

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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March 2, 2010
Start: 1:12pm
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HELD AT: 250 Broadway
Hearing Room, 16th Floor

B E F O R E:
KAREN KOSLOWITZ
Chairperson

COUNCIL MEMBERS:
Charles Barron
Leroy G. Comrie, Jr.
G. Oliver Koppell
James F. Gennaro
Julissa Ferreras
Michael C. Nelson

A P P E A R A N C E S

COUNCIL MEMBERS:

Daniel R. Garodnick

A P P E A R A N C E S (CONTINUED)

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2 CHAIRPERSON KOSLOWITZ: Call this
3 meeting to order. Good afternoon. My name is
4 Karen Koslowitz and I'm the Chair of the Committee
5 on Consumer Affairs. Today, we'll be holding our
6 first hearing on Introductory Bill Number 6-A, a
7 local law to amend the Administrative Code of the
8 City of New York in relation to process servers.

9 I'd like to begin by acknowledging
10 the sponsor of the bill, Council Member Garodnick
11 and by recognizing the other Committee members in
12 attendance. Council Member Gardonick.

13 COUNCIL MEMBER GARODNICK: Thank
14 you very much. Is now the appropriate time for me
15 to say a few words--

16 [Crosstalk]

17 CHAIRPERSON KOSLOWITZ: -- finish
18 my statement and--

19 COUNCIL MEMBER GARODNICK: -- or
20 later? Okay. Got it. Thank you, Madam Chair.
21 Thank you for having me today.

22 CHAIRPERSON KOSLOWITZ: Council
23 Member Charles Barron--

24 COUNCIL MEMBER BARRON: Good to be
25 here. Thank you.

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2 CHAIRPERSON KOSLOWITZ: -- and
3 Council Member Leroy Comrie.

4 Consumer debt is a growing problem
5 in New York City. A 2008 report by MFY Legal
6 Services found that there were nearly 600,000
7 cases filed in New York City Civil Court in 2007;
8 three times as many as were filed in 2000.

9 Although debt collectors used to attempt to
10 contact the debtor via phone calls, letters and
11 offers to negotiate a payment plan, today's debt
12 collectors are going straight to New York City
13 Civil Court.

14 As in any Court case, to start a
15 debt collection case, the collector must notify
16 the debtor that a lawsuit has been filed against
17 him or her to collect the overdue debt.

18 Unfortunately, many debtors are never served
19 notice of the case and, therefore, do not appear
20 in Court to defend themselves, leading to a
21 default judgment in favor of the plaintiff
22 collector.

23 There are three ways a notice can
24 be delivered in New York State; personal service,
25 in which the notice is delivered in person;

1 substitute service, in which the notice is
2 delivered to a person of suitable age and
3 discretion at the person's workplace, residence or
4 dwelling in addition to being mailed to his or her
5 place of business or last known residence; and,
6 three, nail or mail service, in which the summons
7 is both mailed and physically posted to the
8 person's workplace, home or known dwelling.

9 Unfortunately, some process servers have adopted a
10 fourth illegal method known as sewer service or
11 the deliberate failure to deliver a summons
12 followed by a false affidavit of a successful
13 delivery.
14

15 Existing City law requires anyone
16 doing business as a process server to be licensed
17 by the Department of Consumer Affairs. Currently,
18 the only requirement to become a licensed process
19 server is to be fingerprinted for the purposes of
20 performing a criminal background check.

21 Intro 6-A seeks to increase
22 regulation and accountability of the process
23 server industry. It would divide the current
24 licensing category into two types of licenses; one
25 for individual servers and one for process server

1 agencies. Licensees would be required to post a
2 bond to cover the cost of any fines incurred or
3 any judgments received by a person who is a victim
4 of improper service. For individual process
5 servers, this bond would be \$10,000, unless they
6 are employed by a process server agency, in which
7 case, the agency would be required to post a bond
8 of \$100,000.
9

10 Intro 6-A would also ensure that
11 individuals who have suffered due to improper
12 service would have the right to make a civil cause
13 of action against the process server or process
14 serving agency to cover compensatory and punitive
15 damages, injunctive and declaratory relief,
16 attorneys' fees and costs and other appropriate
17 relief.

18 To provide additional documentation
19 that service is actually made at the correct time
20 and location, Intro 6-A would require that each
21 process server carry and operate an electronic
22 device, such as a global positioning device, while
23 serving process to record the date, time and
24 location of service.

25 Intro 6-A would also include a

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2 number of other measures to regulate the industry,
3 including requiring process servers and agencies
4 to retain their records for seven years and
5 requiring individual servers to pass an exam
6 administered by the DCA demonstrating
7 understanding of appropriate service of process.

8 I'll now turn the microphone over
9 to Council Member Garodnick, who has prepared a
10 few remarks about this bill.

11 COUNCIL MEMBER GARODNICK: Thank
12 you, Chair Koslowitz. And I think you did an
13 excellent job in describing what the bill does.
14 Let me just, for a moment, talk about why we are
15 endeavoring to create additional regulation here.
16 And I also want to thank you for holding the
17 second hearing on the bill.

18 I introduced the bill because,
19 according to a report by MFY Legal Services in
20 June 2008, entitled Justice Disserved, it became
21 clear that there have been too many instances
22 where New Yorkers were not properly served process
23 and consequently suffered great financial
24 hardship. Their attention to this matter signaled
25 that there is a problem with the system, as a

1 whole. It's not the result of rogue agency or
2 individual, but an industry that needs structure
3 and regulation, in my view.
4

5 Defendants who do not receive
6 proper notification of cases filed against them
7 and, ultimately, don't show up in Court, suffer
8 great consequences. Default judgments are entered
9 and often the first time that they know that a
10 case has been initiated against them is when they
11 find that their assets have been frozen or
12 creditors have garnished their wages causing a
13 great deal of financial and emotional distress.
14 And this practice, of course, is unacceptable in
15 our justice system. That's why there are rules
16 about what must be done under New York law for New
17 York cases, federal law for federal cases.

18 This legislation will put more
19 stringent regulations on process servers and
20 process serving agencies, so that litigants will
21 have more protection and process servers will have
22 a vested interest in ensuring that litigants are
23 properly served. As a result of this legislation,
24 I believe we'll be able to raise the standard of
25 the industry and ensure that there is

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2 accountability when things are not done properly.

3 So, I am glad that we are moving
4 forward on the second hearing, Madam Chair. And
5 I'll look forward to hearing the testimony today.

6 CHAIRPERSON KOSLOWITZ: Thank you.
7 We've also been joined by Council Member Oliver
8 Koppell. At this time, I'd like to call the
9 Administration, Commissioner Mintz, Andy Eiler.

10 [Pause]

11 JONATHAN MINTZ: Good afternoon.
12 Thank you for the opportunity. I'm joined on my
13 left by Andy Eiler, the Consumer Affairs
14 Department's Head of Legislative Affairs and on my
15 right, by Sandy Cohn, the Deputy General Counsel
16 for the agency.

17 I appreciate the opportunity to
18 appear before you this morning to comment on Intro
19 Number 6, a bill that I believe is a game-changer
20 when it comes to regulating the process server
21 industry in the City to protect New Yorkers. We
22 thank Council Member Garodnick, the bill's prime
23 sponsor, for bold and visionary protections that
24 he's proposed for New Yorkers, whose lives, as
25 you've said, Madam Chairman, have been turned

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2 upside down when they can really least afford it
3 by ruinous judgments resulting from stealth
4 lawsuits initiated by false or improper service of
5 process. So, we commend the Chair and the
6 Committee for making this issue, also, by the way,
7 one of your first orders of business. I think it
8 sends a great signal.

9 We're pleased to have had the
10 opportunity to work with Council Member Garodnick
11 and his staff to strength an already tough bill,
12 which is sorely needed to protect consumers from
13 the fraudulent service of process known as sewer
14 service. Sewer service, obviously, doesn't happen
15 all the time, obviously. But it is an all too
16 common practice, where servers fail to properly
17 serve the papers to the intended recipient with
18 the notice that he or she has been sued and then,
19 compounding that abuse, by falsely claiming to
20 have actually served those papers.

21 While utilized in many types of
22 cases, sewer service is particularly pervasive, as
23 you noted, in consumer debt collection cases,
24 depriving victimized consumers of the opportunity
25 to respond and defend themselves against

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2 creditors' claims that are frequently incorrect in
3 the first place or even entirely false. The
4 consequences of these predatory practices are
5 dire. As Council Member Garodnick, himself, has
6 noted, they wreak the greatest financial harm
7 among the tens of thousands of people who are sued
8 for debts that they may or may not owe and who
9 only learn that they've been victimized when they
10 suddenly find, as you noted, Madam Chairman, that
11 their wages have been garnished or their bank
12 accounts have been unexpectedly frozen because of
13 a lawsuit of which they were unaware and,
14 therefore, defaulted.

15 The recent study, Justice
16 Disserved, well documents the scope and nature of
17 sewer and other types of improper service, as well
18 as the financial devastation such service creates
19 for consumers who are thereby deprived of the
20 chance to defend themselves against what may be
21 claims for payment that are false, improper or
22 incorrect. This has become an ever increasing
23 problem with the rise of the debt buyer industry,
24 whose members purchase old and often stale debts
25 and use assembly-line techniques to run them

1 through the Courts to obtain judgments for amounts
2 that consumers often don't owe.

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4 The Department's heightened concern
5 about this industry was triggered by an 18% spike
6 in the number of complaints docketed against debt
7 collection agencies between fiscal '06 and fiscal
8 '07. And, as a result, at that time, the
9 Department conducted a series of proactive
10 initiatives to take a closer look at the debt
11 collection and process server industries.

12 So, first, DCA held a public
13 hearing in June of '06 on the debt collection part
14 of the industry, highlighting a number of
15 predatory and illegal practices. The Department
16 learned that technology had really compounded the
17 traditional debt collection abuses by providing
18 too easy of a pathway for the debt collection
19 industry to file cases and obtain judgments
20 against the growing numbers of alleged debtors who
21 became entangled in and then, allegedly defaulted
22 on their credit contracts.

23 DCA's public hearing on process
24 server practices was held in June of '08. And it
25 provided us with firsthand testimony from

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2 consumers, advocates, Judges and process server
3 agencies, as well as individual process servers,
4 who, themselves, underscored, loudly and clearly,
5 a primary and critical area of reform in process
6 server practices. The need to improve and update
7 current requirements for documenting that the
8 process server indeed served process as claimed.

9 DCA has opened investigations and
10 issued subpoenas to 117 individual process servers
11 and agencies. Referrals for these investigations
12 came from Civil Court Judges, attorneys and
13 consumer complaints. DCA's developed direct
14 evidence of sewer service by some process servers
15 through its investigative work, following process
16 servers during their rounds and then, comparing
17 their logbook records to the actual locations that
18 we witnessed them visiting in the field.

19 Since December of '08, we have
20 served charges on 53 individual process servers;
21 47 of those proceedings have been settled or
22 tried, resulting in the revocation of nine
23 licenses, the assessment of approximately \$25,000
24 in fines and the imposition of extensive
25 injunctive relief in 37 cases. Six cases remain

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2 pending in DCA's tribunal and we anticipate that
3 many more cases will be brought in the future
4 against these process servers.

5 Additionally, the practice of
6 process server agencies are under close scrutiny
7 by the Department. The rise in the number of
8 docketed complaints against debt collection
9 agencies, unfortunately, has continued. By fiscal
10 '08, docketed complaints catapulted that industry
11 into first place on DCA's list of top five
12 complaint categories, with complaints increasing
13 from 908 in fiscal '06 to 1,266 in fiscal '08.
14 Sad to say, the debt collection industry remains
15 in first place when it comes to the consumer
16 complaint experience.

17 Last year, the Council enacted
18 legislation signed by the Mayor in March of '09,
19 to curb abusive debt collection practices that
20 included proposals DCA had formulated based on its
21 findings at its public hearing on debt collection
22 practices. The new law, together with DCA's soon-
23 to-be-published rules, will make a huge difference
24 in consumer protections from predatory debt
25 collection practices. But, it is only the first

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2 step in the battle that DCA is waging, in
3 collaboration with the Council, to protect
4 consumers, especially during this economic
5 downturn.

6 Protecting consumers against the
7 abuse of sewer service and other equally
8 misleading and improper service of process goes
9 hand-in-hand with protecting consumers against
10 abusive debt collection practices. Putting an end
11 to the illegal practices of process servers hired
12 by debt collection agencies, when they use
13 judicial rather than non-judicial process to
14 collect debts from consumers, is the necessary
15 next step to prevent consumers from being abused
16 by the debt collection industry.

17 Intro 6-A responds directly to that
18 need and does even more. It significantly impacts
19 the practices of the 2,081 individual process
20 servers and the 143 process server agencies the
21 Department currently licenses by putting in place
22 a roster of smartly tailored incentives and
23 penalties that are aimed in encouraging and
24 promoting effective service of process.

25 The key measures include the

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2 requirement that process servers carry and
3 operate, at all times, while engaged in the
4 licensed activity, a low-cost electronic device
5 that will independently verify the time, a place
6 and location of service or attempted service a
7 process server claims to have made. The
8 requirements for using an electronic device have
9 been very carefully circumscribed so that it
10 tracks the process server only when he or she is
11 serving process or attempting to serve process.
12 Since the device is not required to be operational
13 at any other time, it would not otherwise either
14 track or record the location of the process
15 server. The device only verifies the location of
16 the process server as of when he or she is already
17 required by law to document such activity.

18 Next, the requirement that all
19 agencies who assign process for service within the
20 City be licensed, ensuring that anyone responsible
21 for serving process to New York residents can be
22 held accountable under the City's licensing law.

23 Also the requirement that process
24 servers maintain electronic records created by
25 electronic devices, ensuring that the records of

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2 service or attempted service can be effectively
3 monitored and audited to verify the truthfulness
4 of the process server's claims. Electronic
5 verification of service does not substitute for
6 the logs and affidavits of service process
7 currently required to maintain and file; but,
8 rather supplements those paper records, providing
9 an independent basis for verifying the
10 truthfulness of the claims that are made. It is
11 extremely difficult, if not impossible, to verify
12 self-serving claims noted in written records, a
13 problem which, by itself, does the most to
14 perpetuate sewer service. An electronic database
15 will be one of the most important and effective
16 tools for identifying and eliminating sewer
17 service.

18 Finally, the requirement for
19 training and testing process servers, as well as
20 preparing and distributing educational materials
21 to the servers, ensuring that they're fully aware
22 of the legal requirements for, and their
23 obligations to, serve process. While the
24 Department would need to identify additional
25 resources to effectuate this provision, these

1 requirements buttress the obligation the bill
2 imposes that process servers and process server
3 agencies follow all City, State and Federal laws
4 that apply to the service of process.
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6 Taken together, these critical
7 legislative requirements vastly strengthen the
8 process server licensing law, giving consumers
9 hope for the first time that sewer service will be
10 an abuse of the past. The remaining provisions of
11 Intro 6, relating to bonding and the right to sue
12 process servers who fail to make proper service,
13 further bolster consumer protections by enabling
14 consumers to be made whole when they are not
15 properly served and sustained financial harm.

16 But it is the bill's requirement
17 for electronic verification of service of process,
18 along with the other measures highlighted above,
19 that will create a sea change when it comes to
20 protecting consumers. The Administration,
21 therefore, wholeheartedly supports the enactment
22 of this far-reaching effort to stem the tide of
23 predatory process server practices that have, for
24 far too long, deprived consumers of their day in
25 Court to defend themselves against unfounded, if

1 not false, and fraudulent, claims.

2 We will look forward, not only to
3 the bill's swift enactment, but also to continuing
4 to work with its proponents and with the Council
5 to protect consumers in debt against the abuse.
6 Thank you. I'm happy to answer any questions.

7 CHAIRPERSON KOSLOWITZ: Thank you
8 very much. You may have mentioned it, but I'm
9 sorry I was distracted. How many process servers
10 are there?
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12 JONATHAN MINTZ: We license just
13 over 2,000 individual process servers and 143
14 agencies.

15 CHAIRPERSON KOSLOWITZ: Okay. And
16 is there any way that DCA can improve the
17 oversight of these agencies and--

18 JONATHAN MINTZ: [Interposing]
19 Yeah, pass the bill. Yes, I mean, you know,
20 listen, I want to reiterate what I said and this
21 is true in a number of industries that we regulate
22 where there's so much harm. There are plenty of
23 process servers who do a great job and who pride
24 themselves in doing the right thing.
25 Unfortunately, as you've noted, the problems of

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2 sewer service are both too significant and the
3 harm done too vast to not really step up and do
4 something that I know the Council only does when
5 something is really important, which is to step in
6 and enact additional requirements.

7 I think that the ability to
8 literally prove whether or not a process server
9 was where they said they were is a completely
10 different approach to sewer service. It's a
11 factual representation that makes us move beyond,
12 essentially, the honor system in this industry,
13 which has failed.

14 CHAIRPERSON KOSLOWITZ: Do you
15 audit any of the books of process servers?

16 JONATHAN MINTZ: We do. We do
17 conduct audits. We have conducted several, as I
18 outlined in my testimony. I would note, it is an
19 extremely laborious process when the records are
20 not electronic. That's a significant problem if
21 you're really going to do a good job. And, in
22 addition, at the end of the day, when somebody has
23 written down in the logbook that they were in a
24 particular place at a particular time, the ability
25 to prove that they weren't, if that's, in fact,

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2 what happened, is extraordinarily difficult, if
3 not nearly impossible, under the current law.

4 CHAIRPERSON KOSLOWITZ: Okay.

5 Thank you. Council Member Garodnick.

6 COUNCIL MEMBER GARODNICK: Thank
7 you very much, Madam Chair. I will be brief.
8 Commissioner, we thank you for your in-person
9 testimony today. And you made an important point,
10 which I neglected to make in my opening, which was
11 the fact that this is the number one complaint
12 that you all get and that the complaints have
13 risen and risen over time, particularly in the
14 last five to six years. And so, I wanted to focus
15 just a couple of questions on the, essentially,
16 the change in the bill since the last hearing.

17 You identified the electronic
18 device portion as one of the game-changing
19 elements of the bill. And I wanted to just make
20 sure that we talk about this for a moment because
21 a lot of people, myself included, would have some
22 hesitation, as a general matter, about electronic
23 devices, electronic tracking in employment in any
24 situation, really. Explain to us, if you could
25 put a little more meat on the bones here, as to,

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2 one, why that is important; and two, why the, you
3 know, the civil liberties considerations that one
4 might ordinarily have might not be present here.

5 JONATHAN MINTZ: I'd be happy to.

6 So, first, in terms of why it's important. At the
7 end of the day, what we are trying to do with the
8 regulation of the process server industry, at the
9 end of the day, is to make sure that, in fact, the
10 process servers properly served the process or did
11 the proper attempt to serve the process then led
12 to the nail and mail. And, at the end of the day,
13 it's a question of were they there or not. There
14 are all sorts of incentives and disincentives and
15 fines and threats that exist in the current law
16 and that can always be beefed up. And some of
17 them are terrific.

18 But, at the end of the day, it
19 still comes down to whether or not either an
20 auditing enforcement agency, a Court in a traverse
21 hearing, or an individual consumer in their own
22 efforts to protect themselves, can actually prove
23 whether or not somebody was there. The ability to
24 essentially operate on the honor system in the
25 current law, to write down yes, I was there,

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2 offers virtually no protective. Electronic
3 verification is, as I say, a sea change in
4 offering the best possible protection.

5 The civil liberty concern I think
6 is an important one to address. I lay out a
7 couple of bullets. First, I want to remind
8 everybody that it is already a requirement in the
9 law that a process server swear to their location
10 when they are serving process. That is part of
11 doing business. And it's, obviously, a critical
12 component of these protections. People don't have
13 due process of the law if they don't realize that
14 actions have been initiated against them. So,
15 their role in making due process possible has led
16 to, here and anywhere in the country, the
17 requirement that process servers swear to the
18 location and when they were there.

19 The ability to take, in a sense, an
20 electronic verifying snapshot of that merely
21 updates the current legal requirement and is not
22 anything more than that. This isn't a homing
23 device, you know, strapped to the back of a
24 process server. This is, in many cases, a
25 telephone or a Blackberry or a camera that you log

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2 in and press the button and say here I am, you
3 know, identify my coordinates and the time. This
4 should square with what I'm writing down in the
5 log. And that's it.

6 It's not going to know where you
7 are in between process serving. It's not going to
8 know where you are for lunch, you know. It's
9 purely about taking that momentary snapshot saying
10 I am where I'm supposed to be. I am verifying
11 that I am where I am writing down in the log as
12 the law requires. And for those process server
13 businesses and individuals who pride themselves on
14 good service of process, this is a way to protect
15 their good name, as well, to verify that they did
16 what they said they did.

17 COUNCIL MEMBER GARODNICK: That
18 last point was the one I was just going to ask,
19 which was doesn't it also help, for somebody who
20 wanted to challenge the legitimate service of
21 process, being able to show with legitimacy and
22 some conclusive facts that you were present, sort
23 of helps the process of showing that process was
24 actually made in that location?

25 JONATHAN MINTZ: Absolutely.

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COUNCIL MEMBER GARODNICK: Okay.

Well, I think the civil liberties point about due process and how, if you do not have a notification of the fact that a lawsuit has been commenced against you, there are civil liberties issues deeply present in that fact. And that, truly, is what we're trying to get at here. That's the root of it. So, I'm glad you made that point.

On the subject of the electronic records and how that will assist DCA in doing audits down the line. Can you say a little bit more about that?

JONATHAN MINTZ: Well, I'd like to pretend that I have, you know, 4,000 investigators back at the office who, whenever we get wind that there might be a problem with a process server, can, you know, spend the next three weeks pouring through everybody's records and, you know, that's not true. In fact, we don't have that kind of resources. And so, if you're really going to dig deep and figure out whether a process server or process server business is doing the right thing, it's a very labor-intensive process. It's a labor-intensive process for us. It's also a

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2 labor-intensive process for a Court that is
3 conducting a traverse hearing.

4 I think that one of the reasons
5 that there are a woefully low number of traverse
6 hearings currently happening is because, in many
7 ways like us, the Courts know that the hill they
8 have to climb to truly investigate a litigant's
9 claim that they were never served is very
10 significant. Having electronic records, updating
11 current requirements, again, it's not a new
12 requirement, allows you to quickly get the data.
13 And, again, any process server industry that
14 stands behind its work would have nothing to hide
15 and, in fact, would want to prove to the Court or
16 to their clients or to the litigants, that they
17 had done exactly that. Electronic records makes
18 it possible to do that and we believe will assist
19 the Courts in their receptivity to the claims by
20 litigants that they never were served process.

21 COUNCIL MEMBER GARODNICK: Thank
22 you. And the last question I had for you was on
23 the subject of the training and testing and the
24 regulations that are in place today relative to
25 those which we would be putting in place with this

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2 legislation. At the last hearing, it became very
3 clear to most of us that there really was not much
4 that you needed to entertain to be able to be a
5 process server in the first instance. I gave a
6 few hypotheticals as to whether I could show up
7 with a, you know, my basic, I forgot what number
8 of dollars it was, and just get ready to go. And
9 the answer was, essentially, yes today.

10 Help us understand and contrast the
11 rules today about what you would need to do to
12 become a process server and what you would need to
13 under this legislation.

14 JONATHAN MINTZ: In many instances,
15 we license 57 different industries, in many
16 instances, the license can serve as, in essence,
17 an after-the-fact accountability. It may not
18 necessarily be hard to get the license. But it is
19 the tool that we have should a licensee not behave
20 accordingly. In other instances, there are
21 categories where there is a higher bar to entry.
22 Currently, as you noted, process servers have a
23 relatively low bar to get a City license. There's
24 a fingerprint background check. There's some
25 questions of basic accountability. Are they who

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they say they are?

The proposal in this bill to require pass a test, and I believe the language suggests both when they get a new license and when they renew, would ask of process servers that they were both fully cognizant of the legal requirements to do a good job at the first instance, which is obviously a terrific idea, but would also keep them current because, to the extent that the law was updated or changed or there were key findings in the Courts that impacted upon how they did their work and what was required of them, it would be part of their process of training.

And so, while, as I noted in my testimony, I'll be working with you to identify resources to help develop and administer this test, I think that it will go a long way toward making sure, again, that people who enter the industry and who take on the public duty of serving process from a Court, should know what they're doing.

COUNCIL MEMBER GARODNICK: And just to be absolutely clear about that. Today, if I

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2 wanted to become a process server, it would be a
3 fingerprinting background check and a small fee,
4 but no additional information to me about what the
5 rules are for serving process?

6 JONATHAN MINTZ: That's right.

7 Process servers now is one of the many industries
8 we regulate where the bar to entry is,
9 essentially, are you who you say you are, such
10 that you can be held accountable in the future.
11 And, in this category, do you have an
12 inappropriate criminal background.

13 COUNCIL MEMBER GARODNICK: Right.

14 Well, that's one of the reasons why I think that
15 this bill is so important because when you're
16 dealing with an industry which affects so many
17 people's lives and can actually ruin people's
18 lives, we need to make sure that all of this
19 information is out there; that it's provided at
20 the outset and that we take additional steps,
21 which we're taking today.

22 So, I want to thank you,
23 Commissioner, for your support of the bill. And,
24 Madam Chair, I have to apologize. Just very
25 briefly, I have to call the Technology Committee

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2 to order downstairs for a vote. But I will be
3 back in a moment. I also want to invite Council
4 Member Koppell, at some point, if he wishes to
5 vote on the legislation downstairs, as a member of
6 that Technology Committee. But I will be back and
7 I thank you for your testimony.

8 CHAIRPERSON KOSLOWITZ: Thank you.
9 I just want to say that Council Member Gennaro had
10 come in. There's a lot of Committee meetings
11 going on today. In fact, I'm supposed to be at
12 Education. But, of course, I'm going to be here.
13 So, I just want to acknowledge you're going to see
14 Council Members coming and going. And they know
15 that they're coming and going.

16 Council Member Oliver Koppell.

17 COUNCIL MEMBER KOPPELL: Thank you,
18 Madam Chair. I concur that we need to do
19 something here. And I concur that the testing and
20 education requirements make sense. I have no
21 problem with that. But I have some questions, and
22 perhaps concerns, about some of the other
23 provisions.

24 First of all, on the electronic
25 verification, are we sure, are you sure, that we

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2 have a simple system that doesn't require either a
3 large investment or that may be difficult to
4 operate? I mean, are we, you know, you're asking
5 people to get electronic equipment. How much is
6 it going to cost? And are you sure that it's
7 fully tested and available?

8 JONATHAN MINTZ: I'm glad you asked
9 that question. I think that's important. The
10 answer is I'm completely sure. The devices
11 themselves range in cost, depending on the service
12 that you have, between zero and \$300. You could
13 be talking about a cell phone. You could be
14 talking about a Blackberry at one end of the, you
15 know. So, the cost of the device is minimal and,
16 in some cases, zero. The cost of the monthly
17 service is about 30 bucks a month.

18 And the ability to do it and sign
19 up and get it moving is near instantaneous. And
20 one of the ways that we know that is because,
21 recently, and this was written about several
22 months ago, the Department of Buildings
23 instituted, essentially, this process for their
24 buildings inspectors. So, it's happening already
25 at a massive level. I have been briefed by the

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2 Commissioner and his staff on that process. It
3 was simple and cheap and works perfectly.

4 COUNCIL MEMBER KOPPELL: Okay. So,
5 if I have a cell phone, I'm serving the process.
6 Now, I arrive at the office, let's say, of the, or
7 the home, let's say, of the individual involved.
8 What do I do then?

9 JONATHAN MINTZ: In a sense, what
10 you'll do is you'll have, you or your employer,
11 will have a contract with probably a system called
12 TeleNav, which can serve a range of different
13 service providers. And, basically, what you do is
14 you'll get to the place you're supposed to be.
15 You'll take your device, you'll sign in, put in
16 the identifying information, maybe it's the docket
17 number of the case, and you'll press enter. And
18 it's done. It's very simple.

19 COUNCIL MEMBER KOPPELL: And
20 there's one or more than one company that will--
21 that do this for you.

22 JONATHAN MINTZ: That's correct.

23 COUNCIL MEMBER KOPPELL: What? One
24 or more than one? That's a question.

25 JONATHAN MINTZ: Oh, sorry. I know

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2 of at least one. It serves multiple providers. I
3 believe there are others, as well. There is more
4 than one, I'm confirmed.

5 COUNCIL MEMBER KOPPELL: So,
6 there's more than one provider you can sign up
7 with and it's only about \$30 a month.

8 JONATHAN MINTZ: That's right.

9 COUNCIL MEMBER KOPPELL: You're
10 sure of that?

11 JONATHAN MINTZ: I am sure.

12 COUNCIL MEMBER KOPPELL: Okay.
13 Well, that's of concern to me. If that is not
14 true and there are people here who seem to be
15 chuckling, so I'd like to know that.

16 The other thing that concerns me is
17 the bonding requirement. I'm a lawyer in
18 practice. And I've, recently, discovered that the
19 practices with respect to bonding have changed
20 markedly, maybe 'cause of the recent financial
21 crisis. And now, for most bonds, they require
22 100% cash deposit, for most bonds. So, that means
23 that if an individual wants to be a process server
24 independently, they have to really come up, unless
25 you tell me differently, with \$10,000. And if

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2 they want to run a small process serving, well,
3 any process serving agency, but I'm concerned
4 about the small one, \$100,000. That's a fairly
5 strong problem. And, for some people, may even be
6 difficult to do it even with the cash. I know
7 with home improvement contractors, and I'm not
8 that familiar with this, but I know that there's
9 some alternative bonding scheme that's set up so
10 if you can't get a bond from a commercial bonding
11 place, the City has a provision. Is there
12 anything like that here?

13 JONATHAN MINTZ: Good memory. In
14 the home improvement contracting scenario, we have
15 an alternative to a bond, which is a trust fund.
16 And they can pay a smaller amount of money just up
17 front into that trust fund. The current bill does
18 not include a trust fund option. The questions
19 that you raise about the bond I think could
20 probably be directed to the sponsor and his staff,
21 who proposed the bond in the first place. I don't
22 know about what a market would be in this context.
23 But I suspect the sponsor would.

24 COUNCIL MEMBER KOPPELL: Well, what
25 about, I mean, do you think that a bond is

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essential as part of this bill?

JONATHAN MINTZ: The way a bond works is that when a consumer has come forward to complain and when their complaint has been borne out as true and when the licensee has, essentially, disappeared, then the bond is used to try to make that consumer whole.

Unfortunately, in the process server scenarios, up until now, not a lot of consumers have stepped forward and realized that their rights were abrogated or that there was some place they could go. As I mentioned in my testimony, Courts have not been hugely welcoming of cries from litigants that they needed a traverse hearing to discuss whether or not service of process actually occurred. And so, the Department has not had, at the top of its list of concerns, how do we help make these consumers whole when licensees fly the coop.

That having been said, if this bill is passed and it makes it easier for consumers to prove their claim that they were not, in fact, served, then I think the need for a bond would increase.

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2 COUNCIL MEMBER KOPPELL: Well,
3 thank you for that. Madam Chair, I have
4 considerable concerns about the bonding
5 requirement because it's a considerable barrier to
6 entry to have to put up \$10,000 for an individual
7 or \$100,000 for a small business. And I think
8 that we ought to rethink this bonding requirement.
9 Perhaps a lesser bonding requirement or perhaps a
10 bonding requirement even related to the amount of
11 business that a process server does might be
12 something that we might consider.

13 But, you know, we always talk about
14 we want to encourage people to get involved in
15 small businesses and we want to encourage
16 entrepreneurship. This is a big discouragement.
17 If you say to someone well, you want to be a
18 process server. It's a great thing you can do.
19 You don't, you know, I don't mind having them pass
20 a test. That's fine. But then, to say, you know,
21 you got to put up \$10,000, and that's \$10,000
22 you're going to put away and you're never going to
23 see it. It's going to be always put somewhere, or
24 \$100,000 if you're going to run a small business.
25 That's a big barrier to entry. And I think we

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2 ought to think long and hard. I, personally, at
3 this moment in time, would not support this bill
4 if it had such a stringent bonding requirement,
5 unless there was something like for the home
6 improvement contractors that they could get some
7 sort of protection for a lower amount of money.

8 CHAIRPERSON KOSLOWITZ: Okay. All
9 right. Please, no applause.

10 COUNCIL MEMBER KOPPELL: I have to
11 go to this other meeting that Mr. Garodnick
12 mentioned.

13 CHAIRPERSON KOSLOWITZ: Okay.

14 COUNCIL MEMBER KOPPELL: So, I'll
15 try and come back. But I also have to go to
16 Education, as you know.

17 CHAIRPERSON KOSLOWITZ: Council
18 Member--

19 COUNCIL MEMBER KOPPELL: I ask my
20 counsel to stay.

21 CHAIRPERSON KOSLOWITZ: Okay.
22 Council Member Comrie.

23 COUNCIL MEMBER COMRIE: I want to
24 second my concerns about the bonding process.
25 That would be a cash up front payment to DCA, the

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bond itself?

JONATHAN MINTZ: Well, not necessarily. Again, I don't know whether or not-- there is no current bonding requirement. And so, I have no history to speak of of what the bonding market would be, whether or not--

COUNCIL MEMBER COMRIE:

[Interposing] What's the bond for home contractors? Do they pay that up front to you?

JONATHAN MINTZ: No. They, in fact, are able to pay a certain amount down to get the bond. There's a market. It's not a one-for-one. It's not a one-for-one experience.

COUNCIL MEMBER COMRIE: It's not a one-to-one experience.

JONATHAN MINTZ: That's right.

COUNCIL MEMBER COMRIE: So, they would have to come up with \$10,000 cash is what you're saying.

JONATHAN MINTZ: In that context--

COUNCIL MEMBER COMRIE: Or, 100,000.

JONATHAN MINTZ: -- they don't. Again, I have no way to guess what a bonding

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2 market would be in a new industry requiring
3 bonding.

4 COUNCIL MEMBER COMRIE: Hmm.

5 JONATHAN MINTZ: It may be that the
6 bill's sponsor, who proposed the bond, might have
7 some more information than I do.

8 COUNCIL MEMBER COMRIE: Oh, well,
9 he's not here. So...

10 JONATHAN MINTZ: Right. That's why
11 I said it.

12 COUNCIL MEMBER COMRIE: I should
13 have realized that, Commissioner. Okay. Well, I
14 have the same concerns about the need for that
15 much money. And I think, as Council Member
16 Koppell said, the requirement to tie it into the
17 actual amount of work done seems to make sense to
18 me so that it could be tied into the actual amount
19 of opportunity or activity that a agency or
20 individual has.

21 JONATHAN MINTZ: If I could, if you
22 don't mind, if I could just throw in real quickly.
23 There are practical concerns about that version of
24 the proposal we could discuss. It would be quite
25 difficult, if not impossible, for licensing

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personnel to make that assessment.

COUNCIL MEMBER COMRIE: If you did it on the last three years of activity for a business or an individual based on their income tax files. You could pretty much lock it in from there.

JONATHAN MINTZ: My guess is you may find that the industry is less interested in showing us their tax forms.

COUNCIL MEMBER COMRIE: Hmm.

JONATHAN MINTZ: But, you'll see.

COUNCIL MEMBER COMRIE: Well, you're talking about creative accounting.

JONATHAN MINTZ: Right, there you go.

COUNCIL MEMBER COMRIE: Okay. Just my other concern, you said that there is equipment that is already being done, utilized by TeleNav. What proof do you have that this equipment is...

JONATHAN MINTZ: Well, TeleNav is the system. And you can subscribe to the system the way you subscribe to cell phone service.

COUNCIL MEMBER COMRIE: Okay.

JONATHAN MINTZ: And that system

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2 can serve a number of different providers, an AT&T
3 phone, a Sprint phone, Blackberry. And, again, as
4 I say, this isn't theoretical. It's happening
5 around the country. And, most locally, it's
6 happening with all of the Department of Building's
7 inspectors. This is what they do at every single
8 one of their inspections. And the flipping of the
9 switch, as it will, by the Buildings' Commissioner
10 to make this happen, was incredibly simple, very
11 quick and has been problem-free.

12 COUNCIL MEMBER COMRIE: Okay. So,
13 it's been tried and field tested successfully and
14 it's used in other jurisdictions.

15 JONATHAN MINTZ: That's right.

16 COUNCIL MEMBER COMRIE: Okay. And
17 also you said that the-- you talked about the need
18 to be able to have a traverse hearing and the
19 reluctance of bringing forth traverse hearing.
20 But you never describe for the general public what
21 a traverse hearing is.

22 JONATHAN MINTZ: A traverse hearing
23 is a hearing, if you find yourself in the middle
24 of a lawsuit and you, as a litigant, a consumer,
25 for example, feel that you were not properly

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2 served with the papers, if there was a default
3 brought against you and you claim the reason for
4 the default was you never knew, if there was some
5 other service of process that was critical to the
6 way the suit was moving forward, you would make a
7 claim to the Court that you weren't properly
8 served and that nothing should happen until this
9 question of your due process rights are litigated.
10 That conversation, that hearing, is called a
11 traverse hearing.

12 Unfortunately, consumers don't
13 always know to be able to step forward and call it
14 that. Courts aren't always all that excited about
15 picking up on the signals they're getting from the
16 litigant that that might be the problem. And so,
17 there aren't, frankly, enough traverse hearings
18 because they are so difficult. With the passage
19 of Intro 6-A, I believe it would change that
20 calculation and go a long way toward helping the
21 Courts make sure that the hearings in front of
22 them involved everybody's due process rights.

23 COUNCIL MEMBER COMRIE: So, right
24 now, a consumer is dealing with a loss of income
25 due to their bank account being seized,

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through the roof.

And the primary problem is not that they're not being nice when they're making the phone calls, although that's illegal. The primary problem is they're collecting on debts that aren't actually owed. And the way the economy is pressuring creditors and the technology that has made it easy for the debt collection industry and its spin off the debt buyer industry to have a machine of lawsuits that they use, rather than even bothering to make the phone calls and figure out whether a debt is owed, has just created this massive problem for people that they have nothing to do with.

I mean, I, myself, have been contacted by a debt collector for a debt I didn't owe. And, you know, I was able to short circuit that process. But, if you don't know that there is that process, you can't short circuit it. And so, the idea that people's bank accounts are being frozen because they never knew of a lawsuit is terrible, particularly when you add in that the common experience is they often have nothing to do with the debt.

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COUNCIL MEMBER COMRIE: Um-hm.

JONATHAN MINTZ: It's ridiculous.

And so, that's why I think this is so important.

COUNCIL MEMBER COMRIE: So, right now, DCA doesn't have any mechanism to help those consumers? They have to, you said, go get a lawyer or get a nonprofit to help them.

JONATHAN MINTZ: The first line of attack is trying to deal with the Court, that's right, is for those litigants to try to deal with the Court. And that involves a lawyer. It's difficult.

COUNCIL MEMBER COMRIE: Okay. And, on the other hand, if you're a process server company, can you go to DCA to get the records to prove that you delivered a service?

JONATHAN MINTZ: Yes. In fact, many times we have both sides, both the process servers-- well, the process servers have their own records. But they'll, you know, come to us to submit proof for them to the Court that they're properly licensed, which is important. Consumers will sometimes come to us and ask us to help demand the records from the process servers to

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prove the process.

The truth is, in this case, no matter how interventionist the Department can be, it's always reactionary. And so, that's why I think strengthening the hand of the Courts to handle it in the first instance is the smartest, most efficient way to staunch the bleeding as quickly as possible.

COUNCIL MEMBER COMRIE: And how long do these records have to be saved for?

JONATHAN MINTZ: The bill calls for seven years, which I think is appropriate.

COUNCIL MEMBER COMRIE: How long is it saved for now? How long are they saved for now?

JONATHAN MINTZ: I believe it's three years.

COUNCIL MEMBER COMRIE: Three years. Okay. But, isn't most consumer debt held against you for seven years - - ?

JONATHAN MINTZ: We're--

COUNCIL MEMBER COMRIE: I don't recall.

JONATHAN MINTZ: We might be

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2 talking about two different things. There are the
3 records that debt collectors are required to keep.

4 COUNCIL MEMBER COMRIE: Right.

5 JONATHAN MINTZ: And there are
6 records that process servers are required to keep.
7 The process servers are currently required to keep
8 the records for three years. This bill would
9 suggest, it would move it to seven years, which I
10 think is appropriate. And, as you say, squares
11 better with the debt collection experience that is
12 usually part and parcel with the process server
13 problem.

14 COUNCIL MEMBER COMRIE: Okay.

15 Thank you. Thank you, Madam Chair. I do want to,
16 again, align myself with the concerns that Council
17 Member Koppell raised regarding the amounts of the
18 bonding and how that could be mitigated. While I
19 understand the need and I have constituents that
20 have been victims of sewer service, I also want to
21 make sure that we don't eliminate the ability of
22 people to do honest work. Thank you.

23 CHAIRPERSON KOSLOWITZ: Thank you.

24 We've been joined by Council Member Ferreras and
25 Council Member Nelson. Okay. Thank you very,

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very much.

We're going to call panels of three up to testify. We have a lot of people that are going to be testifying today. Carolyn Cotton, MFY Legal Services, Johnson Tyler, South Brooklyn Legal Services and Anamarie Segura, City Bar Association of City of New York. [Pause] Whenever you're ready, you can start.

CAROLYN COFFEY: Hi. My name's Carolyn Coffey and I'm a senior attorney at MFY Legal Services. [Off mic] Okay. Sorry about that.

So, my name is Carolyn Coffey. And I'm a senior attorney with MFY Legal Services' Working Poor Project and Consumer Rights Project. And I want to thank you for the opportunity to testify today about Intro 6-A.

MFY each year provides direct representation or assistance to over 6,500 clients in New York City. And we provide legal training to thousands more. Our clients are primarily the poor and working poor, retirees and the disabled.

Our clients routinely are the victims of sewer service. Sewer service has long

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2 been a problem in the Civil Court, the City of New
3 York despite a history of attempts to address it.
4 Today, sewer service is so pervasive that, in many
5 types of cases, debt collection cases, in
6 particular, it occurs more often than lawful
7 service and, as a result, tens of thousands of New
8 York City residents are subject to abuse every
9 year. For this reason, there is an urgent need
10 for reform of the process serving industry, as the
11 Council has recognized.

12 MFY has a long-standing interest in
13 the problem of improper service because of the
14 havoc that it wreaks on our clients' lives. As
15 the Council has acknowledged today, we issued a
16 report in 2008 called Justice Disserved, which
17 analyzed the high default rate in cases in Civil
18 Court. And we concluded that defaults were the
19 result, in large part, of sloppy and illegal
20 service of process.

21 We previously testified in support
22 of Intro 1037, the predecessor to Intro 6-A. And,
23 overall, we support the current revised version of
24 the bill. Specifically, we support the bonding
25 requirement of Intro 6-A, which would require all

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2 licensed process servers and process serving
3 agencies to provide the Department of Consumer
4 Affairs with a surety bond in order to obtain
5 licenses. We believe this bonding requirement
6 will guarantee payments of fines levied by the
7 DCA, which licenses them and will guarantee
8 payment of judgments issued against process
9 servers and process serving agencies.

10 By introducing market forces into
11 the process serving industry in the form of surety
12 companies, the bonding requirement of the bill
13 will increase accountability and raise the
14 professional standard of the process serving
15 industry and will even serve to exclude some of
16 the more unreliable servers.

17 We also support the provisions of
18 the bill requiring process serving agencies to
19 provide employees with information about their
20 rates, as workers, including their rates under
21 Wage an Hour laws and to provide educational
22 materials regarding the laws pertaining to lawful
23 service of process.

24 We're pleased that Intro 6-A has
25 been revised to include a private right of action

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2 against individual process servers, who abuse
3 their power and position to effect service on New
4 Yorkers. This provision is particularly important
5 as it will allow individuals, who have been harmed
6 by process servers who do not adequately carry out
7 their jobs, to seek appropriate redress in the
8 form of damages, injunctive relief and attorney's
9 fees.

10 Although the language in the global
11 positioning system provision of the bill is broad
12 and leaves the detail as to how GPS will be
13 implemented to the Department of Consumer Affairs
14 to establish by rulemaking, MFY supports the
15 provision because it is intended to reinforce what
16 process servers already are required to do under
17 applicable laws and pursuant to DCA regulations.
18 The GPS serves as additional verification that a
19 process server was present at a location where he
20 or she claims to have effected service.

21 However, we do have two concerns.
22 First, we're concerned that the time required to
23 promulgate satisfactory regulations and allow the
24 process serving industry to acquire the GPS
25 technology may unnecessarily delay the

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2 implementation of the entire bill. We believe
3 it's critical that this bill be passed and
4 implemented promptly. Therefore, we recommend
5 that the law become effective no later than 180
6 days after its enactment, except that the new GPS
7 requirement may take effect at a later date if the
8 DCA needs more time to implement it and to allow
9 the process serving agencies sufficient time to
10 purchase equipment and to train employees on the
11 use of the new technology.

12 Second, we urge the City Council to
13 amend the current bill by adding a severability
14 clause. A severability clause would ensure that
15 the entire bill cannot be enjoined or invalidated
16 in the event that only a portion of it is
17 challenged in Court and will make clear that each
18 new requirement under Intro 6-A is intended to go
19 into effect independently of any other requirement
20 in the bill.

21 In conclusion, MFY Legal Services
22 urges the adoption of Intro 6-A with a
23 severability provision. By passing this bill, the
24 Council will take an important step to protect New
25 Yorkers from the harms of sewer service and to

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2 ensure that those individuals who are victims of
3 this practice can seek compensation when they're
4 harmed. Thank you for holding today's hearing.
5 And thank you for the opportunity to testify.

6 JOHNSON TYLER: Thank you for
7 allowing me to testify today. My name's Johnson
8 Tyler. I'm an attorney at South Brooklyn Legal
9 Services.

10 South Brooklyn Legal Services is
11 part of Legal Services of New York City. Our
12 offices collectively represent about 60,000 people
13 annually and sewer service is a problem we see
14 every single day. I want to focus my comments
15 today on why the GPS is needed with particular
16 emphasis upon how widespread sewer service is
17 practiced among a small number of process servers,
18 but nevertheless, the disproportional effect it
19 has on the Court systems.

20 Last year, in 2009, a company
21 called American Legal Process had a suit brought
22 against it by Attorney General Cuomo. He's
23 seeking relief to vacate 100,000 default
24 judgments. Those 100,000 default judgments
25 involved 20 process servers who worked for one

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2 process serving agency. At least four of those
3 guys work here in New York City for other
4 agencies. What Attorney General Cuomo found, by
5 seizing the hard drive of this process serving
6 company's computer, was he was able to link all of
7 these affidavits of service together in 62
8 counties. And then, through computer technology,
9 analyze the data.

10 He found that one process server
11 here in New York City made 40, no, 400 attempts at
12 exactly the same time on these affidavits. So,
13 we're not talking he did 8:19, 8:20. He did 8:19
14 a.m. 400 times over this time period. Another
15 one, 50 of these duplications. Another one, 20 of
16 these duplications. The third one was 184.

17 So, the Attorney General has found
18 this problem for one process server. The question
19 is do other people do this? And you have to look
20 at the debt collection industry in New York City
21 and how it operates, 'cause the same principles
22 that apply to how they operate without, apply to
23 all the process service agencies they contract
24 with. They pay, the process servers get paid \$5
25 per service. That is the standard within the

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2 industry. The spokesperson at the last hearing
3 for the Process Server Association agreed that
4 that is the standard for the industry in debt
5 collection, \$5 per service. So, you have low pay
6 going for you.

7 The other thing is why would I, as
8 an attorney, hire someone to engage in sewer
9 service? I'm very interested in winning my case
10 and not having my judgment overturned. In fact,
11 there's a Court of Appeals case in New York that
12 says if you're not diligent as an attorney in
13 hiring the right process server, you're liable to
14 your client for hiring the wrong person.

15 In debt collection, it's a very
16 different game. Debt collectors, whether they're
17 Capital One or whether they're a debt buyer, they
18 have already dealt with a client, or a consumer,
19 who, for whatever reason, says they cannot pay or
20 will not pay the debt. Statistically, if you take
21 100 of those cases, only 17 of them will ever have
22 money that legally is collectible. In other
23 words, it won't be Social Security, won't be SSI.
24 It won't be worker's comp. Seventeen out of 100
25 cases.

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2 So, a debt collector is interested
3 in getting a default judgment and that's why they
4 pay so little because the way you weed out the 17
5 people who can pay out of those 100 cases is
6 through post-judgment discovery that you can only
7 do after you get a default judgment. The more
8 money you spend in trying to get that judgment
9 cuts in on your profit line. So, it benefits them
10 to get sewer service.

11 So, most attorneys and most process
12 servers are ethical and do the work they're doing.
13 But they're getting paid much more because the
14 attorneys want to secure that judgment, make sure
15 it's good, make sure they don't have a problem
16 with Statute of Limitations. But in the debt
17 collection industry, getting to judgment is the
18 goal. So, you can then do those discovery
19 devices, locate bank accounts, freeze them, locate
20 wages and garnish them.

21 So, that's the big difference. And
22 you see those exact players involved in New York
23 City. So, American Legal Process is not an
24 aberration. It is the model of debt collection.
25 And you also see process servers working within

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New York City who work for ALP, as well.

So, that's my first point. It is a big problem in New York City. It is agreeably a small segment of the process server industry. But they have a huge effect. Just as you can see 20 process servers creating 100,000 default judgments in that ALP case, New York City we have 300,000 debt collection lawsuits being filed every year, all of which get paid \$5 per service. The majority of those cases involve sewer service. They just have to.

The last point I want to make about GPS is it really does work. The other day, we had a huge snowstorm. I had one of the people I work with has an iPhone. We bought, for 4.99, an application that allows you to take a photograph with the camera and then link it up to Google Latitude and other stuff and show exactly where you are. Well, he took that photograph during the middle of the snowstorm in downtown Brooklyn in the third floor of a six-floor building, surrounded by tall buildings, it's attached to my testimony. You can see the photograph with the time and date. It works. This technology does

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work.

And it's very important because what you see also in ALP is you see people, that's American Legal Process, you see process server making 100 claims of service in one day. Anyone can walk in for \$340 and get a license. If you do 100 services a day at \$5, you're making graduate school wages with no degree. I mean, that's 500 bucks you're making a day. So, what the GPS does, it limits your ability to make fraudulent services. You have to go places. To the extent someone is going to take one of these things and zip around the City, passing people's houses, claiming to do service, it's not going to work, because you have the time dates there. All right. It shows exactly when you were there. If you do 16 services in 25 minutes, people are going to suspect it. So, I think the GPS provision is very important.

The bonding is also important because, and by the way, I understand Assemblyman Koppell's, or Councilman Koppell's concern. But, my understanding last time at the hearing, we heard that it would cost \$80 to get a \$10,000

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2 bond. That it's not a one-for-one deal
3 whatsoever. And the industry, the lobbyist for
4 the industry said as much. She described it as a
5 get out of jail free or insurance type of card.
6 So, we have a very differing opinion about how
7 burdensome that bond is. And I think with the GPS
8 provisions, the people who are issuing the bonds
9 will find it more attractive and less risky a
10 thing to do. But the bonding provision is
11 important because it does create a sanction, a
12 meaningful sanction, if you get caught engaged in
13 sewer service.

14 The DCA has done a tremendous job
15 trying to enforce this stuff, trying to uncover
16 it. In the cases that they've found sewer
17 service, the median penalty, other than losing
18 your license, is \$1,000. That's the price,
19 \$1,000. You need to have a tougher penalty. The
20 bonding requirement creates a body of money that's
21 there that someone can collect in the event of
22 sewer service.

23 Thank you for your time.

24 ANAMARIA SEGURA: My name is
25 Anamaria Segura. And I'm a member of the Consumer

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2 Affairs Committee of the New York City Bar
3 Association. I am testifying on behalf of the
4 Civil Court and the Consumer Affairs Committees of
5 the New York City Bar.

6 The City Bar supports City Council
7 Intro 6-A, which amends the laws governing process
8 servers in New York City. The committees believe
9 that this legislation is absolutely necessary to
10 reform the process serving industry, which is just
11 plagued by problems which have devastating effects
12 on New Yorkers, as the Council has already heard.
13 It's really no secret that there's a crisis in the
14 process serving industry in New York City and that
15 the New York Courts are completely overwhelmed by
16 this wave of consumer credit litigation,
17 especially.

18 And some of these numbers, I might
19 be repeating what other people have already said,
20 but more than 75% of the 300,000 consumer debt
21 transactions that are initiated annually in New
22 York City Civil Court result in default judgments,
23 often after sewer service. Those cases are
24 overwhelmingly brought against low and moderate-
25 income New York debtors, many of whom are elderly

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2 or disabled and nearly all of whom are
3 unrepresented by counsel.

4 As a result, each year, tens of
5 thousands of New York City residents are deprived
6 of their due process right to be heard before
7 judgments are issued against them. As a result of
8 these judgments, countless New Yorkers are unable
9 to support their families, secure housing or
10 obtain employment.

11 Based on our experience as
12 practitioners in this forum, we believe that the
13 reason for the high rate of defaults is that
14 consumers never receive notice that a lawsuit has
15 been started against them. Many process servers,
16 as you've already heard, who are hired to serve
17 papers in these kinds of cases engage in sewer
18 service. And, as Johnson mentioned and talked
19 about, the New York State Attorney General
20 recently brought civil and criminal charges
21 against American Legal Process, a process serving
22 agency that allegedly failed to serve New Yorkers
23 in tens of thousands of cases.

24 The committees believe that the
25 practices uncovered by Attorney General Cuomo are

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2 far from unique and actually occur very frequently
3 in consumer credit actions. Now, we believe that
4 this bill would help ameliorate many of the
5 problems inherent in the process serving industry
6 in New York City.

7 We support the provisions of the
8 bill that require an applicant for a license to
9 post a \$10,000 surety bond and process serving
10 agencies to post \$100,000 bond. Those bonds will
11 be essential to secure payment of any fine or
12 penalty levied by DCA, as well as any-- as the
13 payment of any final judgment recovered by a
14 person who's been injured by improper service of
15 process.

16 We also support the provision
17 allowing for a private right of action against
18 process servers, enabling individuals to seek
19 injunctive relief and damages from servers who
20 engage in sewer service and abuse the legal
21 system. The committees believe that this private
22 right of action should be explicitly limited to
23 persons who were improperly served with process.

24 We also support the new GPS
25 provision of the bill to the extent that any GPS

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2 requirement enhances laws that are already
3 currently in place, including the maintenance of
4 log books, and with the caveat that we support the
5 provision only if including it won't hold up the
6 passage of the entire bill in a timely fashion.
7 The committees believe that passage of this
8 legislation is really just urgent and requests
9 that the Council pass it promptly.

10 The committees also approve the
11 bill's other important provisions, including the
12 requirements that process servers be required to
13 take an examination to obtain a license; that
14 process serving agencies be required to inform
15 their employees of their rights pursuant to
16 Minimum Wage, Overtime and Payroll Deduction laws,
17 as well as any other employment obligations of
18 their employers and that employment records be
19 retained for three years and process serving
20 records for seven years in electronic form.

21 Finally, we fully support the
22 provision requiring the Department of Consumer
23 Affairs to produce educational materials for
24 distribution to licensed process servers regarding
25 process serving laws and regulations. It's

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2 essential that process servers be educated about
3 the laws governing service of process.

4 This bill is going to go a long way
5 to address lots of problems that are currently
6 plaguing the process serving industry and will be
7 a deterrent to those who believe that they can
8 engage in shoddy service without any consequences.
9 We really urge the City Council to pass this
10 important legislation promptly. Thank you.

11 CHAIRPERSON KOSLOWITZ: Thank you.
12 Thank you. I would like to ask some questions.
13 What recourse do defendants who believe they were
14 improperly served have with respect to their
15 garnished wages and frozen assets?

16 CAROLYN COFFEY: If someone wasn't
17 served and so they didn't find out about a lawsuit
18 until their wages were garnished, their only
19 recourse is to go Court and file an Order to Show
20 Cause and attempt to vacate the default judgment
21 that was entered against them. Now, the Court has
22 gone a long way in terms of trying to help pro se
23 defendants defend themselves. But you have to
24 know that you have the right to go to Court in
25 order to go to Court. And you have to fill out

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2 the appropriate paperwork and then, go to Court
3 and actually defend yourself. Many people, many
4 New Yorkers, the people who call MFY's hotline
5 have no idea of their rights. But you can go to
6 Court and undo a judgment if you were improperly
7 served.

8 CHAIRPERSON KOSLOWITZ: You can,
9 okay. Is there any kind of mechanism for the
10 person who was served, you know, through the
11 Courts, you know, to be reimbursed?

12 CAROLYN COFFEY: If their wages
13 were garnished and the Court finds that the
14 judgment was entered improperly because of
15 improper service, then they are entitled to get
16 their wages back. In the case of restrained bank
17 accounts, which is also a big problem with people
18 can use judgments to freeze people's bank
19 accounts, people are not reimbursed for any bank
20 fees or insufficient fund fees. And that can add
21 up to hundreds and hundreds of dollars for people.

22 CHAIRPERSON KOSLOWITZ: Among your
23 clients, what is the most common cause of improper
24 service?

25 JOHNSON TYLER: Can I answer that?

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CAROLYN COFFEY: Yeah, go ahead.

JOHNSON TYLER: We have a client who has an address that just looks like any old address in Brooklyn. And he discovered his wages were garnished in 2009. So he looked at the computer records in the Court, found three judgments against him by three different creditors; an original creditor, Household Bank, two debt buyers, three different law firms, three different process servers, three different process serving agencies. In other words, there's no duplication of anyone being a bad apple here. Just a customary thing.

And so, he said well, they say you served you. What happened? He said they couldn't possibly serve me. Look at my address. They said what do you mean, look at my address. So, he looked on Google map, his address. His address is a mansion, in essence, in the Greenwood Cemetery. But it's surrounded by a wrought iron fence. So then, we pulled the affidavits. These guys said they knocked on-- he lists his address was an apartment. They knocked on the apartment door seven times, spoke with three different neighbors.

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2 I mean, there are no neighbors there. It's set
3 off from the street. The only neighbors are dead
4 people.

5 And, you know, so that's how people
6 find out about them. They don't get any notice.
7 I think that is the standard, because, again, you
8 got to go back to how much are these guys getting
9 paid, five bucks. What are the likelihood of them
10 getting caught? Very little. It's your word
11 versus my word. You have to collect all this data
12 to be able to show that someone was somewhere
13 else, because they're not, you know, the way these
14 affidavits are written, they're not written in a
15 way that someone can easily detect sewer service.
16 You don't have someone with a series of index,
17 'cause basically they get given a whole of block
18 of these things in Civil Court. So, if you go in
19 the basement of Civil Court, you can look at 15,
20 20, 30 consecutive affidavits of service from a
21 process server. None of the times conflict with
22 each other. The problem is you don't know if that
23 guy's actually filing cases in Queens on the same
24 days. He's filing them in Manhattan. He may be
25 doing it in Richmond County.

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2 And that's what the ALP case found.
3 They were able to get all this information, 62
4 counties worth of affidavits to compare. It's
5 impossible. It's impossible for the DCA or
6 anyone, a private litigant, to uncover sewer
7 service. I mean, it is just a lucky thing if it
8 happens.

9 So, that's why the GPS thing is so
10 important. You can't be at all these places at
11 once.

12 CHAIRPERSON KOSLOWITZ: So, you
13 would say sewer service is prevalent?

14 JOHNSON TYLER: Prevalent within
15 the industry of debt collection, not in all-- in
16 other areas, I believe it happens. You know, you
17 have Aetna, you have insurance companies battling
18 each other in Civil Court. Well, they just go and
19 serve the Secretary of New York State and for 40
20 bucks and it happens. I believe that happens.
21 But in debt collection, which is 300,000 cases a
22 year, yes, it is the standard. It is the
23 standard.

24 CHAIRPERSON KOSLOWITZ: Thank you.
25 Council Member Garodnick.

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2 COUNCIL MEMBER GARODNICK: Thank
3 you very much. I just wanted to thank you all for
4 your advocacy on this issue. And to just throw
5 one question at you on the subject of the surety
6 bond, because, in my absence downstairs and
7 Chairing the Technology Committee, I understand
8 that there were some questions raised about how
9 difficult that would be to obtain. And I wanted
10 to see if you could give us a little bit more of a
11 sense of that and sort of flesh out that issue a
12 little bit for the record here.

13 CAROLYN COFFEY: Well, my
14 understanding, I mean, I'm not an insurance
15 expert, but my understanding is that the monetary
16 requirement for a surety bond would actually be
17 very, very low. And that would be low for process
18 servers and process serving agencies that have a
19 decent record. And so, I think the point of the
20 bonding requirement, my understanding is to
21 introduce market forces and have an insurance
22 company review, you know, whether or not to bond
23 somebody. And if they're doing a good job, then
24 the bond actually is, it's not one-for-one, it's
25 actually a very, very small fee for, you know, the

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individual or the agency.

COUNCIL MEMBER GARODNICK: Okay.

Thank you, Madam Chair.

CHAIRPERSON KOSLOWITZ: Thank, any other questions? Thank you very much. I'd like to call Chad Marlow, John Penny-- Perez, I'm sorry, John Perez and Harlin Parker. [Pause]

Mr. Marlow, your testimony is very lengthy. Could you, in some way, summarize a lot of this?

CHAD MARLOW: Madam Chair, with all due respect, many of the issues that have been raised already before this hearing are extraordinarily complex. I realize that, to a large extent, we are involved in political theater. But for the members of the process serving industry, this theater production is a drama. For me to try to summarize these issues and provide incomplete testimony would turn it into a comedy.

So, I will try to be as brief as I possibly can, but I think that a lot of the testimony you've been getting has started with it's my understanding that, I believe that. You

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2 won't hear those phrases at all in my testimony.
3 And I think it will clarify a lot of these issues.
4 So, you know, I'm here at your pleasure. By all
5 means, anytime you want to cut me off, that is
6 your prerogative.

7 CHAIRPERSON KOSLOWITZ: Well, I
8 don't want to cut you off. I want you to have
9 your say. But 15 pages is a lot of pages.

10 CHAD MARLOW: Well, we've got a lot
11 of-- this bill's got a lot of problems. I'll do
12 my best, Madam Chair. I certainly will.

13 CHAIRPERSON KOSLOWITZ: Thank you.

14 CHAD MARLOW: Good morning. My
15 name is Chad Marlow. And I am the President of
16 the Public Advocacy Group. I am pleased to be
17 appearing before the Committee on Consumer Affairs
18 on behalf of the New York State Professional
19 Process Servers Association, as well as the
20 National Association of Professional Process
21 Servers.

22 Before getting started, I would
23 like to offer my greetings and well wishes to the
24 members of the Committee and to extend special
25 good wishes to the new Chair of the Consumer

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2 Affairs Committee, Councilwoman Koslowitz. Of
3 course, it's far more accurate to call you the new
4 old Chair of the Committee as you're returning to
5 guide a committee you expertly Chaired during your
6 previous service on the Council. In any event,
7 welcome back. We are very lucky to have someone
8 with your insight and experience chairing this
9 Committee today.

10 As you know, and by the way, I
11 should add, with the Majority Leader here, that he
12 followed in big footsteps and now you are
13 following in big footsteps.

14 MALE VOICE: Too late, too late,
15 too late.

16 CHAD MARLOW: As you know, Madam
17 Chair, Intro 6 is a revised version of a process
18 server regulatory bill that died at the end of
19 last year's session. My clients, who I will
20 reference as the NYSPPSA and NAPPS, respectively,
21 spent a great deal of time and effort attempting
22 to make that bill as well crafted as possible. It
23 is my clients' top priority to ensure that any
24 process servers or agencies that willingly violate
25 the rules governing the service of process are

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2 driven out of our industry immediately and
3 permanently.

4 When a process server intentionally
5 engages in sewer service, it harms the defendants
6 in those lawsuits and tarnishes the reputation of
7 our industry. With that in mind, based on our
8 inside expert knowledge of our industry, we advise
9 the bill's drafters on how future cases of sewer
10 service could best be deterred; something we
11 believe includes severely punishing those who
12 break the law. In fact, we advocated for
13 considerably tougher penalties than those in the
14 current bill and for permanently expelling any
15 persons or businesses that engage in sewer service
16 from working in our industry, because those
17 punishments in combination are the only effective
18 ways to deter sewer service.

19 Before I discuss the specific
20 provisions of the bill, I would like to make a
21 general observation. When the City Council
22 identifies a problem it wishes to address, and
23 strengthening the regulation of process servers
24 certainly belongs in that category, it can pass
25 one of two types of bills. The first is what I

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2 call a window dressing bill or, if you will, a
3 constituent newsletter bill. These bills create
4 the appearance of taking action, but do little to
5 actually address the underlying problem.

6 Oftentimes, sponsors of these bills seem more
7 focused on the quality of media coverage their
8 bills received, like Intro 6 received in the New
9 York Times this weekend, than in the quality of
10 the bill itself.

11 The other categories of bills is
12 real problem-solving legislation. This type of
13 legislation takes more time and effort to craft
14 than those of the window dressing variety, but
15 that is certainly time well spent if one wants to
16 genuinely address a problem.

17 Madam Chair, in its current form,
18 Intro 6 is a window dressing bill. It is--

19 CHAIRPERSON KOSLOWITZ: In your
20 opinion.

21 CHAD MARLOW: This entire testimony
22 is in my opinion, Madam Chair. While it brings
23 down the hammer on thousands of innocent process
24 servers who get up every morning, do their jobs to
25 the best of their abilities and would never

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2 consider breaking the law, it does little to
3 protect consumers or to deter the actions of those
4 few bad apples in our industry who are intent on
5 engaging in sewer service.

6 As I will discuss shortly, if this
7 bill passes in its current form, its
8 implementation will be stayed by a Court of law
9 and it will ultimately be held unlawful. The lost
10 opportunity that scenario represents would be
11 tragic. In addition to that problem, unless the
12 bill is significantly amended, it will result in
13 New York City having too few process servers to
14 handle the avalanche of cases that are brought in
15 this City every year, which exceeds the annual
16 amount brought in the State of California. This
17 will compromise the proper functioning of New York
18 City's judicial system and lead to skyrocketing
19 costs for consumers as the demand for process
20 servers outstrips supply.

21 It is my hope that finally, today,
22 the opinions of the NYSPPSA and NAPPS will be
23 given the same due consideration as those of DCA
24 and the various public interest legal service
25 groups who have commented on this regulatory

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2 effort. If that happens, we will be able to draft
3 legislation that is as effective as possible in
4 ending sewer service without causing massive
5 unnecessary collateral damage to all those who
6 provide for their families by working in the
7 process serving industry.

8 Let me turn to the first specific
9 problem with Intro 6, namely, its attempt to force
10 process serving agencies that engage in the
11 service of process on a national level, which is
12 virtually all of them, to hold a New York City
13 process server's license. The sea to shining sea
14 jurisdictional scope of this bill violates both
15 the laws and Constitutions of the United States
16 and the State of New York, a dubious achievement.

17 The current bill in Section 2,
18 essentially defines a process serving agency as
19 any business "the purpose of which is to assign or
20 distribute process to individual process servers
21 for actual service in the City of New York."
22 Intro 6 attempt to apply the scope of New York
23 City's licensing and regulatory requirements to
24 process serving agencies, whose connection to New
25 York City goes no further than picking up a phone

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2 and hiring a local business, is utterly and
3 unequivocally illegal. This is not a close
4 question of law.

5 Madam Chair, there are no shortage
6 of attorneys working on this bill. I spoke with
7 many of them at length about this problem last
8 year. As such, it is mindboggling that this
9 overextension of New York City's regulatory power
10 remains part of this legislation. From this, I am
11 left to draw one of two conclusions. Either these
12 attorneys need to brush up on their civil
13 procedure and re-read the Supreme Court Seminole
14 International Shoe against Washington case or
15 they've been advising the drafters of this bill
16 that its jurisdictional scope is illegal, but
17 their counsel is being ignored.

18 In the 65 years since the Supreme
19 Court decided the International Shoe case, and
20 Courts throughout the nation have expanded upon
21 and interpreted that ruling, it has been beyond
22 dispute that a business cannot be held subject to
23 the jurisdiction of the law of a state or locality
24 unless it has certain minimum contacts with the
25 jurisdiction. Picking up a telephone or sending

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2 an e-mail or fax from outside the jurisdiction to
3 hire a business inside the jurisdiction has never
4 been enough to establish minimum contacts.

5 By way of background, Madam Chair,
6 I want to note that the last time I offered my
7 opinion that a consumer affairs matter was
8 proceeding unlawfully, I took the decision of a
9 Supreme Court Justice and the unanimous panel of
10 five Appellate Court Justices to have that opinion
11 taken seriously. The fact that the City wasted
12 tens of thousands of taxpayer dollars defending an
13 indefensible position was unfortunate and to do so
14 again here during these lean economic times would
15 be even worse. It is my hope that we do not have
16 to go down that path again.

17 In light of the fact that literally
18 first semester law school students in their civil
19 procedure class are taught and expected to
20 understand minimum contacts principles, and that
21 my legal analysis seems to be repeatedly falling
22 on deaf ears, I thought I would try a different
23 approach in the hopes of achieving a different
24 result. Instead, I will attempt to illustrate
25 Intro 6's jurisdictional overusing using three

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2 illustrative quizzes that I believe will resonate
3 even with those who lack legal training.

4 Quiz number one, tomorrow I go on a
5 shopping spree. First I go on the internet and I
6 order some cheese from a local cheese shop in
7 Wisconsin. Next I pick up the telephone and order
8 some real maple syrup from a farm in Vermont.
9 Finally, I return to the internet and order a DVD
10 from Best Buy. When the items arrive, I noticed I
11 paid sales tax on only one of the items. Okay.
12 First part of the quiz is which item did I pay tax
13 on? Anyone? Full room want to guess which one
14 that was?

15 CHAIRPERSON KOSLOWITZ: We're not
16 playing games.

17 CHAD MARLOW: Okay. I'll tell you.
18 It was Best Buy. The more important question is
19 why did I have to pay tax on the Best Buy order,
20 but not the others. The answer is because only
21 Best Buy has a physical location in New York
22 State. The rule of law is plain. If a business
23 does not have a physical location in New York, New
24 York State cannot require it to collect taxes on
25 the State's behalf. In short, the other local

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2 businesses lack the requisite minimum contacts to
3 be subject New York law.

4 Quiz number two--

5 CHAIRPERSON KOSLOWITZ: Please [off
6 mic] can we go--

7 CHAD MARLOW: Madam Chair, I will
8 attempt to summarize them. But, like I said, I
9 spent four or five months describing the legal
10 aspects of these things and it just does not seem
11 to be getting through. So, I will dispense with
12 the quizzes. But, perhaps, I will point this out.
13 And I'll just summarize them.

14 If this City attempts to apply its
15 laws to a process serving agency in Utah, who
16 serves process and tries to enforce them, they
17 will not be able to take that Utah agency into New
18 York Court, 'cause the Courts don't have
19 jurisdiction. They will have to go to Utah to sue
20 them and they will lose because the Utah agency
21 does not have minimum contacts.

22 Same thing goes for New York State.
23 If they try to burden any other place in New York
24 State with these rules, if they do nothing more
25 than pick up the phone and hire, we're talking

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2 about a Long Island firm, Syracuse, Buffalo and
3 hire a New York City process server and they try
4 to subject them to this law, they will also not be
5 able to do it. Both, for reasons of minimum
6 contacts. But, also because of the New York State
7 Constitution and its opinions with regard to home
8 rule.

9 And I'll return to my testimony to
10 state this. Every year, the New York Department
11 of State puts out a guide it calls the Local
12 Government Handbook. And it really is a must-read
13 for local legislators looking to pass laws that
14 govern businesses from Buffalo to Lake Placid to
15 Montauk. On page 34 of this year's guide, which
16 is attached to my testimony as Exhibit A, the
17 Secretary of State writes "Judicial
18 interpretations of the home rule article
19 illustrate the tension between the affirmative
20 grant of authority to local governments and the
21 reservation of matters outside the property,
22 affairs or government of local governments to the
23 State Legislature. In a society where many issues
24 transcend local boundaries, a growing number of
25 matters are considered to be matters of State

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2 concern." This limitation is good news for New
3 York City businesses, as well, because they will
4 never have to fear being required to pay licensing
5 fees to local governments in Syracuse or
6 Lackawanna or Yonkers, despite having little to no
7 connection with those localities.

8 One footnote to this quiz, it's
9 important, as best as my clients have been able to
10 ascertain, under the current DCA licensing law, no
11 process serving agency located outside the City of
12 New York holds a DCA process serving license.

13 To bring this bill into compliance
14 with governing federal and state law, the
15 definition of a process serving agency needs to be
16 revised to cover agencies that, one, have a
17 physical presence in New York City or, two, send
18 their own employees into New York to serve
19 process.

20 As a practical matter, if the
21 provisions of this bill will not change, and,
22 again, I'll summarize here, Madam Chair, we are
23 going to end up in Court. The National
24 Association of Professional Process Servers is
25 going to pick a jurisdiction, I imagine Utah or

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2 Texas will probably be chosen, and they will bring
3 DCA there to challenge this law. The State
4 organization's going to do the same and the City's
5 lawyers are going to be shuffling off to Buffalo.

6 This is an important issue. We all
7 agree that much work has to be done to regulate
8 the industry. It makes no sense whatsoever for
9 the authors of this bill to put the bill at risk
10 of getting held up in Court just so they can
11 regulate process servers in Honolulu, in Miami, in
12 Rochester. It makes no sense whatsoever. Having
13 strict laws applicable to anyone who is in New
14 York or does business in New York is enough and it
15 doesn't create a legal problem.

16 The next section I want to discuss
17 is making its appearance for the first time in
18 this version of the bill. For ease of reference,
19 I'm going to refer to it as the GPS provision.
20 The provision found at Section 7 of the bill reads
21 "Electronic record of service. A process server
22 licensed pursuant to this subchapter shall carry,
23 at all times during the commission of his or her
24 licensed activities, and operate at the time
25 process is served or attempted, an electronic

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2 device that uses global positioning system, wi-fi
3 or other such technology as the Commissioner shall
4 prescribe."

5 When I read this new GPS provision,
6 I told my clients to set their phasers to stun and
7 immediately beam me over to their office so we
8 could discuss it. The GPS provision of this bill
9 deserves a place in the Unrealistic Legislation
10 Hall of Fame next to Ronald Reagan's Strategic
11 Defense Initiative, which proposed to shoot
12 nuclear missiles out of the sky by bouncing them
13 off mirrors on satellites.

14 Up to this point, only two entities
15 have publicly advocated for tracking process
16 servers using GPS-like technology. The Department
17 of Consumer Affairs, which oddly sent its general
18 counsel to Washington, D.C. last year to brag
19 about this provisions inclusion in the final law
20 before it was even added to the bill, and Brooklyn
21 Legal Service, who testified about it last year.

22 Let me begin by addressing DCA.
23 While DCA's science fiction fantasy about tracking
24 process servers through GPS devices may work great
25 in the depths of their imagination, it does not

1
2 operate nearly as well in New York City. I spoke
3 with DCA about its GPS idea late last year and I
4 asked them a few questions. First, I asked them
5 if they were aware of any cases in which such a
6 device had been tested and shown to be both
7 reliable and impervious to data manipulation.
8 Their answer was no. And that is the correct
9 answer, Madam Chair.

10 Second, I asked them if they were
11 aware that the only person claiming to have
12 developed a reliable GPS tracking system for
13 process servers, which is called Truth In Service,
14 was the former owner of American Legal Process,
15 the firm that the Attorney General cited for the
16 100,000 cases of sewer service. They stated they
17 were unaware of that fact.

18 Third, I asked DCA if they would be
19 willing to develop or hire someone to develop the
20 software necessary to implement a uniform reliable
21 GPS tracking system that could not be easily
22 compromised by those who want to engage in sewer
23 service. Their response, in short, was that they
24 had neither the time, money or inclination to do
25 so. They said they would leave it up to

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2 individual process servers and agencies to develop
3 their own programs, which, in the case of our
4 industry's bad apples, is the regulatory
5 equivalent of giving the fox the keys to the hen
6 house.

7 Finally, I asked DCA if it had not
8 occurred to them that agencies and servers who
9 intend to comply with the law, would attempt to
10 develop reliable GPS tracking software, while
11 those who intend to engage in sewer service, would
12 develop software that could be manipulated. To
13 this, I did not receive a response.

14 I'd like to respond to that last
15 question, however, by letting them and the
16 Committee know that a leading developer of
17 software for the process serving industry, whose
18 identity I'm going to withhold at this time for
19 his protection, was contacted a few years back by
20 ALP about developing a new software program, ALP
21 called the Fudge-O-Matic. This software would be
22 designed to automatically catch and correct cases
23 when ALP inputted false records of service that
24 placed process servers in two places at the same
25 time or nearly the same time or that were too far

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2 apart. The developer declined to write the
3 software. Believe me, those who want to engage in
4 sewer service will pay good money to programmers
5 who enable them to manipulate GPS tracking data.
6 So, any tracking system that is used had better be
7 close to hack-proof as possible.

8 I would be willing to try to make
9 this developer available to the Committee, subject
10 to whatever conditions he would insist upon. But
11 I think it would be unwise to pass a bill with a
12 GPS requirement without hearing from him first.

13 In short, while DCA is seeking a
14 fancy GPS tracking system requirement to brag
15 about at conferences, it is not willing to make
16 the effort to determine if a reliable tracking
17 systems exists or can be developed. That creates
18 a dangerous disadvantage vis-a-vis those who will
19 try to get around whatever flawed system DCA
20 approves.

21 In the case of Brooklyn Legal
22 Services, I am afraid that their testimony about
23 GPS tracking last year was, at best, based on what
24 could be fairly categorized as 30 minutes of high
25 school level internet research. I think BLS'

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2 decision to submit testimony suggesting that GPS
3 tracking of process servers is cheap, available
4 and capable of accurately validating legal
5 compliance was irresponsible and may have led to
6 the inclusion of the GPS provision in the current
7 bill when it otherwise would have been rejected.

8 Unfortunately, as that portion of
9 BLS' testimony was presented in a series of
10 footnotes that were not part of its oral
11 testimony, it escaped rebuttal until now. In its
12 testimony, BLS first suggested a particular
13 Verizon mapping program could be used to track
14 process servers. However, BLS failed to note that
15 the tracking is in real time only and the program
16 cannot record location data.

17 Next, BLS claimed a program called
18 Google Latitude could be used to track process
19 servers and they even re-mentioned that program
20 here today. But Google's own website states that
21 that program has problems of capturing "completely
22 wrong locations."

23 BLS' next prescribed device, called
24 Mobile Spy, cannot be activated by the user and
25 only records location data intermittently. So,

1
2 whether or not the location in which process is
3 served is captured is entirely subject to chance.

4 Next, BLS stated that even without
5 a cell phone, small transmitters can be carried to
6 enable tracking. However, the device they point
7 to, available at rmtracking.com only shows live
8 locations. It does not record data.

9 BLS also recommended a program
10 called Eye-Fi, but reviews of that program report
11 that its wi-fi based tracking is very inaccurate.
12 It also has other problems that are similar to
13 GeoLogTag that I'll mention in a moment.

14 BLS also endorsed something called
15 the GPS Image Tracker, a chip which one places in
16 a digital camera to record the time, date and
17 location of each photograph. This device has the
18 same drawbacks as GeoLogTag and Eye-Fi. However,
19 its users commonly complained that it shuts off
20 unexpectedly and that it's difficult to ascertain
21 when it's functioning properly.

22 In discussing the final program
23 advocated by BLS, GeoLogTag, I'll shift my focus
24 to the reality of using GPS to track process
25 servers because all of the software currently

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2 available, GeoLogTag comes the closest to meeting
3 the standards of reliability and accuracy that are
4 necessary for the purpose of monitoring legal
5 compliance. That being said, GeoLogTag is still
6 plagued with shortcomings that make its use
7 inappropriate.

8 Because the NYSPPSA has a Brooklyn-
9 based member that has been experimenting with
10 using GeoLogTag to track its process servers, my
11 testimony here is partially based on actual field
12 tested feedback of this software. It should be
13 noted, at the outset, that GeoLotTag is currently
14 available only on two very expensive smart
15 phones, AT&T's iPhone and Verizon's Droid. While
16 GeoLogTag's GPS-based data capture seems more
17 accurate than the other programs available, it
18 would be an overstatement to call the program
19 reliable. The Brooklyn-based agency trying out
20 the software has reported numerous incidents where
21 its process servers returned from serving process,
22 only to discover the picture they took captured
23 inaccurate data or no data at all.

24 Here, under Intro 6 requirements,
25 the process server would need to return to the

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2 location and re-serve process in order to comply
3 with the law. And that assumes that the data
4 capture works the second time, which it might not
5 if the location has an insufficient signal.

6 CHAIRPERSON KOSLOWITZ: Sir, I'm
7 going to have to really cut you short, because
8 you're on page 7 and there are eight more pages to
9 go. And we understand that you don't like the
10 GPS. So, can we continue?

11 CHAD MARLOW: All right. I'll
12 summarize the GPS with this. Contrary to what DCA
13 says, by the way, about the tracking program that
14 they noted, and I looked it up, it's a Facebook
15 program for tracking your friends. The issue with
16 GPS, when this Committee uses it or doesn't use
17 it, is simple. Is it reliable and can it be
18 manipulated? Almost all of these programs are
19 consumer programs that store the data in a way
20 that can't be searched. So, you have to go
21 through individual files at a time and you can go
22 in and change the data as easily as the name. The
23 idea that something that can be manipulated by
24 someone with a basic understanding of computers is
25 going to somehow deter sewer service is completely

1
2 inaccurate. So, let's not pretend that GPS
3 tracking is going to move the ball along at all.

4 If they, you know, this law says in
5 24 months, people have to come back and report.
6 So, in 24 months, let DCA, if it wants GPS
7 tracking, to report back to this Committee about a
8 program that has been tested to actually work.
9 Let's not try to convince the public that we're
10 doing something that we otherwise, you know, can't
11 really use to protect consumers.

12 So, Madam Chair, I'll turn to the
13 surety bond issue. And, again, I'll try to
14 summarize what I'm saying in here.

15 We spoke with a couple of
16 individuals. Well, let me just say that there's
17 basically, there's four problems that we have with
18 the surety bonds. First, the amount of the bond
19 required is wildly out of line with other surety
20 bond requirements in New York. Second, because
21 the dollar amount of the bond is so high, only
22 individual process servers with very good credit
23 scores and large process serving agencies could
24 satisfy even the initial qualifications for such a
25 bond. Third, given the scope of liability process

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2 servers and agencies are exposed to under the
3 current bill, it would be nearly impossible for
4 them to obtain the bond, regardless of their
5 credit, regardless of their money. And fourth,
6 for the reasons I just discussed, if this goes
7 through, it's going to rapidly increase the cost
8 of serving process and wildly decrease the number
9 of process servers who can't obtain these bonds.

10 Again, for the sake of brevity, I
11 will point out that, as I promised you, I'm not
12 going to say I think, I imagine, I guess, with
13 regard to bonding. There are three letters
14 attached to my testimony, Madam Chair, two from
15 Michael Iceman [phonetic] of the Unilite Insurance
16 Agency in New York State and one of H. Eric Venas
17 [phonetic] of Insurance Track, which is located in
18 Washington State. What they tell you is this.
19 Individuals are going to need a credit score of
20 650 to 700 in order to get a bond. Businesses are
21 going to have to show assets of five times the
22 amount of the bond in order to secure it. So,
23 that means a small agency is going to have to show
24 a half million dollars in assets to get the bond.
25 They're going to look into the owners, who may

1
2 have to own real estate, who are going to have to
3 have unblemished credit.

4 Beyond that, there's an even larger
5 problem, which is the area that these bonds try to
6 cover is essentially for professional malpractice.
7 And surety bonds are not issued for that reason.
8 That's what E & O insurance is for. So, if they
9 want to protect consumers, do it by requiring
10 Errors and Omissions insurance. Set the levels at
11 whatever level you want to set for a surety bond,
12 but don't put a requirement into the bill that
13 will be impossible for people to meet. Again,
14 read both of the testimony of these individuals
15 and they will tell you these bonds are going to be
16 impossible to secure. They're inappropriate for
17 what they're being used.

18 The final comment I'll make about
19 that issue is that my testimony includes a
20 breakdown of all of the bond requirements, the
21 specific ones that are required of people in New
22 York City. None of which approach the amount
23 that's being required of process serving agencies,
24 except for one. And that one is for the storage
25 of explosives, Madam Chair. The \$100,000 bond

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2 requirement applies to the storage of low
3 explosive, small arms ammunition, primers, black
4 powder and smokeless propellants. I would hope
5 that the Committee would understand that having
6 the same bond for process serving agencies as for
7 people who store explosives, ammunition and
8 gunpowder is poorly researched and it's really,
9 really out of whack.

10 Let me get, then, to the last point
11 that I want to discuss today. And that is the
12 legal liability that this bill sets for people in
13 the industry. This bill treats process servers
14 and process serving agencies as ticking time bombs
15 that are about to engage in sewer service, are
16 about to screw over people in debt cases and are
17 about to take away their money, you know, close
18 their bank accounts, ruin their credit. And
19 because of that, its design, it takes away their
20 rights and it's basically designed to funnel money
21 from them or their bonders onto people in debt
22 service cases.

23 I think that there's no place that
24 that is shown more specifically than in its
25 application of strict liability to both process

1
2 servers and process agencies and vicarious
3 liability to agencies. Strict liability in this
4 bill basically says it doesn't matter whether a
5 process server or an agency serves process
6 incorrectly because they made a simple mistake or
7 because it was designed to defraud. It makes no
8 difference whatsoever.

9 The Court of Appeals of New York
10 has called this onerous liability. It's applied
11 in cases of egregious manufacturing problems, dog
12 bite cases. But, in this case, and I notice that
13 Council Member Garodnick is looking confused.
14 It's Section 4, when it says the--

15 COUNCIL MEMBER GARODNICK:

16 [Interposing] I'm not confused about that, Chad.
17 But, thank you.

18 CHAD MARLOW: Oh, okay, I'm sorry.

19 COUNCIL MEMBER GARODNICK: I had a
20 separate question.

21 CHAD MARLOW: I'm sorry, my
22 apologies, Councilman. The other area applies
23 vicarious liability to process serving agencies
24 for the actions of their independent contractors.
25 This is inappropriate because vicarious liability

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2 is applied to people over which you have strict
3 control, your employees, not independent
4 contractors. And the idea that someone for whom,
5 you know, an agency in Atlanta or Washington State
6 could hire in New York as an independent
7 contractor to serve service, could decide they
8 don't want to do their job. Slip it down a sewer,
9 literally or figuratively, and now this agency is
10 going to be on the hook for damages is completely
11 inconsistent with Supreme Court juris prudence on
12 when you should apply vicarious liability. And,
13 again, that's in the testimony.

14 So--

15 CHAIRPERSON KOSLOWITZ:

16 [Interposing] Can you please--

17 CHAD MARLOW: -- and I will flip to
18 the end and I will conclude with this.

19 CHAIRPERSON KOSLOWITZ: Thank you.

20 CHAD MARLOW: I'm sorry. Let me
21 just find the last page. In addition to revising
22 the bill not to hold process servers and agencies
23 liable for unintentional mistakes and for
24 substantially higher fine, this bill really,
25 really needs to do three things. It doesn't need

1
2 bells and whistles like surety bonds, GPS
3 tracking, jurisdiction over Nome, Alaska. These
4 things are not needed to protect debtors. Three
5 things, and three things only, are needed to
6 protect debtors and to protect the reputation of
7 this industry.

8 First, substantially higher fines
9 for incidences of sewer service. And it might be
10 a great idea to use those fines to put them into a
11 fund to assist victims of sewer service. Second,
12 mandatory jail time for anyone who engages in
13 sewer service, intentionally engages in sewer
14 service. And third, permanent license revocation
15 for anyone who engages in sewer service.

16 If you tell these people if you
17 intentionally engage in sewer service, we are
18 going to fine you violently, we are going to lock
19 you up in jail and you are never going to do
20 business in this industry again, that's how you
21 deter bad behavior, Madam Chair, not through GPS
22 tracking and bond requirements. That sort of law
23 would make a real difference in the live of New
24 Yorkers and help protect my industry. Thank you.

25 CHAIRPERSON KOSLOWITZ: I couldn't

1
2 believe that you would have more after that
3 testimony. Ditto would suffice.

4 HARLIN PARKER: I can't do ditto
5 because I don't believe ditto. My name is Harlin
6 Parker. I'm the President--

7 MALE VOICE: [Off mic]

8 HARLIN PARKER: Oh. My name is
9 Harlin Parker. I'm the President of Target
10 Research. We are a licensed process serving
11 agency. I am a licensed process server
12 individual. We're a private investigations firm,
13 licensed and bonded by the State of New York.

14 A few points, if you don't mind. I
15 am very glad that you are taking this up and
16 Councilman Garodnick, I could give you a big hug.
17 I really could. I have been involved with this
18 issue for a very long time. When I first got
19 involved with this industry back in 1983, I became
20 aware of these abuses. I brought them to the
21 attention of Consumer Affairs back then, which
22 resulted in the joint investigation by Consumer
23 Affairs and the Attorney General's office back in
24 1983ish, whatever it was.

25 I met with Consumer Affairs

1
2 Commissioner, Mark Green, when he first became
3 Commissioner, to talk about this very subject. I
4 was pleased to give my two cents to Mr. Cohen of
5 Consumer Affairs when they recently had a meeting
6 on this subject. It's something that we've been
7 looking to do for a very long time. Efforts with
8 the Department of State, of New York State, to
9 license process servers have go nowhere over the
10 years. And I'm glad you're doing it now.

11 The idea back then, as it is now,
12 even to become a Notary Public, you need to take a
13 test and there are people who fail that test. So,
14 you don't want people acting as a Notary Public
15 who can't even pass a test and know what they're
16 doing. And in Consumer Affairs now, it's not so
17 much of a license as it is registration because a
18 license, at least to me, connotes a prior showing
19 of ability or knowledge in order to do the work
20 that you're setting out to do.

21 Given that, I am glad this is all
22 taking place and you're doing this. I do not
23 believe it's a perfect bill. I do believe it's a
24 fine bill.

25 On the bonding requirement, I'm

1 bonded. I think the \$80 figure came from what it
2 cost me to have my PI license. It's \$80 a year.
3 I spoke with my bonding company today about what
4 the cost would be for a bond, both for a process
5 server individual and an agency. They have no
6 idea because they have to see the bonding
7 requirements and the bonding form that you might
8 have. So, they have no idea what it is. But I
9 believe Councilman Koppell and Comrie, you're
10 correct that if it is a one-for-one dollar amount,
11 I believe that is an unfair burden to entry to the
12 business. That's a lot of money for a lot of
13 people. But I do want to see some coverage. And
14 maybe an E & O policy in lieu of a bond, or in
15 conjunction with, that might be an answer.

17 As far as the ability to sue, and
18 yes, the area of-- there's two areas of abuse,
19 consumer collection's one and L & T is the other.
20 And, as far as Consumer Affairs goes, and as far
21 as consumer collection goes, I have to applaud
22 Attorney General Cuomo for bringing an action not
23 just against a process serving agency that abused
24 the system, but against the attorneys, because
25 even back in the 1980s, the idea was that the law

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2 firms who are engaging process servers in consumer
3 collections and paying such a small amount of
4 money, knew, or should have known, that this abuse
5 was going on. And Attorney General Cuomo has
6 taken some of these law firms to task and I'm glad
7 he's doing so.

8 Back in the '80s, paying \$5 to a
9 process server was the norm. It is still the norm
10 now. That's not even adjusted for inflation. In
11 my firm, we pay process servers on an hourly basis
12 whether or not they are successful in legally
13 effecting process. We do that to buttress their
14 own testimony and to disincentivize them from
15 dumping process because if they go someplace two
16 or three or four times, and only then find out
17 that the person they are seeking moved, for them
18 to do that work for free, it's just not going to
19 happen. And that leads to the abuses.

20 As far as the ability for an
21 individual to sue a process server or process
22 serving agency, we all know that it's very easy to
23 start a lawsuit and it's very expensive to defend
24 one. And corporations, LLCs cannot appear in
25 Court on their own. They have to hire an

1 attorney. So, the cost of defending these kinds
2 of suits can be prohibitive. And there are people
3 who will start these actions on a dime.
4

5 What I would hope that would happen
6 is not to take away their right, if they are
7 damaged, to sue for damages but only after
8 showing, maybe in an administrative hearing that
9 the process server was grossly negligent in what
10 they did, because otherwise, you're going to have
11 a lot of lawsuits, whether or not they are
12 meritorious or not. And the cost of defending
13 them would be prohibitive.

14 The GPSes. I have a Blackberry. I
15 have AT&T service. I spoke with them, also today.
16 The TeleNav system does not work. It will not
17 provide me with my location at any point in time.
18 I hope they're wrong. And I hope the Commissioner
19 is right. But whatever it is, the technology has
20 to be nailed down. I also think it's a bit silly,
21 'cause my own GPS in my own car, which is an
22 expensive one, very often, too often, not all the
23 time, cannot find the satellites. And I don't
24 know where I am. GPSes also don't work inside
25 here. So, if I were to go to serve you right now

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2 with summons, I couldn't determine my location at
3 this point in time.

4 What I proposed then, I still
5 propose now, which is a low-tech answer, just as
6 taxi drivers have to keep a running log, date,
7 time, place, throughout their day. Then the
8 process server should have to submit those logs on
9 a regular basis to DCA where they cannot be
10 doctored. And if an affidavit of service is
11 presented and it's questioned, all those dates and
12 times that may be appearing on that affidavit
13 should correspond to the daily logs. That may be
14 another way to do it.

15 As far as some of the other things
16 are concerned, I would like to see this Council
17 support some changes that might help, whether it's
18 a local law or a State law.

19 Process servers are looking to do
20 work on behalf of one party in an adversary
21 proceeding to protect the Constitutional rights of
22 their adversary. They need to be able to do it
23 effectively. Right now, if I go onto your home
24 and your property to serve you with a summons, I
25 am technically trespassing. That's ludicrous.

1
2 I'm there to try to serve you with a Court
3 document. And it could be a Court-ordered
4 document. A Judge could have signed an order
5 directing that you be personally served and I
6 cannot, technically, walk onto your property.
7 That's got to be changed.

8 Also, just as far as logistics are
9 concerned, what we found then, I think is still
10 the case, unfortunately, there are blank form
11 affidavits, which are signed by process servers,
12 which are used by process serving agencies. The
13 reason for that is the logistics of getting the
14 process server back into the office to sign an
15 affidavit. The logistics, especially with E-
16 filing now, can be alleviated if you allow process
17 servers, licensed process servers, to either sign
18 an affirmation or a regular certificate of
19 service, like they do in other Courts. The need
20 to get to a Notary Public very often is a burden
21 and costly and time-consuming. So, it doesn't
22 take away from the veracity of the statement of
23 the process server, but it is just a logistical
24 easement.

25 Other than that, I think this

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2 regulations are long overdue. I applaud you for
3 doing them. I just hope you do them better.

4 JOHN PEREZ: Okay. I have nothing
5 to submit and my comments will be brief. First of
6 all, my name is John Perez. I am an attorney in
7 the State of New Jersey. I run a process serving
8 company in that State. And I'm also the past
9 President of the National Association of
10 Professional Process Servers. I currently sit as
11 a member of the Board of Directors. And I am a
12 member of perhaps 11 state associations throughout
13 the country.

14 In my efforts with the National
15 Association of Professional Process Servers, as
16 well as the New York State Professional Process
17 Servers, I have been the advocate of education.
18 And although I came initially here to make
19 comments in opposition to this bill, I believe
20 Mr. Marlow and Mr. Parker have highlighted
21 concerns that I would just reiterate. So, I'm not
22 going to be redundant.

23 But with respect to this bill, I am
24 in favor of one aspect of it, which is the
25 requirement of education of process servers.

1
2 About seven years ago, I was instrumental in
3 helping the New York State Professional Process
4 Servers institute a education and continuing
5 education program, which over the last seven
6 years, has proven very successful. Many members
7 of the Association have attended. I believe one
8 of your Council from the Department of Consumer
9 Affairs also attended one of our seminars and was
10 favorably impressed.

11 The Commissioner that indicated
12 that education should be a requirement, education
13 and testing, which I wholeheartedly support. He
14 had also indicated that they would be looking for
15 resources to provide that type of education. And
16 I submit to you that one of the resources, not the
17 exclusive one, already exists with the New York
18 State Professional Process Servers Association.
19 It's a proven program. It's highly regarded by
20 those who have attended it, process servers, as
21 well as outsiders. And I strongly suggest that
22 you look at that as one of the resources for your
23 education.

24 Beyond that, thank you.

25 CHAIRPERSON KOSLOWITZ: What kind

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of training do you give process servers?

JOHN PEREZ: Well, I'll give you an example. In the courses that I participate in, just as a brief overview, we start out with an overview of the American legal system, basically trying to give the student a feel for the environment that he is working in. We review the State and Federal Court structures. We review the concept of due process of law. We take apart a typical civil case, which is where most of our process is issued and served. And we divide it into three sections; the initial phase, the intermediate phase and the final phase. And we discuss the different types of process that are served in each one of those phases.

For instance, in the initial phase, you're serving summons and complaints and counterclaims and things of that nature. In the intermediate phase, which is the discovery phase, you're serving Subpoenas, motions and orders. Now, fortunately for the process servers in New York, whether you're serving a Subpoena or a summons and complaint, it's all served the same way. But, in other states, it's not. So, in the

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2 other states that we address this issue of
3 education, we explain the differences in the
4 nature of the process and the manner in which it
5 needs to be served.

6 We go into the final phase, which
7 is something that private process servers don't
8 participate in. It's mostly law enforcement
9 people, like Sheriffs and Marshalls, which is the
10 collection of money. We don't levy accounts. We
11 don't seize property. But we do participate in
12 the final phase by serving motions or Subpoenas to
13 discover assets. We're involved in that.

14 Then, in the New York scenario, as
15 well as other states, we review the specific
16 state's statutes and Court rules regarding service
17 of process and how process is to be served upon
18 individuals, upon minors, upon corporations, the
19 whole gamut of different types of individuals that
20 are served or companies that are served.

21 Additionally, we get into looking
22 at how process is to be served that's coming into
23 New York City or going out of New York City, the
24 forwarding and receiving of work. So, we review
25 that and make the distinctions of how that process

1 is to be served.

2 We also go into the Code of
3 Professional Conduct and an ethical
4 responsibility, which all the State Associations
5 that I belong to, and the National Association,
6 have high standards for that. And we teach and we
7 emphasize professional conduct in this business.
8 And I think that's important. Not just telling
9 someone here's a packet of laws and go read it and
10 this'll tell you, you know, how to serve the
11 process, but also to have a feel for that you must
12 act ethically and responsibly and professionally
13 in this business.

14 And then, we go into different
15 aspects, which go beyond the specific states, the
16 rules and regulations or statutes, you know, just
17 a whole bunch of other things that are relevant to
18 the process serving community. It's a pretty
19 comprehensive presentation. It's been well
20 received. It's been well accepted here, the
21 process servers that have attended in New York.
22 And it's, in my opinion, something to exemplify,
23 something to copy the experiences happen here in
24 New York.
25

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2 And, again, I suggest that the
3 Commissioner or anyone else looking to implement a
4 process server program, it already exists. You
5 don't have to reinvent the wheel. It's a very
6 good sound program. And I recommend you look at
7 it seriously.

8 [Crosstalk]

9 CHAD MARLOW: [Interposing] If I
10 could just--

11 CHAIRPERSON KOSLOWITZ: --
12 everybody does that?

13 CHAD MARLOW: Basically, just to -
14 - what he said, that entire program, just in terms
15 of time, lasts around six hours. And then, at the
16 end, there's a 100-question test. And in order to
17 be certified by the New York State Professional
18 Process Servers Association, you have to pass the
19 test. So, not everyone does it in the State.
20 It's not even required. Councilman Garodnick is
21 exactly right. It's not required to take the
22 training or the test in order to become a process
23 server in New York. But if you want to be
24 certified by the Association, you need to take
25 that entire course. You need to pass that 100-

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question test. Then, you get certified.

I think that, based on Council Member Garodnick's statements earlier, which I agree with, and the Association agree with, I think it would be outstanding if every single person who was a licensed process server in the City of New York had to take such a course and pass such a test. I think that would eliminate a lot of the, I don't want to use the word riffraff, but there I just did, but I think that would be great.

I think Councilman Garodnick is exactly right when he says I can just walk in, pay a fee and there I go. I mean, yeah, that's right. But have them earn it. This is a profession. Process serving is a profession. Doctors have to study and take tests. Lawyers have to study and take tests. There's nothing wrong with requiring that of process servers.

JOHN PEREZ: If I can just add this. In the states, there are several states throughout the country that either license, register or certify process servers. In all of those states, they require education of process

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2 servers. They don't just, you know, accept
3 someone's money and an application and say here's
4 your license to serve process. Across the board,
5 they require education and testing and to prove
6 your ability to serve process with the relevant
7 knowledge.

8 HARLIN PARKER: Just two things.
9 Over 25-plus years, I've learned that one thing I
10 cannot teach and that's honesty. You either start
11 with an honest person or you don't. As far as the
12 testing goes, Commissioner Green was very much for
13 testing when we talked about it. And he wanted to
14 see it happen. And he said well, we don't have
15 the money for it. And at that time, a process
16 server's license was I think 20 bucks a year. And
17 I suggested to him that he raise the fee. They
18 raised the fee, but they didn't put in the
19 testing.

20 CHAIRPERSON KOSLOWITZ: How do you
21 determine the address of the person you're
22 serving?

23 HARLIN PARKER: Is that to me?

24 CHAIRPERSON KOSLOWITZ: Any one of
25 you.

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2 HARLIN PARKER: Well, we start off
3 with what counsel has provided. And we send a
4 process server out to that address and they do
5 their best to ascertain whether it's correct or
6 not. My firm does not engage in consumer
7 collection actions. So, I have to, you know, give
8 that as a caveat. And but, my understanding of
9 that area is that you have a lot of people who are
10 in buildings where there is no directory. Their
11 names may not be on the door. And there may not
12 be people to speak to. So, it's very difficult on
13 a field visit to ascertain whether the address is
14 correct or not. There are other methodologies
15 involved, you know, a postal search or any of the
16 myriad of databases that I subscribe to and other
17 firms subscribe to to check identities and
18 addresses.

19 But, as far as a lot of that goes,
20 I got to say that there is a lot of, not identity
21 theft, but identity mixing, because I know a lot
22 of people where we go through what we have found
23 on databases, as far as addresses for them go, and
24 they said oh, I never lived there. Because names
25 are the same, they sometimes get mashed together

1 on some of these data aggregators. And so,
2 counsel sometimes doesn't have, maybe they think
3 they have the right address, but they don't.
4

5 But it's sometimes very difficult
6 to determine a last address. And when they want
7 you to still serve process, they are allowed to
8 serve at a last known address. But when we do it,
9 we put on that it was done pursuant to the
10 counsel's instructions.

11 CHAD MARLOW: Probably the gold
12 standard in terms of determining proper service is
13 to do a DMV search. The DMV searches are, they do
14 cost money. Some people will pay for them. I
15 don't know if the people in the debt collection
16 services are going to want to pay for them. I
17 understand they run around \$6. But my
18 understanding is that if you run a DMV search,
19 this is why they write on the back that if you
20 move, you have to update your address in 30 days,
21 if you run a--

22 MALE VOICE: [Off mic]

23 CHAD MARLOW: But if you run a DMV
24 search and that confirms that that's that person's
25 address, you can go to that address and serve that

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2 address and that will hold up in Court. It's the
3 person's responsibility, if they move, to change
4 their address. So, that is actually kind of the
5 gold standard.

6 Now, requiring a DMV search for
7 every person, obviously, some people don't have
8 driver's license, but they have IDs, that's good
9 in theory, but the thing that the Council would
10 have to balance is it would cost more money. It
11 would drive up the cost of service of process.
12 So, that's something, just for your consideration
13 when you do whatever balancing you might do.

14 CHAIRPERSON KOSLOWITZ: Okay.

15 Thank you.

16 HARLIN PARKER: In order to do a
17 DMV search, you have to have the person's exact
18 date of birth. If you don't, because of the way
19 DMV operates, and I have a direct account with DMV
20 New York State, they only search the last five
21 letters of the last name and the first three
22 letters of the first name. So, if you don't have
23 the exact date of birth, you're going to get a lot
24 of chaff.

25 CHAIRPERSON KOSLOWITZ: Thank you.

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Thank you very much.

HARLIN PARKER: Thank you.

CHAIRPERSON KOSLOWITZ: Thank you.

Okay. Next panel Tashi Lewa [phonetic], hope I'm pronouncing your name right, Claudia Wilner [phonetic], Sarah Mischner [phonetic] and Robert Martin. [Pause]

TASHI LEWA: Hello. Thank you, Chairperson Koslowitz and members of the Consumer Affairs Committee for the opportunity to comment on the proposed amendments--

CHAIRPERSON KOSLOWITZ:
[Interposing] Shhh. Can we have some quiet here, please.

TASHI LEWA: -- regarding licensing and the regulation of process servers and for the Committee's ongoing attention to this issue as it relates to consumer rights. I'd also like to thank Council Member Garodnick for his leadership on this issue.

We believe the proposed amendments will provide much needed, long overdue consumer protections and oversights that the current laws do not fully address. The Legal Aid Society-- and

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2 my name is Tashi Lewa, I'm with the Legal Aid
3 Society-- is one of the oldest and largest legal
4 services providers for low-income families and
5 individuals in the United States. Annually, the
6 Society handles some 300,000 cases and among
7 those, approximately 30,000 are individual civil
8 matters.

9 The vast majority of clients that
10 we represent in consumer debt collection cases
11 have been the victims of improper practices by
12 process servers. In almost all those cases, we
13 are able to overturn default judgments, remove
14 holds on bank accounts and provide relief from
15 garnishment of wages. Yet, because of limited
16 resources, the Legal Aid Society and other similar
17 organizations that work with consumers are able to
18 assist only a relatively small number of
19 individuals, who become the victims of unethical
20 behavior by process servers and their debt buyer
21 employers.

22 The number of consumer debt cases
23 filed in New York Civil Courts has grown
24 exponentially in the recent years. While the vast
25 majority of debt collection cases that end up

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2 resulting in default judgments, which are
3 routinely granted when consumers fail to appear in
4 Court after process servers claim to have served
5 them, debt buyers and other entities that retain
6 process servers regularly rely on consumers not to
7 appear in Court to win their cases. As a result,
8 incentives exist for process servers to provide
9 sewer service whereby consumers are not given
10 notice of lawsuits and which, then, conclude with
11 default judgments.

12 As Councilman Garodnick earlier
13 stated, the problem is not one of a brief
14 aberration or a unique particular case. It is a
15 systemic problem that is there. We strongly
16 support the Court's inclusion of a private right
17 of action for individual consumers to pursue.

18 I know other people have discussed
19 the surety, the surety bonding requirements. And
20 some of the requirements regarding to the
21 recordkeeping. And we are strongly in support of
22 those. But I'd like to just focus on the GPS
23 requirement and the requirements of a private
24 right of action.

25 At past Consumer Affair Committee

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2 meetings, the Legal Aid Society has raised
3 concerned about the Department of Consumer
4 Affairs' limited resources to enforce provisions
5 of the City Administrative Code and state laws
6 against abusive behavior by process servers and
7 debt buyers. Since process server is a volume
8 practice, we believe that the only way to provide
9 for strict compliance with the proposed amendments
10 and other process server regulations is to give
11 consumers a private right of action, similar to
12 that which is granted regarding tax preparers and
13 those regarding improvement contractors.

14 We also generally support the new
15 requirement that process servers use GPS devices
16 and keep records to track their actual routes.
17 However, relating to some of the concerns that
18 were raised earlier, DCA will need to monitor the
19 existing technology as some systems may be more
20 reliable than others and less subject to
21 manipulation. I'd also like to state that there
22 was testimony earlier about the how GPS is not a
23 perfect system. That there are some flaws and
24 errors do occur. And I don't think that the
25 standard should be set at perfection. I think, as

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2 we had testimony from people from the DCA earlier,
3 who talked about the system functioning in an
4 adequate and correct manner when it was used by
5 the City government employees. So, I think that
6 definitely there is good grounds to continue using
7 GPS.

8 Furthermore, we should also bear in
9 mind that having a GPS requirement does not cancel
10 the necessity of having these other requirements
11 that do currently exist. We do have other
12 recordkeeping requirements as a backup. So, I'd
13 like to also state that we also would not want to
14 see any of the other recordkeeping requirements
15 eliminated because of the difficulty that Civil
16 Courts and many litigants, especially pro se
17 litigants, are likely to face in analyzing the
18 technology in a Court setting if service of
19 process is challenged.

20 I'd also like to, at this time,
21 briefly mention, there was some discussion about
22 due process rights of process servers, whether
23 there was minimum contacts, 14th Amendment rights.
24 And I think there should really not be any
25 question that there are more than adequate minimum

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2 contacts when you have process server agencies,
3 and they may be nationwide in scope, but when they
4 come to New York and they're obtaining licenses to
5 serve as part of their active business, they
6 purposefully avail themselves of business
7 opportunities here in New York, there's no reason
8 why they can turn around and argue that they lack
9 any contact with New York and somehow claim that
10 their due process rights are being violated.

11 So, as I stated earlier, we do
12 support the other requirement for process serving
13 companies as far as their record keeping, the
14 surety bonds. Two brief amendments that we would
15 suggest to the current Intro 6-A. And those
16 relate to the surety bonding requirement and to
17 the GPS requirements.

18 We would request that an exception
19 be made in the case of not-for-profit legal
20 organizations. The abusive process serving
21 practices have existed and grown primarily in the
22 debt collection agency practice areas, and
23 exclusively with private process servers and
24 process serving agencies. However, requiring not-
25 for-profit legal organizations to obtain surety

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2 bonds and GPS devices unnecessarily burden not-
3 for-profit institutions. This would have an
4 adverse impact on consumer protections by placing
5 additional financial burdens on those who
6 represent the victims of abuse process servers and
7 negatively impact the very class of individuals
8 that the proposed amendment seeks to protect.

9 Thank you, again, for your
10 leadership on these issues.

11 CLAUDIA WILNER: Hello. My name is
12 Claudia Wilner. I am the Senior Staff Attorney at
13 NEDAP, the Neighborhood Economic Development
14 Advocacy Project. And I thank the Committee for
15 allowing me to testify today. NEDAP is here to
16 testify in support of Intro 6-A. We strongly
17 support this bill and we think it is absolutely
18 crucial and we urge that it be enacted as soon as
19 possible.

20 The problem of sewer service is
21 just absolutely pervasive in the debt collection
22 world, which is one that we are, unfortunately,
23 all too familiar with. And I know I've talked
24 about this before at other hearings. So, I don't
25 want to belabor the point too much. But I'll

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2 point out simply that we were able to review cases
3 that have come in-- that came in to our hotline,
4 which we run for low-income New Yorkers in the
5 City. And we found that, in 2008, 70% of hotline
6 callers who were defending themselves in cases,
7 debt collection cases, were not properly served
8 and only 12% of people reported that they had been
9 served in accordance with the law. And over and
10 over again, we just hear about the terrible
11 consequences of people not getting notice of
12 cases, having judgments entered against them.

13 And may I add to the litany of
14 other problems that people have in addition to
15 frozen bank accounts and wage garnishments, we're
16 now seeing people who are in foreclosure, who are
17 trying to get loan modifications and who are
18 unable to get loan modifications in time because
19 of default judgments entered against them because
20 of sewer service in cases that they never knew
21 about. And people are actually losing their homes
22 because of these cases. It's a really serious
23 problem and it needs to be addressed as soon as
24 possible.

25 I wanted to just mention, quickly,

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2 a few provisions that have come up today. The new
3 ones that have been added since the last time we
4 looked at this legislation. One is the GPS
5 provision. And we support this provision. We
6 think it has a lot of promise. And the reason is
7 because it offers the ability to independently
8 verify what the process server says that he did.
9 And this is just of crucial importance. And we so
10 often see process servers claiming to go out to an
11 address and they never went there. And when you
12 look at all of the times they claim that in the
13 day, they could claim, you know, 100 trips. And a
14 person can't do 100 trips and there needs to be a
15 way so that all of their claims are tracked and
16 they are located in one place, so that it would
17 just cut down on a lot of the blatant lies,
18 frankly, that we often see. So, I think that GPS
19 is really important for that reason.

20 I can see that it might take a
21 little time to find the right program. And,
22 hopefully, the program that they're using already
23 at the Department of Buildings will be easily, you
24 know, carried over to the process server industry.
25 So, I would just urge that the whole rest of the

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2 bill and the implementation of the other
3 provisions not be delayed because of potential
4 need to study the GPS provision more. So, I think
5 that's really important. And I think that that
6 should be added to the bill so that all of the
7 other provisions can go into effect.

8 And the other piece that I really
9 wanted to talk about is the private right of
10 action and how important that is. And, you know,
11 people have been, and as others have testified
12 today, talking about the problem of sewer service,
13 since the 1980s and nothing has happened since
14 then. It has only gotten worse.

15 And it's quite clear that the
16 agencies, who are supposed to be doing
17 enforcements, which would be the Department of
18 Consumer Affairs and the Attorney General, have
19 really not done enough to curb this problem. And
20 the Courts also have looked the other way. And
21 the problem has gotten worse and worse and worse
22 and worse and worse. And there need to be more
23 cops on the block. We need to enable and empower
24 people, when they're victims of these harmful
25 practices, to be able to do something about it to

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2 get redress for their wrongs. And currently,
3 there is really no way for people to do that.

4 And also, I think that the ability
5 to get injunctions is really helpful because it
6 allows individual people to actually get agencies
7 to make changes that will have an effect on, you
8 know, hundreds of thousands of other people. So,
9 it's a very, very important provision.

10 And I will leave my testimony
11 there. Thank you.

12 SARAH MISCHNER: Hi. My name is
13 Sarah Mischner. I'm actually here on behalf of
14 Harvey Epstein. He's the Project Director of the
15 Community Development Project at Urban Justice
16 Center. I'm here to urge you to support proposed
17 legislation Introduction 6-A. This is an
18 important piece of legislation that will protect
19 consumers from process servers in New York, who
20 engage in illegal activity, and create a mechanism
21 to punish those process servers who do.

22 Since 2005, the Urban Justice
23 Center's Community Development Project has
24 represented defendants in consumer debt cases in
25 New York City's Civil Court. We have also

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2 represented victims of consumer fraud and unfair
3 collection practices in affirmative litigation in
4 State and Federal Court. Additionally, the
5 Community Development Project provides general
6 counsel services to community groups advocating
7 for economic justice, including foreclosure,
8 housing and consumer justice.

9 Anyone could be the victim of sewer
10 service, but vulnerable groups, such as the
11 elderly, disabled and working poor families are
12 disproportionately affected. Frequently, these
13 individuals are unaware of their legal rights and
14 may lack an understanding of the legal system. We
15 find instances of sewer service most frequently in
16 matters of debt collection, property foreclosures
17 and eviction.

18 Sewer service is a problem that has
19 plagued New York City residents for decades.
20 There are statistics reports, as well as press,
21 reflecting this negative pattern and calling for
22 reform. A change in process server oversight is
23 imperative to safeguard the due process rights of
24 every New York City resident, as well as to ensure
25 that they are able to address complaints issued

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2 against them. To accomplish this goal, we must
3 regulate and control the work of process servers
4 through the use of the surety bonds, private
5 rights of actions, better licensing requirements
6 and recordkeeping.

7 I'm going to just summarize this
8 portion. Basically, we support the use of a
9 surety bond, 'cause it creates accountability and
10 it'll also cover final judgments recovered by New
11 York City residents for damages caused by a
12 process server or an agency's violation. Also, we
13 support the use of educational materials and
14 development of that 'cause we think that's an
15 important step forward.

16 Also, most importantly, as my
17 colleague here noted, the private right of action.
18 This may be the most important and vital addition
19 to create accountability. While the bonding
20 requirement is a powerful method of guaranteeing
21 compliance, there are clear limitations for the
22 DCA to bring enforcement actions. Fines, alone,
23 have consistently proven insufficient to stop
24 sewer service. The inclusion of a private right
25 of action allows individual victims of sewer

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2 service to make claims against the process server
3 and obtain desired relief.

4 Also, the GPS requirement that has
5 come up a lot today and the electronic records,
6 keeping them for seven years is an incredibly
7 important addition.

8 Some recommendations to improve the
9 bill are given that process servers are required
10 to maintain and keep these records during their
11 commission, they should also be required to file
12 them with the DCA on an annual basis. This
13 ensures that the documents are available to the
14 DCS for review if any questions arise about the
15 credibility of a process server. Also, if process
16 servers are on notice that their logs are reviewed
17 by the government agency who licenses them, there
18 will be additional public accountability.

19 Furthermore, it will provide a better foundation
20 for the reporting requirement in the bill. By
21 having the records readily and publicly available,
22 the report may be more accurate and efficiently
23 created.

24 Also, since process servers will be
25 required to carry an electronic GPS device, they

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2 should just be required to operate it. If they
3 could turn it off when they are outside of their
4 service, I think the language of the bill right
5 now is a little confusing with when they're
6 supposed to operate it and when they're supposed
7 to carry it.

8 Finally, an exemption from the bond
9 requirement should be afforded to process servers
10 employed at legal services and not-for-profit
11 agencies while serving process for such employers.
12 Though these organizations are unlikely to fall
13 under the definition of a process server agency,
14 the bond requirement for individual process
15 servers serving five or more process per year will
16 likely be too burdensome for many of these low
17 overhead organizations.

18 These recommendations will ensure
19 the due process rights of all New York City
20 residents by affording us the basic right to
21 respond to claims brought against us and will
22 protect vulnerable groups from potentially far-
23 reaching calamitous effects of sewer service.
24 Thank you very much for introducing this bill and
25 for the opportunity to testify.

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ROBERT MARTIN: Good afternoon.
I'm Bob Martin from District Council 37, where I'm the Associate Director of Municipal Employees Legal Services, known as MELS. And my nickname is Brief.

MELS provides services to active City workers and retirees and their dependents, including representation in consumer and debt cases. And I want to note that in a prior life, I served for seven years as general counsel at DCA and so, I have some experience in the regulation of process servers.

There is a crisis in the process service industry. It's clearly not the first crisis, but because of the unprecedented volume of consumer debt cases and the opportunity for sewer service, in my opinion, it's the worst crisis. We are clearly at a low point when the Attorney General and the Chief Administrative Judge file suit to overturn over 100,000 default judgments due to sewer service and when legal services organizations are compelled to bring a class action lawsuit seeking similar relief on behalf of New York City residents.

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2 DC 37 MELS recently released a
3 study called Where's the Proof, in which we
4 analyzed cases filed by debt buyers over an 18-
5 month period. Our overall finding was that, in
6 almost 95% of the cases in which our lawyers
7 appeared in a debt collection case and filed a
8 discovery demand, debt buyers could not, or would
9 not, substantiate the debt. That's, in large
10 part, because the debt buyer business model is
11 geared toward obtaining default judgments, which
12 is where process servers come in.

13 In 65 of the 238 cases in our
14 study, or 27%, our clients only learned of the
15 lawsuit after their salary was garnished or bank
16 account restrained. Time after time, our clients
17 told us they had not received a summons that a
18 process server claimed to have served. And, in
19 many instances, what our clients said was backed
20 up by an affidavit of service that was obviously
21 false, containing an incorrect physical
22 description or claiming service upon a non-
23 existent relative.

24 It's just awful. And I don't know
25 what other word to use that our union members and

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2 retirees and senior citizens and clients are
3 subjected to practices such as these. And our
4 clients are the lucky ones because they have us.
5 I sometimes participate in a volunteer program in
6 the Courts called CLARO [phonetic]. In fact, some
7 of the people here helped created that program, in
8 which we go to the Courthouse and talk to people
9 who don't have lawyers. And those people really
10 have it bad. And when you go to the Court, you
11 can see on the face of the papers, 'cause they
12 copy the Court file, that something was really
13 wrong in the service and that those people were
14 not properly served, or weren't served at all.

15 We support the legislation before
16 you because it is a good bill. It would, in fact,
17 go far toward making a sea change in the industry
18 and that's just what's called for. The bill
19 includes several components that would help
20 resolve the crisis in the industry. The bonding
21 requirement, that's a good requirement because it
22 would bring a level of professionalism to the
23 industry by ensuring that only those individuals
24 and companies with the requisite background and
25 resources will be able to engage in process

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2 serving. I used to know a lot about bonding, but
3 I have a hard time believing that there's not a
4 way for a legitimate process server to get an
5 affordable bond from an insurance company.

6 The GPS requirement, that's great.
7 I think it's a great innovation with the potential
8 to eliminate kitchen table service.

9 And we support the other items in
10 the bill, including the part that would make it
11 clear that companies are responsible for the
12 actions of the individual process servers whom
13 they engage or employ. That's absolutely
14 appropriate.

15 I want to applaud and thank
16 Councilman Garodnick and the other co-sponsors of
17 the bill and the Committee members. And I urge
18 you to push ahead in its passage. Thank you for
19 the opportunity to testify.

20 CHAIRPERSON KOSLOWITZ: Thank you
21 very much. Thank you. Council Member Garodnick
22 has question.

23 COUNCIL MEMBER GARODNICK: Thank
24 you very much, Madam Chair. And thanks to all of
25 you for your testimony today. I wanted to throw a

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2 few issues at you and see if you can deal with
3 them for us and for the record.

4 The first one has to deal with this
5 jurisdictional question. We heard from the
6 representative of the New York State Professional
7 Process Servers Association and the National
8 Association of Professional Process Servers who
9 raised issues about International Shoe and minimum
10 contacts and things like that. I'm going to read
11 to you the text of the bill. And I just want you
12 to address, for us, the best that you can, whether
13 you believe that there are minimum contacts such
14 that you think that the City can regulate this.

15 "A process serving agency is a
16 person, firm, partnership, association or a
17 corporation, other than an attorney or law firm
18 located in the State or deputized City Marshall,
19 who," this is the key part here, "maintains an
20 office, bureau or agency, the purpose of which is
21 to assign or distribute process to individual
22 process servers for actual service in the City of
23 New York." There it is. That's what the bill
24 says. Help us understand if that establishes
25 minimum contacts for the purpose of satisfying the

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law, in your view.

TASHI LEWA: Well, just briefly, I think the requirements, the due process requirements of the 14th Amendment as it comes to minimum contacts, in particular, specifically in regards to doing business is that there be a systematic regular contact, as that's what's required here. And that there be purposeful availment of the business opportunity. And I think over here, in this case, especially in the context of where you have process serving agencies that are licensed to do business in New York, that have purposely availed themselves of business opportunities and the reason that they have these offices is to do business for that particular reason. I don't think there's any way that you can deny, especially when you have opened up offices, as the language that you indicated to. I don't think it can be denied that there are more than sufficient minimum contacts to meet the requirements of due process.

And I think there also has to be, you know, legally what's required and where the emphasis should be, I think the true emphasis

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2 should be on the concerns, the due process
3 concerns, of the individuals who are being served.
4 I think that has to be, an emphasis has to be
5 placed on that as well, because when those
6 individuals are denied proper service of process,
7 their due process rights are affected, as well.

8 COUNCIL MEMBER GARODNICK: Anybody
9 else want to address that one?

10 ROBERT MARTIN: DCA licenses all
11 kinds of businesses, including debt collection
12 agencies that don't even have an office in New
13 York. And what counts is activity that affects
14 the consumers and residents in New York. I didn't
15 understand any of that argument. It's not a
16 problem. I don't think you should concern
17 yourself with it.

18 COUNCIL MEMBER GARODNICK: Hit the
19 button.

20 CLAUDIA WILNER: Sorry, the mic was
21 off. Yeah, I mean, I think what we have to think
22 about here is these process serving agencies that
23 have decided to locate in Westchester or on Long
24 Island, but a lot of their principal business is
25 sewer service on New York City residents and there

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2 are people who work for them are serving
3 thousands, tens of thousands of people in New York
4 City every year. They're filing affidavits in the
5 Courts with the name of that process serving
6 agency on them. And it's obviously a central part
7 of their business to serve people in New York
8 City. And I think they would be covered and are
9 properly covered by this definition.

10 COUNCIL MEMBER GARODNICK: Okay.

11 Thank you. One other question on the subject of
12 the GPS. Obviously, in the bill, it provides that
13 the Department of Consumer Affairs will establish
14 such appropriate technology to be able to
15 accomplish this. I'm going to read to you the
16 portion of the testimony of representatives of the
17 industry and I want you to respond to it because I
18 want to make sure that this is a realistic goal or
19 a realistic aspiration on the part of this
20 legislation.

21 The testimony says "When I first
22 read this new GPS provision, I told my clients to
23 set their phasers to stun and to immediately beam
24 me over to their office so we could discuss it.
25 The GPS provision deserves a place in the

1
2 Unrealistic Legislation Hall of Fame next to
3 Ronald Reagan's Strategic Defense Initiative,
4 which in 1983 proposed shooting nuclear missiles
5 out of the sky using laser beams bounced off
6 satellites."

7 So, the question that I have for
8 you is let's make sure that this is not an
9 unrealistic aspiration that we're setting the DCA
10 up to do. What is this realistic? Why does this
11 make sense?

12 TASHI LEWA: Well, I would just
13 state, you know, GPS is not Star Wars technology.
14 I think somebody described it as such. And we use
15 it as a regular part of our lives. I mean, I use
16 GPS, as well. Sure, it's falls short of
17 perfection. Sometimes it doesn't work. But
18 that's why we, as I stated earlier, we do have
19 these backup requirements that we still have to
20 follow the other requirements on service
21 processors to maintain their records and keep
22 records. So, I think that's something important
23 to bear in mind.

24 SARAH MISCHNER: One note. I'm not
25 yet admitted to practice. But, I'll comment on

1
2 this anyway. I think that the language of the
3 bill, as it stands, with the backup, as you said,
4 requirements for keeping documentation of where
5 they were, what they were doing and having to keep
6 that record. The GPS would be a backup. And if
7 the technology does exist, it can't hurt. And if,
8 my understanding, the DCA seems to be using it
9 with building inspectors and if they're using it
10 already, why would it not be okay to use it in
11 this case?

12 COUNCIL MEMBER GARODNICK: Okay.

13 So, let me just follow up on that because there
14 was something else, a point that was made in the
15 last panel, which I thought was interesting, which
16 is perhaps you don't have the service right here
17 in this room and you want to be able to electronic
18 document the fact that you have been where you say
19 you've been, how do you deal with that? Is that a
20 concern? Or does marking it just outside of this
21 room establish essentially the same goals that
22 we're after here?

23 ROBERT MARTIN: If--

24 CLAUDIA WILNER: Yeah-- go ahead.

25 ROBERT MARTIN: If my phone doesn't

1
2 work in this room, I go out on the street. I have
3 to believe that when DCA, you know, looks at this
4 and develops its rules and regulations, it would
5 allow for that situation. The GPS, and the
6 technology's there. Let's don't kid ourselves.
7 It is there. It provides some assurance that
8 process servers do not engage in the time-honored
9 technique, at least by some process servers, a lot
10 of process servers, of sitting around the kitchen
11 table and filling out an affidavit. Sorry.

12 CLAUDIA WILNER: I'd just add, I
13 mean, GPS isn't a cure-all for every kind of ill
14 that we have in process service. So, I'll give
15 you an example of a frequent type of problem of
16 sewer service that we see that GPS wouldn't
17 address at all. And that is the substitute
18 service on a fictitious individual. We commonly
19 see process servers, they may even go to a
20 building but don't find someone home, so they make
21 somebody up and they claim that process was
22 served. But that person doesn't exist. And it
23 wasn't served. And we see that over and over and
24 over again.

25 So, the GPS, if a person goes once

1
2 and says they served somebody, they're not going
3 to be able to tell through the GPS technology that
4 they didn't serve anybody and made somebody up.
5 But that doesn't mean that GPS isn't important.
6 GPS is important, as I said previously, because it
7 does provide this ability of creating an
8 independent double check on, at least, what
9 process servers are doing, are claiming, as to
10 what their movements are throughout the day. And
11 that's very important.

12 I mean, right now they're claiming
13 many more trips than could possibly ever happen.
14 If you actually are able to get all of their
15 affidavits in one place and track out what they
16 say, it's just not possible. So, to have one
17 single independent record of where they are is
18 immediately going to cut down on those kinds of
19 problems, as well as provide some verification in
20 terms of making sure that people are actually, you
21 know, going where they say they're going.

22 So, I think it's important for that
23 reason, but also that we should remember that it's
24 not the only component. And the other parts of
25 the bill, the bonding, the private right of

1
2 action, the education and the training
3 requirements are all important and they all need
4 to be there working together.

5 I would just add that I think that
6 it is-- well, I'm not going to add anything else.
7 I'm not an expert on GPS technology. But I think
8 we should be looking closely at what's already,
9 you know, working at the Department of Buildings
10 and it should be something that they can import.

11 COUNCIL MEMBER GARODNICK:

12 Miss Wilner, while I've got you, last question.
13 Window dressing, do you think this bill is window
14 dressing?

15 CLAUDIA WILNER: No. I don't think
16 it's window dressing. I think it's going to make
17 a big, big difference. I hope it'll make a big,
18 big difference. But I think the combination of
19 all of the different requirements, particularly I
20 think the bonding is really important, because I
21 think that's going-- and it's something that I
22 didn't talk about before, but we did talk about it
23 extensively at the last hearing. What the bonding
24 really does is sort of raise the playing field and
25 make it so that some of the very worst people who,

1
2 unfortunately, are really a large part of the
3 problem, may not be able to actually get a bond
4 and they won't maybe be able to be process servers
5 anymore. And that would be great. And it would
6 be really great for everybody. So, that's one
7 thing.

8 And, two, is just having to give
9 people more opportunities to be able to enforce
10 their rights and then, have the bond available to
11 satisfy those rights is going to mean just, you
12 know, much more enforcement of the law overall.
13 And I think that's going to have a big, big
14 difference.

15 COUNCIL MEMBER GARODNICK: Thank
16 you very much, Madam Chair. And thanks to all of
17 you for your testimony.

18 CHAIRPERSON KOSLOWITZ: Thank you.
19 David Robinson, Mark Isenberg [phonetic], Lazarus
20 Bruce. Okay. And Eric Berman. [Pause] Okay.

21 MARK ISENBERG: Want me to do it?

22 CHAIRPERSON KOSLOWITZ: Want to
23 start?

24 MARK ISENBERG: Anything you want.
25 Good afternoon.

1
2 CHAIRPERSON KOSLOWITZ: Good
3 afternoon.

4 MARK ISENBERG: I'm Mark Isenberg.
5 I'm a process server. I'm a retired detective of
6 New York City and former assistant to the
7 Commissioner of Legal Matters and Liaison to the
8 Corporation Counsel.

9 I have a small process serving
10 business. We work out of Long Island, where I
11 live. And we serve process all over. I want to
12 bring this into focus. While I've been listening
13 to this dog and pony show, some of the people have
14 been coming up here, it's very interesting. Okay.
15 Everybody has their own ideas. But, you know, I
16 would suggest that some of you people sit in the
17 car with me and ride around and watch us serve
18 process and understand what it is to serve process
19 and what you get on the other end. You have
20 people telling you I don't want to give you my
21 name. You have people telling me she don't live
22 here anymore and you know she does because you
23 turn around and you hear Roseanne, you're not
24 here. Okay.

25 So, we know that you're talking

1
2 about sewer service. I take offense that you
3 people would actually think that we all do sewer
4 service. I do not do consumer debt--

5 CHAIRPERSON KOSLOWITZ: Excuse me,
6 sir.

7 MARK ISENBERG: -- collect--

8 CHAIRPERSON KOSLOWITZ: You're not
9 talking to them. You're talking--

10 MARK ISENBERG: Okay.

11 CHAIRPERSON KOSLOWITZ: -- to the
12 record.

13 MARK ISENBERG: I do not do
14 consumer debt collections. I do summons and
15 complaints, Subpoenas; 75 to 80% of mine are
16 corporate and law firms and companies. I do not
17 do that. We are NAPPS members and NYPPSA members.
18 We stay in our area. I do not go out of my areas.
19 You don't have to GPS me. I'm in Nassau, Suffolk,
20 Brooklyn and Queens period. Occasionally, I go
21 into Manhattan. Very rarely, I go into Staten
22 Island, when I have a corporate service or a
23 individual that I get an - - 'cause my sister
24 lives there. I go to dinner.

25 We do not need a GPS 'cause if I

1
2 don't do what I have to do during the day, I don't
3 make it up. I put it aside and I do it the next
4 day. That's what we do. That's the business.
5 Councilman, I invite you ride with me one day to
6 see what it's like to serve process. You're
7 invited. Come with me. Give me a call. I'll
8 give you my card.

9 Another thing, it is not a crime of
10 trespass. As a former New York City detective, I
11 worked robbery and homicide, burglary and sex
12 crimes. It is not a crime of trespass when you
13 have a legitimate reason to be on someone's
14 property. The crime of trespass, the violation of
15 trespass says enters upon a property with no
16 legitimate reason to be there. We have a
17 legitimate reason to be there. We have process to
18 serve. That's number one.

19 Number two, fees. I never got \$5
20 for a service from anyone. I give about over one-
21 third to anybody that works with me or for me,
22 one-third of what I get. And, generally, our
23 range is between, on regular service, is between
24 50 and \$70 a service. Okay.

25 Also, I want to make something

1 clear. In lieu of this bonding, 'cause I'm a
2 licensed private investigator. And, I'm licensed
3 by the State of New York and I am bonded. Okay.
4 But in lieu of bonding, I have a million dollars E
5 & O insurance. So, if anything that anybody does
6 wrong would reflect on my E & O insurance. It
7 would have nothing-- bonding is only \$10,000. I
8 have a million. I have a million dollars. So, I
9 would say to put that in in lieu of a bonding. If
10 a company or an individual has Errors & Omissions
11 insurance, that's interesting.
12

13 Education, I'm all for it. Like I
14 said, I was a training officer for the training
15 offices in New York City Police Academy. And I'm
16 all for training and education. And I really
17 think that that could be done.

18 But we could be able to grandfather
19 in some of us that have been doing this for over
20 20 years and never had any complaints or so much
21 of a peep out of anyone that we've been serving.
22 People are going to be John Does and Jane Does and
23 going to say that I never got served. We always
24 followed up with legitimate lawful mailing. And
25 if I'm really suspicious, I send it certified

1
2 mail, return receipt requested. They sign for it
3 and say I was never served. But you have the
4 green card that says you were. Okay.

5 As far as searches goes on
6 database, a lot of times we confirm, we do what is
7 known in our business as due diligence. We do as
8 best as we can to find out that that's the person
9 we're going to serve at that location. Is it true
10 that law firms have listed the wrong location?

11 Yes. It is true that law firms give us the wrong
12 names? Of course. And our due diligence will
13 show that it was not able to be served. So, we
14 have an affidavit of non-service. Okay.

15 Again, we do not do consumer debt.
16 Those people should be locked up and the keys
17 thrown away. The ones that go over and serve
18 something in Brooklyn and 15 minutes later,
19 they're in Cattaraugus County, all the way out
20 near Buffalo. Those people should be lock, and
21 they were. The guy that bought that company, by
22 the way, a friend of mine happens to know him,
23 he's from the same Temple, as a matter of fact.
24 That guy bought that business, had no idea what it
25 was about. He just listened to the people in his

1
2 business tell him this is how we work. This is
3 what we do. Not to say that he's innocent.

4 He deserves to be locked up because
5 if you're going to get into a business, you learn
6 what the business is about, otherwise, like, you
7 can't do your business. If you get on the City
8 Council, you just don't sit there. When you're
9 elected to City Council, you learn what it is to
10 be a member of the City Council, what you got to
11 do. What your job is. The same here with process
12 serving.

13 I pride myself, and many of my
14 colleagues that are out here, that we are
15 professionals for what we do. There are, I agree,
16 many, some process servers that do the wrong
17 things. But 99% of us are professional and do the
18 right thing. And what you're doing in this bill
19 is penalizing the people that do the right thing.
20 And I agree with NAPPS and NYPPSA, which I'm a
21 member of, that we should do something positive to
22 prevent this from happening and go down on these
23 people that do the wrong thing and do something
24 illegal.

25 You talk about minimum contact,

1
2 Councilman. That doesn't hold water. We have
3 people that send me services from all over the
4 country to serve in Nassau, Suffolk, Brooklyn,
5 Queens, sometimes Manhattan. It just, you know,
6 it's minimum contact. They shouldn't be-- they
7 don't have to be licensed. We are. We're
8 licensed. And we're taking the responsibility.
9 My E & O insurance, I train my people. My people
10 are trained by me of what they have to do and what
11 the law is. I have a law school background. I
12 went to John Jay College of Criminal Justice in
13 addition. I know what the law is. I keep up on
14 new laws. NAPPS keeps us up on law. They send
15 us, in a bulletin, new laws that are coming
16 through so we aware and cognizant.

17 What you should do is you should
18 canvass some of us professionals to help you out
19 in making a bill and formulating the educational
20 and the testing so that it's done properly.

21 Like I said, a lot of people will
22 not give you their name. You can't jump on them,
23 throw them on the ground and put them in a
24 hammerlock to make them give you their name. A
25 lot of people, you don't have to do that. I don't

1
2 want to tell you who I am. Well, you know who he
3 is. I'll give you for instance. My daughter
4 works for me, works with me. She serves. She's a
5 NYPPSA member. We went out to a location. It was
6 an estate area in Long Island. We had to get
7 through a security guard. The man said yeah, you
8 can come up. We walked up to the house and served
9 the man. Mr. Katz. Oh, I'm not Mr. Katz. And my
10 daughter turned around and said to him isn't it
11 funny that my database said that the only person
12 who lives in this private, unattached house is
13 Mr. Katz. All right. It's me. Perfect example.
14 This is what goes on out there.

15 Like I said, any of you people are
16 welcome to ride with me. A lot of guys here know
17 me. Harlin, a lot of them know me. I'm very
18 efficient and effective with what I do. You're
19 very welcome. Give me a call. Take my card.
20 Come and take a ride with me and see what it's
21 like to walk a mile in our shoes and what people
22 give us, short of assaulting us, pulling out
23 weapons on us. Of course, I'm armed all the time,
24 not now. Sending dogs after us. Slamming doors
25 in our face. I mean, this is not a fun thing.

1
2 But we are very proud of ourselves. We're
3 professional. We do what we got to do.

4 And all of your little research
5 and all of your little plans and all of your
6 little database and stuff that's going to show
7 that 42,000 and 600,000 of this and 20,000,
8 doesn't make what we have to do every day. It
9 just doesn't do it. You got to come out and see
10 what it's like, so you can say well, this is what
11 it's like to be a process server, because you
12 can't sit here and know what it's like. Just like
13 when I got in the police department, you don't
14 know what it's like to be a police officer unless
15 you're going out there on patrol and see what it's
16 like to answer a call and it's either - - the
17 people give you.

18 Thank you. And I'm sorry if I was
19 a little bit abrupt, but anyone is welcome [off
20 mic]. Take my card and take a ride with me and my
21 assistant, who rides with me, because as another
22 problem. I have to have-- one quickly. I have to
23 have a girl in the car with me. She serves. I
24 drive because, in Manhattan, you can't stop for a
25 minute. You'll get \$150 summons. And there goes

1
2 my day. So, you have to have two of us in the car
3 to serve in Manhattan and in certain parts of
4 Brooklyn and Queens, 'cause of the traffic people.
5 And a lot of my colleagues would agree.

6 I'm sorry. Your turn.

7 CHAIRPERSON KOSLOWITZ: Thank you.

8 [Pause]

9 ELIZABETH DA VICTORIA LOBO: Good
10 afternoon. My name is Elizabeth Da Victoria Lobo.
11 I'm a staff attorney at Manhattan Legal Services.
12 I'm here today to testify on behalf of Legal
13 Services NYC and two of its affiliate offices, my
14 own office, Manhattan Legal Services and Queens
15 Legal Services.

16 Before I get started on the
17 testimony, I would like to briefly respond to what
18 the gentleman on my right has said. Most legal
19 services advocates, I know I can speak for myself
20 and most others in this room, have served process.
21 We are in, you know, offices with not a lot of
22 support staff and quite often, in our jobs, we are
23 required to go out and serve process in a case.

24 So, I would say that most of us
25 have seen both sides of the coin. We have seen

1
2 the side of our clients coming in, particularly in
3 cases, consumer cases, and in housing cases with
4 an overwhelming majority of them being improper
5 service. And we've also had the experience of
6 serving process. And I can say for myself that,
7 yes, it's not an easy process to do. But I do it
8 within the bounds of the law. And I know the law.
9 And part of what's at issue here is whether or not
10 these process servers know the law.

11 With that being said, I'd like to
12 briefly, I've submitted written testimony and I
13 won't take too much of your time today by reading
14 that in. But, I'd briefly like to address some of
15 the things in the new bill, amendments to the
16 prior Intro 1037, namely the creating of a private
17 right of action and a mandatory licensing exam.

18 These changes would help to further
19 ensure accountability for illegal practices of
20 process servers and, hopefully, prevent many of
21 these practices from occurring. For this reason,
22 we are supporting this bill. And in this
23 testimony, I briefly just want to touch on the
24 beneficial effects of these new provisions and to
25 propose a few modifications.

1
2 First with regard to the licensing
3 requirement, we thank City Council for amending
4 Intro 1037 to take into account the needs of many
5 unrepresented low-income litigants who lack the
6 resources to pay for process servers and must rely
7 on friends or family to serve Court papers. The
8 amendment to 20-403(a) now requires licenses only
9 of those who do business as a process server,
10 replacing the current language, which requires all
11 those who perform the process, excuse me, perform
12 the services of a process server. This amendment
13 is consistent with 20-404(a) and (c), which
14 restrict the definition of process servers to
15 those who do business as a process server.

16 We do ask for one amendment to the
17 licensing requirement. We ask that you exempt
18 attorneys, employees of law firms located in the
19 State and deputized City Marshalls from some of
20 the requirement of Intro 6-A. The current
21 exclusion for these groups under 20-404(b) merely
22 excludes them from the new requirement for process
23 service agencies to be licensed. However,
24 attorneys, employees of law firms and City
25 Marshalls who serve process more than five times

1
2 in one year would still individually need to be
3 licensed process servers. As such, they would be
4 required to post a \$10,000 surety bond required in
5 20-406 [off mic] (1) and carry an electronic
6 tracking device as required in 20-410. These
7 requirements would pose an enormous burden on
8 attorneys, employees of law firms and City
9 Marshalls, all of whom are already regulated by
10 other agencies. We suggest excluding attorneys,
11 employees of law firms and City Marshalls from the
12 requirements of 20-406.1 and 20-410 in order to
13 avoid these unintended consequences.

14 Next, I'd like to speak briefly on
15 the examination requirement. We support the
16 addition of a requirement that a process server
17 undergo an examination of their knowledge of
18 proper service of process in New York City and the
19 applicable laws as proposed in 20-403(c).
20 Examinations are a common tool used in licensing
21 of professionals whose conduct is governed by law
22 and whose actions have significant legal
23 consequences. One common example is an the
24 requirement by most states, including New York,
25 that a Notary Public pass an examination, not to

1 mention other groups, like attorneys.

2
3 In addition, many states and
4 localities currently require process servers to
5 pass an examination, including Alaska, Arizona,
6 Montana, Nevada, the City of St. Louis and even
7 six counties in Florida. Under the current law,
8 any person can pay a fee to become a licensed
9 process server regardless of whether they have any
10 knowledge of the applicable laws governing
11 service. A process server who fails to follow the
12 law may only be held accountable much later when
13 their license is revoked or they are subject to
14 criminal penalties. In the meantime, individuals
15 are harmed by their sewer service and the
16 resulting default judgments. While an examination
17 cannot prevent sewer service, an examination can
18 assure that all those who are doing business as
19 process servers in New York City have a basic
20 level of knowledge of the applicable law.
21 Moreover, individuals would be discouraged from
22 becoming process servers who are unwilling or
23 unable to learn the requirements of proper
24 service.

25 Lastly, we strongly support the

1 creation of a private right of action for any
2 person injured by the failure of a process server
3 to act within the law as proposed in 20-409.2.
4 Under the current law, individuals lack any direct
5 recourse against a process server, who knowingly
6 engages in sewer service. Even though an
7 individual might be able to get the default
8 judgment against them vacated, they are often
9 damaged as a result of the default judgment. A
10 civil cause of action will provide a mechanism for
11 holding the process server accountable for the
12 harm that they willingly cause. And notice the
13 standard is willingly. It wouldn't apply to any
14 process server who, I guess, accidentally, it
15 would have to show intent. In addition, it will
16 highlight the bad actors, who are abusing our
17 justice system.

18
19 Legal Services NYC consumer
20 advocates have observed that process servers
21 rarely appeared to testify at a traverse hearing,
22 when there is an allegation of sewer service. If
23 an injured individual has a private right of
24 action against a process server, the process
25 server must respond to the allegations of improper

1 service in Court.

2
3 We do recommend amending this
4 section to state that any applicable statute of
5 limitations on this private right of action will
6 begin to accrue from the date of discovery of the
7 unlawful service. Many litigants do not discover
8 improper service has occurred until many years
9 after a default judgment was entered, when their
10 bank account is suddenly frozen or their wages are
11 garnished. A judgment creditor has 20 years to
12 enforce a judgment, consequently, a person could
13 discover a default judgment as much as 20 years
14 from the time of improper service, far beyond any
15 applicable statute of limitations for a private
16 cause of action. If the private cause of action
17 were to accrue from the time of discovery, an
18 injured debtor could still obtain recourse for the
19 process server's action.

20 We commend the City Council for
21 their efforts to address this very serious issue.
22 While no one provision of Intro 6-A will solve the
23 problem of sewer service, we believe that its
24 components, in total, have significant impact. We
25 strongly urge the passage of this bill.

2 [Pause]

3 ERIC BERMAN: Good afternoon.

4 Excuse me for my cold. My name is Eric Berman.
5 I'm President of the Commercial Lawyers Conference
6 of New York, which, and also Director of the
7 National Association of Retail Collection
8 Attorneys.

9 The CLC is a New York State Bar
10 Association whose members represent creditors
11 seeking the recovery of consumer and commercial
12 debts in the State of New York. We're law firms
13 whose attorneys are licensed to practice law in
14 the State of New York and whose practice is
15 regulated by and under the supervision of the
16 Appellate Division of the Supreme Court of the
17 State of New York.

18 We regularly seek the monies that
19 are owed our clients. We try to collect those
20 monies without the use of the Courts, if such is
21 possible. We will use the Courts, as been stated
22 earlier today, if, in fact, we are unable to work
23 out a settlement prior to litigation. As a group,
24 if there are 300,000 debtor complaints filed in
25 the City of New York annually, my Bar Association

1
2 probably represents between 50 and 75% of the
3 people who have filed those 300,000 complaints.

4 We are also very familiar with the
5 situation regarding ALP. My firm was one firm
6 that was named as a Respondent in the petition
7 filed by Judge Pfau in that action. Just to
8 clarify one thing despite the fact that the
9 attorneys representing all of us have told us to
10 not to say much. We were approached by the
11 Attorney General well before this action took
12 place. The Attorney General Subpoenaed the
13 records of numerous firms to determine whether
14 there was a pattern in regard to the practices of
15 ALP.

16 I was subsequently informed, as
17 President of this organization, that the only way
18 they were able to determine that there was a
19 pattern was when they took hundreds of the
20 affidavits of service, laid them out on huge
21 tables and began to see how the service was done.
22 It was explained to me that a process server
23 served for Firm A at nine o'clock, served Firm B
24 at 9:10, Firm C at 9:20 and came back to Firm A
25 well later than that, which would indicate to the

1
2 actual law firms that there had been plenty of
3 time for that process server to get to the next
4 location.

5 I discussed this extensively at
6 that time with that Assistant Attorney General.
7 And there was, at that time, nor have there been
8 any allegations whatsoever made that any of the
9 firms that are named actively participated in,
10 colluded with or were involved in the
11 improprieties committed strictly and solely by
12 ALP. Just for the record.

13 Now, to the best of my knowledge,
14 no other process server has been found to
15 committed similar acts. I, obviously, don't know
16 every single process server that has been
17 Subpoenaed. But I'm sure word would have gotten
18 around through the industry avoid process server
19 A, B and C because there's trouble. We certainly
20 hear things like that from time to time.

21 So, the result is we have a rogue
22 operator who makes the rule, or enforces the rule,
23 of the exception that makes the rule. We believe
24 that our process servers do a good job. I can
25 tell you from my own firm's experience that

1
2 whenever we do have a traverse hearing called, in
3 over 90% of those traverse hearings, we win. I
4 can't say if that's true or not for other firms.
5 I'm quoting fact, not fiction.

6 Okay. One of the things that I
7 found very disturbing here is the way that people
8 can throw out numbers without any basis to justify
9 those numbers. I can say thank you for inviting
10 me to this beautiful blue room to testify today.
11 Why not? Maybe I'm seeing it as blue. Well, it's
12 not blue. But, at the same way, we've heard a lot
13 of testimony, which is not necessarily supported
14 by facts. And I urge the Council and the
15 Committee of the Council to always keep that in
16 mind.

17 We believe that Intro 6 or 6-A will
18 not greatly impact the number of lawsuits filed in
19 New York City. It will not stop the banks and
20 large businesses from filing, even if the prices
21 are increased. What the impact will be, and if it
22 is enacted and if it does survive a judicial
23 challenge, the costs of process servers will go
24 up. And small businesses and small businessmen
25 and businesswomen will be the ones who are

1
2 impacted. Not just in consumer cases, but in
3 their own business cases. And, again, we ask the
4 Council to always consider that the focus is on
5 Big Bank A has just screwed 5,000 million people.
6 Well, laws like this affect the small business
7 person in the City or in the locale probably more
8 than it affects big business.

9 And, also, assuming that our
10 default judgments and our other judgments are
11 actually found to be good judgments, the
12 additional costs will be passed through to the
13 judgment debtor. So, here, again, assuming the
14 judgment debtor has any money and we do have a
15 legally enforceable judgment, these additional
16 costs will be taken from that person.

17 So, again, I ask that the City
18 Council and this Committee please keep such things
19 in mind.

20 Now, there's been discussion as to
21 whether or not this Introduction violates Federal
22 law. There is currently a case against the City
23 of New York based upon the licensing of debt
24 buyers. That case is in the Eastern District of
25 New York and it specifically concerns the

1 that, testified well, it may not be perfect.
2 Well, if it's not perfect, that means that the
3 process server's going to get sued. If the
4 process server goes in with a telephone or camera
5 with a GPS device, and it doesn't provide
6 extremely accurate information, and the process
7 server is not chased away by a resident of that
8 particular locale, or threatened with life and
9 limb by that resident, and is able to take a
10 picture, will the GPS work? Well, the way the law
11 is written, if the GPS doesn't work, process
12 server is screwed, pure and simple, because he's
13 going to get sued. And he won't be able to prove
14 that he made the service because the GPS
15 information is incorrect.
16

17 So, if this is going to be part of
18 the law, it should be proven to work. Nothing is
19 perfect. But it should definitely work far better
20 than the experiences all of us have had, whether
21 we have GPSes in the car or if we don't get
22 cellular phone service in different places,
23 because this is a business with strict liability
24 pursuant to this law. So, if the provision's
25 going to be there, let's make sure that it

1
2 actually is applicable.

3 The bond section, which is section
4 4, again, there's been prior testimony as to the
5 only other bond required by the Department of
6 Consumer Affairs of this magnitude, which concerns
7 gunpowder and black powder. And sometimes I
8 wonder if the process server shouldn't be
9 authorized to carry such things when they serve
10 process. But, that's an aside, which I realize is
11 not very humorous. But, they don't. They serve
12 process.

13 Now, as far as all these people who
14 have been, we've been told about, who don't get
15 process service, well, they're inventive. They
16 found ways. My firm was hit with an Attorney
17 General complaint just the other day. The
18 defendant we served no longer lived at the home
19 where he was served. However, he owned the home.
20 That was his prior marital residence. He was
21 thrown out by a Court order for a period prior to
22 the date, a year prior to the date that we served.
23 We have nothing in the record, including the--
24 and, by the way, they included the divorce
25 judgment, which showed that a year after we did

1
2 the service, he was authorized to remove his car
3 and take personal documents from the marital home.
4 And we also have a DMV report, which shows that he
5 maintained that address for all of his motor
6 vehicles during this same time.

7 Now, I can understand why they
8 didn't go to Court to request an Order to Show
9 Cause to vacate that judgment, because they have
10 to prove it. However, if they go to the Attorney
11 General or to the DCA, as will happen in New York
12 City, then, the levels of proof are basically not
13 there. And perhaps we can intimidate the creditor
14 or the creditor's law firm or the small business
15 person from pursuing it because we're saying that
16 we didn't live there.

17 This is not unusual. We also have
18 situations where oh, yes, there was a person with
19 my same last name, same first name, except that
20 two letters were incorrect. They spelt the first
21 name differently.

22 CHAIRPERSON KOSLOWITZ: Can you
23 please--

24 ERIC BERMAN: And I will--

25 CHAIRPERSON KOSLOWITZ: -- now sum-

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ERIC BERMAN: -- sum up. The bottom line is that the black that we're hearing here has to be examined much further than what's being proposed. And this law, the way it's written, I respectfully request, and the Commercial Lawyers Conference of New York respectfully request, that it be tabled until it can be-- until these practices can really be examined, that the GPS works, that whether or not the bonds actually are required, particularly in the amounts that are indicated and whether this is actually a legal bill, because, as Mr. Marlow said, I'm sure it will be challenged. And why bother to go through that if it's unnecessary. Thank you.

CHAIRPERSON KOSLOWITZ: Thank you. You have any questions?

COUNCIL MEMBER GARODNICK: Thank you very much, Madam Chair. Mr. Isenberg, I just want to come back to you for one moment. And just say, obviously, a lot of people were here today talking about bad practices among process servers. And to the extent that I am guilty of that in any

1 way of looping and lumping everybody in together,
2 I don't want to do that. And I don't think they
3 intend to do that either. So, I just want to be
4 very clear because there are bad actors here. You
5 pointed it out. And you may be an excellent,
6 excellent actor. We are aware of that. We're
7 aware of the fact that these are small businesses.
8 We get it.

9
10 I just wanted to ask you one
11 question about your own business. You noted that
12 you, I think you said that you have your own
13 process serving business. You're based in Nassau,
14 but you do service in Nassau, Queens, Brooklyn and
15 sometimes in Staten Island. Is that right?

16 MARK ISENBERG: Nassau, Suffolk,
17 Brooklyn, Queens.

18 COUNCIL MEMBER GARODNICK: Okay.

19 MARK ISENBERG: Sometimes Staten
20 Island, sometimes Manhattan.

21 COUNCIL MEMBER GARODNICK: Okay.

22 So, my question for you is this. Putting aside
23 any of the rules that we're proposing or any of
24 the rules that are on the books.

25 MARK ISENBERG: Okay.

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2 COUNCIL MEMBER GARODNICK: My
3 question for you is do you believe that the City
4 of New York should be able to license your
5 activities when you are interacting with New York
6 City residents?

7 MARK ISENBERG: In what respect,
8 Counselor?

9 COUNCIL MEMBER GARODNICK: I just
10 want to understand whether you believe we can set
11 the rules.

12 MARK ISENBERG: Well, I'm licensed
13 by you to serve process, absolutely.

14 COUNCIL MEMBER GARODNICK: And do
15 you believe that we should be able to license you?

16 MARK ISENBERG: Absolutely.

17 COUNCIL MEMBER GARODNICK: Okay.

18 MARK ISENBERG: There's nothing
19 wrong with that.

20 COUNCIL MEMBER GARODNICK: Okay.
21 That's--

22 MARK ISENBERG: But my--

23 COUNCIL MEMBER GARODNICK: I think
24 we have agreement. By the way, I think we have
25 agreement there.

2 MARK ISENBERG: Okay.

3 COUNCIL MEMBER GARODNICK: Go
4 ahead.

5 MARK ISENBERG: Can I interject one
6 thing, though? All right. I think that you're
7 lumping together all of the eggs in one basket.
8 There are people that do general process and not
9 consumer debt and there are people that specialize
10 in consumer debt. I, for one, do not do any
11 consumer debt. Those are--

12 COUNCIL MEMBER GARODNICK: I hear
13 you.

14 MARK ISENBERG: Those are the
15 people that there are issues with, not us.

16 COUNCIL MEMBER GARODNICK: I
17 understand. I just wanted to get your one--

18 MARK ISENBERG: And we're being
19 penalized for all of them, all right.

20 COUNCIL MEMBER GARODNICK: I
21 understand. I hear you. I just wanted to
22 understand, from your perspective, and that's why
23 I was trying to put aside the issues of whether
24 you think you should be subject to GPS, whether
25 you think, put all that stuff aside. We can agree

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2 that it is appropriate for the City of New York to
3 license a process serving agency like yours.

4 MARK ISENBERG: Absolutely.

5 COUNCIL MEMBER GARODNICK: Okay.

6 MARK ISENBERG: I mean, yeah, but
7 I--

8 COUNCIL MEMBER GARODNICK: That's--

9 MARK ISENBERG: -- I'm from the
10 City. I'm basically--

11 COUNCIL MEMBER GARODNICK: But,
12 you're not.

13 MARK ISENBERG: -- I work in the
14 City.

15 COUNCIL MEMBER GARODNICK: Well,
16 but you're based out of--

17 MARK ISENBERG: I'm physically--

18 COUNCIL MEMBER GARODNICK: -- the
19 City.

20 MARK ISENBERG: But that the whole
21 idea is I'm physically working in the City. The
22 NAPPS member in Buffalo that sends me the work,
23 I'm doing the work.

24 COUNCIL MEMBER GARODNICK: Right.

25 MARK ISENBERG: But he's not doing

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the work.

COUNCIL MEMBER GARODNICK: Now, the NAPPS member in Buffalo, you don't think he should be licensed by the City, right?

MARK ISENBERG: I don't think so, no.

COUNCIL MEMBER GARODNICK: Okay. Because he's referring to you.

MARK ISENBERG: And it's--

COUNCIL MEMBER GARODNICK: And you're doing the work. That's the reason you--

MARK ISENBERG: It's incumbent--

COUNCIL MEMBER GARODNICK: -- should be licensed, right?

MARK ISENBERG: It's incumbent upon me to do a proper legal job. Just like the process I would get from Florida or Georgia or California or Ohio or Iowa, I have to do the proper job in my locale. Just like if I send them something down in Florida, they have to do the proper thing down there.

COUNCIL MEMBER GARODNICK: Okay. Just my question for you, though, is you're based in Nassau. Your office is in Nassau, but you do

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work in New York City?

MARK ISENBERG: Correct.

COUNCIL MEMBER GARODNICK: Okay.

So, we agree that in that situation, because you are directing process servers in New York City, you should be able to be licensed by the City of New York?

MARK ISENBERG: We are licensed by the City of New York, right.

COUNCIL MEMBER GARODNICK: Good. I think we agree. So, the other point I wanted to make is about the technology needing to work. Okay. I completely agree with that. There's no question about that. We want to make sure that this makes sense, that this is not pie in the sky. In fact, we didn't spell it out in the bill because we want to make sure that it works before the Department of Consumer Affairs puts something out there and that goes through an entirely separate rulemaking procedure, which involves public comment. And we expect you'll be out there and everybody will be out there, advocates for, folks who you will be subject to it and that is a good thing.

1
2 But nobody has said anything that
3 it must be pictures. Nobody has said anything
4 that it must telephones. Nobody said... It's an
5 unwritten issue at the moment because, for the
6 reason I think you described, which is we want to
7 make sure that it works.

8 And the last thing I wanted to say
9 is on the subject of partnering you all with
10 education. Absolutely. You all are in the
11 industry. We want to make sure, and the DCA, we
12 will push them to be sure that when they are
13 putting forward their packets, tests, educational
14 materials, anything, that they're working with the
15 folks in the industry because if they don't do
16 that, then they're really missing an opportunity
17 to do this right. So, I just wanted to agree with
18 you. I think that's correct.

19 And, with that, Madam Chair, I
20 thank you and I thank you all for your time.

21 CHAIRPERSON KOSLOWITZ: Thank you
22 very much. And that being the last panel, this
23 meeting is closed.

C E R T I F I C A T E

I, DeeDee E. Tataseo certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "DeeDee E. Tataseo". The signature is written in black ink and is positioned above a horizontal line.

Date

April 1, 2010