

Commissioner Julie Brill
Keynote Address to the National Association of Attorneys General
“Federal and State Law Enforcement Cooperation:
A Lesson from Baseball”
March 6, 2012

It is a great pleasure to talk to you this morning about how the states and the federal government can – and do – cooperate to protect the consumers who are the constituents of us all. I speak today from the federal platform, as a Commissioner of the Federal Trade Commission. But as Jim McPherson just pointed out, I found my voice during my many years working for the states, for my good friends Attorneys General Bill Sorrell and Roy Cooper.

Since the FTC was founded almost 100 years ago, we have relied on our partners in the states to help us carry out our mission to protect consumers as they navigate the marketplace and protect competition as it shapes the economy. But in today’s fast-paced, technologically advanced world, we depend on you more than ever.

Not, of course, that there were fewer scammers and thieves focused on consumers in 1914, when the FTC was founded. Then, out-of-town newspapers warned travelers to New York City to avoid “smooth gentlemen who sell the Brooklyn Bridge or sections of Central Park to guileless foreigners.”¹

One hundred years ago, however, a consumer who moved his wallet to his inside vest pocket, steered clear of dark alleys, and armed himself with a healthy dose of moral fortitude could probably navigate the marketplace intact.

Today’s crooks don’t just pick pockets – they pocket pictures, chat with children, purloin pin numbers, phish for passwords, and crush credit ratings. They operate online, on your smartphone, at your bank, at the doctor’s office, and in the schools.

It isn’t that there are more scammers now. There are just so many more avenues through which they can pursue their scams.

Today, those of us in government who are charged with protecting consumers have to adopt a multi-level, multi-pronged approach if we are going to build effective roadblocks to crooks on every one of those avenues. And that means we must connect, at every level of government, to deploy our resources and skills with maximum efficiency.

Last year, in a different venue, I talked about the teamwork, coordination, and fluidity that the FTC, the new Consumer Financial Protection Bureau, and the states must bring to our efforts in terms of Tinkers, Evers and Chance: the storied defensive trio who worked together seamlessly to turn miraculous double plays for the Chicago Cubs back at the turn of the last century. In 1910, Tinkers, Evers and Chance were lauded in a poem in the *New York Evening*

¹ *Newport (RI) Daily News*, Sept. 11, 1914, pg. 4,col. 1.

Mail, the most famous lines of which read:

These are the saddest of possible words:

“Tinker to Evers to Chance.”
Trio of bear cubs and fleeter than birds.
Tinker and Evers and Chance.

Interestingly, that oft-quoted stanza may qualify as the first tweet about a sporting event – it is exactly 140 characters!

As modern as that makes my double-play consumer protection metaphor, the outstanding achievements in consumer protection enforcement work of just a few weeks ago have rendered it incomplete. Federal agencies – under the leadership of the Department of Justice and the Department of Housing and Urban Development – and the State Attorneys General – under the leadership of Generals Miller, Madigan, Cooper, McKenna, Jepsen, Suthers and Bondi – cooperated as never before to reach last month’s historic mortgage settlement. So I can no longer only speak in terms of a double-play troika if I am going to capture the full essence of the synergy between the states and the feds.

And so, because I am a card-carrying sports fanatic – and with opening day only a month away – today I’ll take another page from the hymn book of what Annie Savoy, Susan Sarandon’s character in the quintessential sports movie, “Bull Durham,” called “the church of baseball.”

That movie told the story of the symbiotic and strategic relationship between pitcher and catcher, which can stand as our newest simile for the combine of the feds and the states, especially when it comes to matters of consumer protection.

In an article published in 1941 and called the “best ‘inside baseball’ essay” ever written, Moe Berg, major league catcher and coach, explored the dynamic between pitchers and catchers that, for him, defined the game. The pitcher, says Berg, has to throw “with enough on the ball to get the hitter out – that is his intention. Control, natural or required, is a prerequisite...he must have direction, not only to be effective, but to exist.”² What a perfect metaphor for the federal government’s consumer protection law enforcement efforts: throwing with everything we’ve got at a narrow strike zone, aiming to get our adversary out before this one scam, infraction, or crime becomes a multi-run homer that puts us all behind in the game.

And how interesting that Berg identifies “direction” as the attribute a successful pitcher – not should – but must have. The federal law enforcement machine endows us with tremendous power, and our national perch gives us great range, but without direction, our efforts will always miss the strike zone.

And that, of course, is where the catcher comes in. Berg says: “The catcher squatting

² *Atlantic Monthly* “Pitchers and Catchers,” September 1941. Available at http://www.loa.org/images/pdf/Berg_Pitchers_Catchers.pdf.

behind the hitter ... has the coign of vantage in the ball park. All the action takes place before him ...[he] has to be able to cock his arm from any position, throw fast and accurately to the bases, field bunts like an infielder, and catch foul flies like an outfielder. He must be adept at catching a ball from any angle, and almost simultaneously tagging a runner at home plate.”

How like the state AGs: you see the game unfold before you, you get everything thrown at you, and you are expected to play every position at the same time. You are the first to see and understand the cons and conmen working their way through the system, receiving and fielding consumer complaints about everything from home repair scam artists to deceptive telemarketers to mortgage servicers who engage in shady practices. Through your complaint handling and mediation services, you try to resolve each case, getting a refund here, requiring a contractor to complete work there, or stopping a foreclosure down the block. From your vantage point behind home plate, you often see problems consumers are facing before we do here in Washington.

As Hall of Famer and former Yankee manager Miller Huggins said: “A good catcher is the quarterback, the carburetor, the lead dog, the pulse taker, the traffic cop and sometimes a lot of unprintable things, but no team gets very far without one.”

I dare anyone to come up with a better description of a State Attorney General.

The Federal Trade Commission has long known the importance of teaming up with the states, especially when it comes to striking out the one set of hitters who seem to streak during an economic slump: those pursuing last dollar scams. These fraudsters, who often first pop up at the state level, promise financially disabled consumers relief but instead deliver only more pain in the pocketbook.

Over the last several years, the FTC has pursued a number of law enforcement sweeps against these swindlers – and in every case, we’ve followed the signals of the states, working together to throw exactly the right pitch. Because we have partnered so effectively, you are all familiar with the details of the cases, but let me review some of the highlights – a visit to law enforcement Cooperstown, if you will, so we can remember and celebrate just how effective we are when we are in sync:

- During “Operation Bottom Dollar,” announced in February 2010³ and “Operation Empty Promises,”⁴ announced in March 2011, the FTC and our state and local partners brought over 150 civil and criminal actions against those promising jobs of all sorts with no intention of delivering.
- In “Operation Health Care Hustle,” opened in August 2010, the FTC along with State AGs, insurance commissioners and other state players, brought 54 lawsuits and 24 regulatory

³ See *press release* FTC Cracks Down on Con Artists Who Target Jobless Americans (Feb. 17, 2010), *available at* <http://www.ftc.gov/opa/2010/02/bottomdollar.shtm>.

⁴ See *press release* FTC Steps Up Efforts Against Scams that Target Financially-Strapped Consumers (Mar. 2, 2011), *available at* <http://www.ftc.gov/opa/2011/03/emptypromises.shtm>.

actions against shady medical discount plans sold to the uninsured, the uninsurable, and the unemployed.⁵

- The FTC and the states launched nearly 250 enforcement actions in the past seven years against scammers who charged hefty fees to debt-burdened consumers to help them lower their credit card payments – help that never materialized.⁶
- And with nearly 500 enforcement actions and investigations by the FTC and the states between 2008 and 2010, we fought scammers who falsely promised loan modifications to consumers facing foreclosure or stuck in underwater loans.⁷
- Based on these cases, the FTC adopted rules that require debt relief⁸ and mortgage assistant relief providers⁹ to comply with a simple principle: they have to deliver on their promises before they can be paid. The State Attorneys General overwhelmingly supported our effort, calling the ban on upfront fees for mortgage relief outfits “the linchpin of effective deterrence of fraudulent practices...”

The FTC may have thrown the right pitch that got the, but it was our state AG partners who most often saw the scams as they developed, pursued the first cases, and called for the pitch that ultimately won the inning.

It should be no surprise then that our record falls far below .500 when we start waving your signals off. Back as early as 2003, federal regulators continually shook off the State AGs’ calls for fast balls against the increasingly risky loans – with exorbitant interest rates and fine-

⁵ See *Press Release* FTC, State Attorneys General, Insurance Commissioners Crack Down on Bogus “Medical Discount Plans” Peddled to the Uninsured, Uninsurable, and Unemployed (Aug. 11, 2010), available at <http://www.ftc.gov/opa/2010/08/hustle1.shtm>.

⁶ Telemarketing Sales Rule, Statement of Basis and Purpose, 16 C.F.R. Pt 310 (2010). See also the following cases: *FTC v. Credit Restoration Brokers, LLC*, No. 2:10-cv-0030-CEH-SPC (M.D. Fla. filed Jan. 20, 2010); *FTC v. Advanced Management Services NW LLC*, 10-cv-00148-LRS (E.D. Wash., filed May 10, 2010); *FTC v. Asia Pacific Telecom, Inc.*, No. 10 C 3168 (N.D. Ill. filed May 24, 2010); *FTC v. Dominant Leads, LLC*, No. 1:10-cv-00997 (D.D.C. filed June 15, 2010); *FTC v. Direct Financial Management, Inc.*, No. 10 C 7194 (N.D. Ill., filed Nov. 8, 2010); *FTC v. Residential Relief Foundation, Inc.*, 1:10-cv-03214-JFM (D. Md. filed November 19, 2010); *FTC v. Debt.com Marketing*, No. SACV10-01788 DOC (Rzx) (C.D. Cal. filed Nov. 22, 2010; stipulated final judgment entered Nov. 24, 2010); *FTC v. Financial Freedom of America, Inc.*, No. 3:10-cv-02446 (N.D. Tex. filed Dec. 2, 2010); *FTC v. Debt Consultants of America, Inc.*, No. No. 3:10-cv-02447 (N.D. Tex. filed Dec. 2, 2010); *FTC v. Media Innovations, LLC; Hermosa Group, LLC*, 8:11-cv-00164-RWT (D. Md. Jan. 20, 2011); *FTC v. Debt Relief USA, Inc., et al.* Case No. 3:11-cv-02059-N (N.D. Tex. Aug. 17, 2011); *FTC v. Christopher Mallett dba US Debt Care*, No.1:11-cv-01664-CKK (D.D.C., Sept. 14, 2011); *FTC v. Roy Cox, Castle Rock Capital Management, Inc.*, No. 8:11-cv-01910-DOC-JPR (C.D. Cal. Dec. 12, 2011); *FTC v. Premier Nationwide Corporation*, No. CIV 12 000 9 PHX GMS (D. Ariz. Jan. 3, 2011); *Credit Restoration Brokers*, 10-cv-00030 (M.D. Fla., Apr. 12, 2011).

⁷ Mortgage Assistance and Relief Services Rule, Statement of Basis and Purpose, 16 C.F.R. Pt 322 (2010).

⁸ Telemarketing Sales Rule, Final Rule Amendments, 16 C.F.R. Pt 310 (2010).

⁹ Mortgage Assistance and Relief Services Rule, Final Rule, 16 C.F.R. Pt 322 (2010).

print fees – pushed on consumers who couldn't afford them. Rather than working to find a way to empower the State Attorneys General to address predatory lending, the feds insisted that regulation of the banks should remain solely with the federal government. North Carolina Attorney General Roy Cooper characterized Washington's attitude back then as taking "50 sheriffs off the job during the time the mortgage lending industry was becoming the Wild West."

Reviewing, in retrospect, the predictable shellacking the economy took as sub-prime purveyors took base after base is as painful – for a Red Sox fan – as watching, again and again, the film footage of Bill Buckner letting an easy grounder go through his legs during the 1986 World Series.

In contrast, last month's historic robo-signing settlement demonstrates the best of what can be accomplished when the State AGs and federal law enforcement work together. It is clear that federal enforcers now recognize the playbook that works: the feds listen to the states, and together we design a strategy for a perfect game.

And now it is time to take that partnership into post-season play and address one of the next great consumer protection challenges of our day: protecting consumers' privacy in an arena in which more and more of our personal data is online and out of our control.

As befits a good catcher, the states have already studied the line-up we face and devised some sound strategies. More than 45 states have enacted data breach notification laws that encourage companies to build secure systems for data so the companies can avoid publicly acknowledging – after a breach – that they have treated their customers' personal information with indifference or incompetence.¹⁰

The FTC has been busy prepping in the bullpen as well. We have brought dozens of cases that have shut down unauthorized data sharing and collection online and across mobile platforms, and that have stopped firms from collecting and sharing children's information without their parents' consent. Just recently, we entered into consent orders with Facebook¹¹ and Google¹² that require those companies to obtain outside audits of their privacy practices for the next 20 years, protecting hundreds of millions of consumers in the United States and worldwide.

We also help shape the policies we enforce. In December 2010, the FTC issued a preliminary report on privacy that laid out basic principles that companies should follow to protect their customers' data; we expect to issue a final report any day now.¹³ One

10 National Conference of State Legislatures, *State Security Breach Notification Laws* (Mar. 5, 2012), <http://www.ncsl.org/issues-research/telecom/security-breach-notification-laws.aspx>

11 *In the Matter of Facebook, Inc., a corporation* FTC File No. 0923184 (2011).

12 *Google Inc., a corporation* FTC Docket No. C-4336 (Oct. 24, 2011) (consent order) available at <http://www.ftc.gov/opa/2011/10/buzz.shtm>.

13 See A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers (Dec. 1, 2010), available at

recommendation from the preliminary report, certainly the most commented on, was our call for the establishment of robust Do Not Track mechanisms that give consumers real information and choices about how their browsing data is collected and used. Individual browser companies, advertising industry groups, and a standard setting body are all working to create Do Not Track mechanisms, and I, for one, am both pleased with these developments, and closely watching as they unfold.

At the FTC, we are aware that protecting privacy in cyberspace is increasingly an issue of protecting privacy in the mobile space. Last month, we released a report on mobile apps for children.¹⁴ We found that in virtually all cases, neither app stores nor app developers tell parents what data apps collect from children, how apps share that data, and with whom. That has to change. No one has the right to keep parents from taking a firm hold of their child's hand as they cross the information superhighway.

We are making this pitch as hard as we can, and I am glad to say that the fine catchers at the California AGs office put their glove on it with no problem. California Attorney General Kamala Harris obtained, from the six companies whose platforms make up the majority of the mobile apps market, an agreement to display privacy policies for the apps they sell so consumers can review the policies before they purchase the apps – something most do not now do.¹⁵ Strike one!

I have every confidence that we will stay ahead of the count as we keep pitching and catching for consumers online. That 39 AGs recently called on Google to explain its new privacy policies shows we are not only on the same team – we are on the same page of a winning playbook.¹⁶

These have been hard times for American consumers. The economic downturn had saddled too many families with the misery of unemployment and foreclosure. The wave of technological innovations that has brought so many exciting ways to communicate and work and recreate has also threatened to inundate consumers seeking to keep their personal data private.

Protecting these consumers is not a game. But baseball has served as an analogy for American life since before apple pie. We at every level of government owe it to consumers to put aside egos and preconceived politics and plot out strategies that will get consumers'

<http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>.

14 See *Press Release*, Federal Trade Commission, FTC Warns Marketers That Mobile Apps May Violate Fair Credit Reporting Act (Feb. 7, 2012) available at <http://www.ftc.gov/opa/2012/02/mobileapps.shtm>.

15 See *Press Release*, Attorney General Kamala D. Harris Secures Global Agreement to Strengthen Privacy Protections for Users of Mobile Applications (Feb. 22, 2012) available at http://oag.ca.gov/news/press_release?id=2630.

16 See *Press Release*, Attorneys General Express Concerns over Google's Privacy Policy (Feb. 22, 2012), available at <http://www.naag.org/attorneys-general-express-concerns-over-googles-privacy-policy-attorneys-general-express-concerns-over-googles-privacy-policy.php>.

predators out for good. To turn one of my mother's favorite phrases around, it is not just how we play our game, it is whether we win or lose – because in these tough times American families should be able to count on us to sweep the series for them.

Thank you for your time. I look forward to working with you all in the months and years to come.