, so that we can alleviate those kinds of problems. I think that the fact that you got one call from, I guess, a research company, asking whether you smoked, we think is probably less intrusive than adopting some other reform of regulation.

Smith: O.K., I agree with that. But I don't think that the industry does itself a service claiming that there are no complaints...

:Oh no, there are!

Rupp: Well, what we try to do, and I'm sorry you misunderstood what we were trying to say, is that in our code of standards, one major section, that first section of the whole code of standards, is our responsibility to the respondents, and it's the primary thing we're concerned about because absolutely it's in our self-interest that we do not turn off our respondents because we need to know to what their opinions are and what they think. So if we have a bad survey, if we abuse that privilege, they're not going to cooperate next time. So you see, we do, I'm sorry you misunderstood that, but we really do work very hard to keep

that cooperation and where we do have refusal rates, and we do do studies about this, where we do have high refusal rates in particular areas we do work to alleviate that...

The thing I spend most of my time on, kind of ironically for the association, is on privacy issues. Quite different from the issue we're discussing here. It's respondent confidentiality. The possibilities, and it's often a government entity, trying to subpoena the questionnaires that will include data that might be used to get back or identify a specific respondent, we believe very strongly that it's a basic ethical code of survey research that no client, no governmental entity, no one outside the people who are actually working with the data and then reporting it in aggregate form should be able to know who that person was because there are basic privacy interests involved.

We recommend in the code, and most everyone does, that as soon as some data, basic data that's needed is entered on the computer, respondent identifiable information is eliminated by clipping it off the questionnaire if the questionnaire is going to be retained. We go into court and we file amicus briefs on respondent confidentiality issues in the event of subpoena and we have almost always prevailed in those cases. We spend a great deal of time trying to protect the respondent not only from harassment but also to minimize any intrusion beyond that minimum necessary for the call and they ask for cooperation in the expression of their views, intrusion into their right of privacy.

Now there's a self-serving interest in doing that, obviously. The Internal Revenue Service wanted to have our cooperation at one point about 2 years ago in giving respondent identifiable demographic information for surveys so that they could match it up with income tax returns...and we told them that we couldn't really, we were apoplectic about it. We went in, we tried to explain to the IRS how destructive that would be, that it would be inconsistent with the representations made explicitly and implicitly about the extent to which we will go to protect the identity of our people. As individual companies most of them tend to be fairly small.

The one issue that they will spend money on, go into court to protect, is the respondent's identity. The issue that they are most willing to spend money on, for me, is that issue. We were successful with the IRS. None of our companies were prepared to give up that kind of information. Again, I say, it's not that we're looking for kudos for it, there is a clear, crass self-interest involved, too. If the New York Times begins to run articles that say "Survey research companies that are calling you up and asking you about X, Y, or Z, are also selling your information about your income to the Internal Revenue Service," that's the end of the survey industry. Alright, so, we're very careful about these...

: And everybody always complains. Always someone is going to complain about this issue no matter what. "I have a non-published number and I got a telephone call from somebody I

don't know and I can't understand it." You're always going to have complaints and no one is saying there aren't any complaints about the industry. The number of complaints is really the question. Are you getting many complaints?

Rupp: No, we don't get any, but respondents do care that their responses are going to remain confidential.

: Absolutely! That is literally...

: No, that's not what I'm saying. We're talking about a particular, we're not talking about telemarketing, we're talking about a particular kind of telephone call. It's done in a particular kind of way. And put aside the ones that are fraudulent, that is "I'm interested in knowing your views on the environment, would you send me \$50 for the Sierra Club". Suppose you did a survey and the survey question was (and you had formulated it yourself) how many of you would prefer not to receive calls from survey research organizations that ask questions?

Rupp: That's not a legitimate question for the purposes you're talking about, particularly if you're talking about regulation because in the example I gave you, you're gay and I say to you "would you like to receive calls from survey companies?" and you say "no"; do you want to have your vote registered in terms of additional funding for AIDS...

Nadel: Your position, I think, is "paternalistic may be good" in a good sense, that you know the self-interest of the person better than they do. But like Maury pointed out...

Rupp: People are not smart enough to project into the future and know how they're going to feel...

: No, so don't get married yet because something might come along, or don't say "no" because there might be a cost of getting one call a year, the other side is that it might be a call I want to receive...

Rupp: Very valid, very valid. I mean, with marriage you can say, you will pay the price of not getting married until you're 50 because some ravaging creature may come along. You're paying a pretty high price. Are you prepared to accept one telephone call...?

: Your father might say "wait until you're 25"; I don't want to go into that now. You're just saying if the person thought about it carefully, and more mature enough, they would realize it's better to be open to calls that might be in their own best self-interest...

Rupp: No, I'm saying they can not know enough to opt out... Let me put it precisely as I can. The amount of survey research, polling calls that are made to individuals is so small in terms of incidence per person and the importance of them to a society like ours is so large in the aggregate. The difficulty in trying to communicate with individuals as individuals and then keep up with their changing views to the extent they want their views reflected in the public dialogue is so impossible, that I think that all of the things you're talking about, so far as it applies to survey research are appalling, are solutions in search of a problem...We are not getting expressions by people that suggest that the kinds of calls our people are making and the way they're being done are offending...

: No, it means that people are smarter than sometimes one gives them the credit for being. I may be prepared to have my views expressed as to whether there should be additional federal aid, support for AIDS research, but I don't want my name given to my employers. I have a right to privacy, but I have a view of my privacy interests that are sophisticated. There are some parts of the public dialogue I want to participate in and I'll say yes or no, when asked, but I don't want to lose control over personal characteristics that I hold dear to myself. I mean, the right of privacy sometimes almost becomes a label, when in fact, if a complicated aggregate of interests and concerns which may each of us unique, different.

McDaniel: I have trouble with one thing, I made this point earlier, I'll repeat it again...different metaphor -- in Dante's Inferno he had different rings for different levels of hell. How come you guys are in a higher ring than the DMA people sitting down here together in the table? I don't know why they should be in a lower ring in the Inferno than you guys. What is it about surveying...I mean, why does it have more social utility than the guy who actually sells the Pampers?

Rupp: We're not expressing a kind of qualitative, we're not comparing ourselves to telemarketing in the sense that you're suggesting. Let me respond in a couple of ways. One, the key point is that the kind of research our use of the telephone requires us to be able to reach, or have an equal chance of reaching, is all of the population. For a telemarketer, if they had their druthers, what they would like is to reach only those people who are going to purchase, and they're certainly prepared to put to one side people who say "I don't want to shop by phone."

: How about political candidates? Do they have a right to reach every single individual?

:Yeah, they fall in the same category. Yeah...

: Yeah...they do...fall in that category...

Nadel: I'd just like to move the discussion. What I'd like to talk about now is distinctions among callers. When are calls to be called "unsolicited"? Most calls from that come from friends have not been solicited, but we wouldn't want to regulate them because they're from friends. If there were any kind of legislation or self-regulation, calls from friends, people you know, relatives, presumably would be exempted. If there were problems with them it would be and is handled as an issue of harassment.

: A lot of people don't want calls from relatives. (laughter)

Nadel: But, you wouldn't list yourself in the directory for that. Another type of calls, and I'm curious what category it would go in, are those by a university. Columbia University calling alumni for contributions. Is that an unsolicited call or not? Should it be or should it not be? Should people be able to opt out when they give the phone number to Columbia and I think Barbara mentioned some catalogues, Lands' End catalog, New York Magazine mentions "we will take you off our list." Could you say "I do not want to be called by Columbia University..."

Brownstone: If you don't want to receive any kind of mail, any mail from the university including your alumni magazine, stuff like that, your records can say "do not mail." If you don't want to receive solicitations, they can code "do not solicit" and if you don't want to receive, if you're willing to receive mail solicitations but not telephone solicitations, there's another code that they can put it. That's right now. That's at Columbia.

: There are very sound business reasons to do that. You're less likely to alienate your alumni...

Nadel: ...Hospitals are, I wouldn't call them culprits, but there are complaints against hospitals contacting former patients to ask for contributions. Should they be permitted to do so or might there be a rule requiring hospitals to give you the option of checking something like "do not want to be called..."

: Again, it's just in their self interest in the long run, so if they have a problem each hospital...serious enough problem, they're not getting the positive response from the community to include such a little box on their form perhaps...

Nadel: But, it seems like the people who would give would say "fine." They only annoy the people who don't want to give and they don't care about those people, do they?

Brownstone: I can tell you one thing, though. You know, it's

easy to get very imaginative about this sort of thing in fundraising. It's hard for me to comment on the other things, but in fundraising I can say it's easy to get very imaginative about a lot of different situations. Responsible, sophisticated organizations like Columbia, or like a major hospital with a fully professional development staff, are going to be careful about how they use these things because they don't want to alienate people and they don't want any kind of potential bad press. That's been my experience and I've been in fundraising for almost ten years. I mean, all I need is one, somebody says "do not call" and that's it, I don't...they get coded right away, no questions asked, you know, we don't want to harass people.

Nadel: Do you have an actual code of ethics, or...?

Brownstone: The National Society of Fundraising Executives does indeed have a code of ethics, and the American Association of Fundraising Council which are more like consulting firms than in-house development staff...

Nadel: I'd like to get a copy...

: These are rules that you think all surveyers should follow, and the question would be, if something like that were given a force of law, so that people who don't observe, the unethical, by definition unethical callers, something could be done about them.

Bowers: Well, CASRD can't, because first of all our code, our enforcement procedures for the code of standards apply to members and can't be imposed on non-members.

Rupp: No, but the vast majority of survey research calls made are made by members of CASRD.

Nadel: O.K. If this is a good code, and if there was a problem of people not following the code, would you still be opposed to legislating that code?

Rupp: I don't think it's amenable to including in legislation... and I would say the same thing in terms of fundraising codes of ethics, too. One of the reasons, I know just from talking to people who helped form these societies, that they developed codes of ethics because they were trying to avoid government regulation, they preferred to self-regulate their industry. Or to write their own...

END OF 3rd SIDE of tape.

: ... We don't live in the best of all possible worlds. I think its going to be quite an advance if your program [TPS] is linked up with the phone company and let's just see where it goes. I mean, it may be an adequate solution, it may be. It's an unfortunate fact that it requires the threat of legislation to produce ...

: Yes...

McDaniel: That's why I stay on my soap box and keep the heat on...

Nadel: I think it's interesting that a couple of months ago when the DMA was overwhelmed with all these bills they were willing to settle for some reasonable compromise. Maybe their system is the best one anyway and shouldn't be modified any further but they seemed willing to get involved in something like this. Whereas when the heat was off a little, they became content to do nothing.

McDaniel: Incidentally, I thought before we adjourn today I'd like to show something to people who are not familiar with the asterisk system, who think that it can't be done. One of the things that Pacific Telephone kept crying in California twenty years ago was, "Oh God, it would really be a difficult thing to put all that in the phone book -- a major task" As it turns out, the telephone company in Toronto, in 1964, had already done it, and I hope you don't mind me introducing the phone book. It had asterisks in it, and in this case they're stars, but it's the same idea. The point is, it's not hard to do, it's already been done, the Toronto Bell System did it a long time ago ...

: Is it still in effect now?

McDaniel: I don't know; well this is not an asterisk system like we're discussing. These stars mean something else. What I think they meant in Toronto is that if you call these numbers you'll incur an extra charge, like calling from the city to the suburbs. The point is it's no big deal to print a phone book that's got little symbols in front ...

: ...the telephone preference list, it's no, not impossible to do that, it's being done right now...

: To give an example, phone books in Illinois have a little plus sign next to the phone number as a warning to you that the party at the other end may tape record the call...

: Oh really?...

: ...plus signs next to hospitals and police stations and even individual residences and it's to put you on notice at that point that they may tape record it and they don't have to...

: No beep?...

: And I don't think they have to beep them...

: That's interesting...

: But the FCC...

Nadel: OK, I think we have two more minutes, I'd just like to summarize. I think that what's been said is that concerning survey research or research calls, there isn't much of a problem right now. People are not upset about it, and so there's really no need for any kind of regulation other than the Code of Ethics. For telemarketing there is some need that's being met right now by the telephone preference service but it would benefit from further publicity -- if more people knew what it was and also I guess more companies were able to subscribe which raises the question of cost. If the cost is \$500 to get access to that list and I want to make a small survey in a small community and I don't have 500 extra dollars just to get the list, then to have to screen it by computer, so that's a question. I don't know who should fund that, whatever.

Brown: Currently, to join the TPS it's \$15 for any company, and it's money that anybody can...

Nadel: Oh really?! It's only \$15...?

Brown: ...per mag tape, so you get, if you have to have 25 the cost might become significant.

Nadel: Each tape has a couple of area codes...?

Brown: No, I don't think it's that sophisticated, I think it's just one overlay, and you run the whole thing against your file.

Nadel: The whole country?

Brown: Oh no, excuse me. It is broken down by area code ... Fifteen bucks right now, for the whole service...national search.

Nadel: And the last thing. I would be curious as to where to draw the line between survey research and marketing, and whether maybe in this code it defines what survey research is.

: ...defining, because you're concerned with here

is telemarketing shouldn't be defined as telemarketing...

Nadel: O.K. I was concerned with unsolicited telephone calls, all unsolicited calls, and just the ring, not after the ring, not fraudulent calling, or privacy afterwards. Just people who don't want the phone to ring and disturb them. What you're telling me is those people who are upset at the ring, after you answer, and you tell them that you're doing a survey, after you've said something nice to them they're not upset anymore just as if they had gotten a friendly call. So you don't see it as a problem,... whereas many people are upset by the automatic dialers -- just having to hang up, just to have to get up from the table.

: I think that's a different story: ADRMPs [automatic dial and recorded message players],...telemarketing. What we're talking about is how to define precisely what you mean by telemarketing.

: Survey research is obviously calling for the purpose of conducting a study....Someone's opinion on a social issue, a problem...

Nadel: If people do not consider it a violation of their right of privacy, are not upset when you call them and you nicely hang up when they don't want to talk, then it's no problem. If people are upset because they were disturbed, the baby was awakened and five percent of people feel they didn't want to have the phone ring, then it would be a problem in my mind.

Rupp: For definitional purposes, it's almost easier to define survey research in the negative in terms of the thrust of the piece you've written....Survey and marketing research...does not attempt to sell a product or service. They are not marketing a product or service. They are not asking, using the telephone call to engage in a commercial transaction.

: What if the purpose of the marketing research call is to determine whether or not it's going to be a profitable product?

: Suppose somebody was going to do some telephone research to see whether people are interested in, you know, young professional magazines, and that's my research and then I'm going to make a marketing decision on...

Rupp: But my point is, that in the course of the kind of calls our people will do they are not proposing a specific commercial transaction. I'm not trying to get you to buy a burial plot, an encyclopedia, sign up for a magazine...

:Would anybody in the profession ever turn over a list of product...?

Rupp: No, this is absolutely improper.....unethical...That's the

kind of invasion of privacy that we would be very unhappy about. Surveyors cannot disclose to the client, to the government or to anyone else the identity of an individual respondent nor can they give them the telephone number of the individual respondent so they can call them.

: O.K. that would be a distinction that could be made. I don't know whether it's good. People who make calls and do not use the individual data but just aggregate data to act on...

McDaniel: I'd like to turn this upside down, in terms of what provides social utility. His clients provide a person more social utility than your clients. Your clients call me up, and what do they get? I'm all give, no take, no giving back nothing. They're taking information from me for free and they sell it to someone else...

Rupp: That's not true...

McDaniel: Well, that's essentially what happens. His client calls me up and says "I've got this wonderful encyclopedia." Now for the guy that wants the encyclopedia, he learns about it; he's got something he didn't have before. He has,... an exchange takes place. The money for the product. I can make an argument, what his people are doing is of more value to individuals than what your client is doing...

:...If you start that argument we'll never get out of here...

McDaniel: I'm just not prepared to concede that what they do is somewhere in a higher ring than...

Bowers: Let's not talk about "higher rings," let's simply say that in order to do a survey at all, and draw any kind of legitimate conclusions from it...

:In other words, put her out of business...

McDaniel: Well, no, no, no, I'm not even saying "put her out of, put me out of business," but rather...

Bowers: You're really impairing the validity of the thing that you're doing and you're impairing the validity of the survey...

McDaniel: But why is what you're doing in the greater...

Rupp: O.K., It's not. Alright? It's just that if they are subject to regulations telemarketers can still do what they want to do, which is to market products, right, in fact, it's to their advantage to eliminate people who get annoyed and who don't to buy the product.

McDaniel: I guess I'm not convinced, and I'm not a statistician, that you still can't valid data in this world...

: Oh, God...

Nadel: O.K. I would just like to thank everybody for attending, braving the weather. We will transcribe this and I will try to incorporate the ideas presented in the next draft of this study. I think we've gotten enough ideas....the people who weren't here, I'm sorry they weren't here, but they might comment on another draft of this. I certainly enjoyed and learned a lot from this. Thank you.

Columbia University Business School
Center for Telecommunications Studies
Unsolicited Telephone Calls and the Right of Privacy
Friday, February 7, 1986 1-4 p.m.
Faculty House, Columbia University

Introduction

Questions for discussion

1. What, if any, plans does the Direct Marketing Association have for modifying the Telephone Preference Service?

a. Would they be willing to publicize the use of an 800 number again now that their test phase is over?

b. What about including a description of the TPS in the instruction pages of local telephone directories together with the 800 number or the address of the TPS?

c. If the number of people signing up for the TPS increases significantly, is the DMA willing to cover the costs of maintaining the list? (How expensive is it?)

d. If a TPS-like list were to be maintained at a break even basis, how much would subscribers have to pay to be listed?

e. If the maintenance and publication of the list was to be a break even proposition, who would be the best candidate for the job: the DMA, local telephone directory publishers, local newspaper publishers, or someone else?

f. Why does the DMA distribute its list monthly, and does it distribute only new names or the entire list?

2. How would the TELL-M device being developed by CHIP Systems work?

a. How should unsolicited callers be charged for calls if they respect its notification?

b. What technical problems might it face?

c. How might it be tested?

3. Distinctions Among Callers

a. What relationships between caller and called should be sufficient to exempt the caller from rules for unsolicited callers?

b. What principal distinctions are consumers most likely to make between types of unsolicited calls?

- i. Sales v. Non-sales?
- ii. Commercial v. Non-profit?
- iii. Local v. National?
- iv. Time of day or week?

c. Should the TPS, TELL-M or other systems be adapted to permit consumers to indicate distinctions between types of calls? If so, how, with code numbers? At what cost to whom?

4. What can be done to prosecute unsolicited callers who do not observe the DMA code of ethics and use the TPS list?

a. What form of regulation would be most reasonable?

b. If some regulation was to be imposed, would it be most desirable to see it promulgated on a national or state level?

c. Could a legislature be trusted to do formulate such a regulation or would it be more appropriate to for that task to be undertaken by a state public utility commission or by individual telephone company tariffs that might be based on some DMA model rules?